

**Act No. 1 of 2002
MINIMUM WAGES**

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Act No. 1 of 2002

MINIMUM WAGES

An Act to make provisions for minimum wages in employments and for connected purposes. *1 of 2002*

[Commencement 21st January, 2002]

1. This Act may be cited as the Minimum Wages Act, 2002. Short title.

2. In this Act- Interpretation.

"employee" means any person who has entered into or works under (or, in the case of a contract which has been terminated, worked under) a contract of employment, whether the contract is for manual labour, clerical work or otherwise and whether it is a contract of service or apprenticeship, and any reference to employment shall be construed accordingly;

"employer", in relation to an employee, means any person or undertaking, corporation, company, public authority or body of persons including-

 - (a) the owner of a business in which the employee is employed;
 - (b) any managing agent of an employer;
 - (c) in relation to a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under a contract of bailment (other than a hire-purchase

agreement), the said owner;

- (d) in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or, where the club is managed by a committee, the members of the managing committee, of the club,

who or which employs any person to work under a contract of employment or uses the services of a commission agent or contract worker; and includes the heirs, successors and assigns of an employer;

"inspector" means an inspector designated under section 11 as the case may be;

"Minister" means the Minister responsible for Labour;

"regulations" means regulations made under this Act and in the manner provided by this Act;

"wages" includes every form of remuneration for work performed, but does not include tips, bonuses or other gratuities.

3. (1) Subject to subsections (2) and (3), the provisions of this Act shall apply in relation to any employee employed in any form of employment in The Bahamas including any such employment by or under the Crown in right of the Government of The Bahamas or by any body corporate established by law for public purposes.

Application of Act.

(2) This Act shall not apply to-

- (a) industrial agreements existing on the date of the coming into force of this Act;
- (b) children and young persons.

(3) The Minister may by order provide that the provisions of this Act or such of the said provisions as are mentioned in the order shall or shall not apply in relation to persons or employments of such classes as may be specified in the order subject to such exceptions or modifications as may be so specified.

4. (1) The minimum wages shall be fixed as follows-

Minimum wages.

- (a) if the employee is employed by the week the minimum wages shall be one hundred and fifty dollars per week;
- (b) if the employee is employed by the day the minimum wages shall be thirty dollars per day;
- (c) if the employee is employed by the hour the minimum wages shall be four dollars per hour.

(2) The Minister may by order increase the sums specified in subsection (1) after consultation-

- (a) with a confederation being in the opinion of the Minister a confederation representative of employers and associations of employers generally; and
- (b) with an association of registered trade unions being an association in the opinion of the Minister representative of employees generally.

(3) As soon as the Minister has made a minimum wages order it shall be subject to affirmative resolution of both Houses of Parliament.

5. (1) If a contract whether made before or after the commencement of this Act, between an employee and his employer provides for the payment of less wages than the statutory minimum wages, such contract shall have effect as for those less wages there were substituted the statutory minimum wages.

Enforcement of minimum wages.

(2) If an employer pays to an employee wages which are less than the statutory minimum wages, such employer is guilty of an offence and shall be liable, on summary conviction, to a fine of five thousand dollars, and the court shall order the employer to pay the employee such sum as is found by the court to represent the difference between the amount which ought to have been paid to the employee by way of remuneration, if section 4 had been complied with, and the amount actually paid.

(3) The powers given by this section for the recovery of sums due from an employer to an employee shall not derogate from any right to recover such sums by civil proceedings.

6. (1) Subject to the provisions of this section, any reference in this Act to wages shall be construed as a reference to the amount obtained or to be obtained in cash by the employee from his employer, clear of all deductions in respect of any matter whatsoever, except any deductions lawfully made-

Computation of wages.

- (a) under any written law requiring or authorising deductions to be made from wages for any purpose specified in that written law;
- (b) at the request in writing of the employee for any purpose in the carrying out of which the employer has no beneficial financial interest, whether directly or indirectly.

(2) For the purposes of this section, the expression "cash" means current coin and currencynotes of The Bahamas and any drafts or orders for the payment of money by means of which wages may be lawfully paid.

(3) Nothing in this section shall be construed as authorising the doing of any act which is illegal by virtue of any written law.

7. (1) Where an employee is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium:

Employers not to receive premiums.

Provided that nothing in this subsection shall apply-

- (a) to any such payment duly made in pursuance of any instrument of apprenticeship not later than four weeks after the commencement of the apprenticeship; or
- (b) to any such payment made at any time if duly made in pursuance of any instrument of apprenticeship, or of any contract in writing providing for the training or education of the employee, which is approved for the purposes of this provision, either generally or in relation to the particular case by the Minister.

(2) Any employer acting in contravention of this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding one thousand dollars, and the court may, in addition to imposing a fine, order him to repay to the employee or other person to whom the payment was made the sum improperly received by way of premium.

8. (1) The employer of any employee shall keep such records as are necessary to show whether or not the provisions of this Act are being complied with as respects that employee, and all such records shall be retained by the employer for three years.

Records and notices.

(2) The employer of any employee shall post such notices as may be prescribed for the purpose of informing that employee of any minimum wages affecting him, and, if it is so prescribed, shall give notice in any other prescribed manner to that employee of the said minimum wages and of such other matters, if any, as may be prescribed.

(3) If an employer fails to comply with any of the requirements of this section, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding five hundred dollars.

(4) This section shall not apply in the case of domestic workers.

9. If any person makes or causes to be made or knowingly allows to be made any entry in a record required by this Act to be kept by employers which he knows to be false in a material particular, or for purposes connected with this Act produces or furnishes, or causes or knowingly allows to be produced or furnished, any wages sheet, records, list or information which he knows to be false in a material particular, he shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding five thousand dollars.

Penalty for false records and information.

10. (1) Where an employer is charged with an offence under this Act, he shall be entitled, upon complaint duly laid by him, and on giving to the prosecution not less than three days' notice in writing of his intention, to have any other person whose act or default he alleges that the offence in question was due, brought before the court at the time appointed for the hearing of the charge; and if, after the commission of the offence has been proved, the employer proves that the offence was due to the act or the default of that other person, that other person may be convicted of the offence; and, if the employer further proves that he has used all due diligence to secure that this Act and any relevant regulation or order made thereunder are complied with, he shall be acquitted of the offence.

Liability of agent and special defence to employers.

(2) Where a defendant seeks to avail himself of the provisions of subsection (1)-

- (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his plea, and to call rebutting evidence; and
- (b) the court may make such order as it thinks fit for the payment of cost by any party to the proceedings to any other party thereto.

(3) Proceedings may first be taken against any such other person to whose act or default an offence under this Act is alleged to be due, without first causing proceedings to be taken against the employer; and in any such proceedings the defendant may be charged with, and on proof that the offence was due to his act or default, be convicted of, the offence with which the employer might have been charged.

11. (1) The Minister may designate any suitably qualified public officer as an inspector under this Act.

Inspectors.

(2) An inspector may, for the purpose of ensuring compliance with this Act or with the Employment Act, 2001 or the regulations made thereunder-

- (a) inspect and examine all books, payrolls and other records, if any, of an employer relating to the minimum wages, overtime pay and vacation pay affecting any employee;
- (b) take extracts from or make copies of any entry in the books, payrolls and other records, if any, mentioned in paragraph (a);
- (c) require any employer to make or furnish statements, either orally or in writing in such form as may be prescribed to provide information respecting the minimum wages paid to all or any of his employees, and their overtime pay and vacation pay; and
- (d) require any employee to make full disclosure, production and delivery to him of all records, documents, statements, writings, books, papers and extracts therefrom, or copies thereof, or of

any other information (whether or not in writing) that the employee has in his possession or under his control and that in any way relate to his minimum wages, overtime pay and vacation pay.

(3) An inspector may, after having given reasonable notice, at any reasonable time, enter upon any place other than a private dwelling where any person is employed for the purpose of making an inspection authorised under subsection (2).

(4) An inspector shall be furnished by the Minister with a certificate of his authority and, on entering any such place as is mentioned in subsection (3), shall, if so required, produce the certificate to the person in charge thereof.

(5) The person in charge of any such place as aforesaid and every person employed therein or in connection therewith, shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties under this Act or the regulations made thereunder.

12. Where an inspector finds that an employer has failed to pay to an employee-

- (a) the statutory minimum wages;
- (b) any overtime pay to which the employee is entitled under the Employment Act, 2001; or
- (c) any vacation pay to which the employee is entitled under the Employment Act, 2001,

Where under-payments found on inspection.

the inspector may determine the difference between the wages actually paid to the employee and the wages to which the employee is entitled and, if the amount of the difference is agreed to in writing by the employer and the employee, the employer shall, within five days from the date of the agreement, pay that amount to the employee.

13. The Minister shall, within six months from the end of every year, prepare an annual report on the administration of this Act and cause such report to be laid before both Houses of Parliament.

Annual report.

14. The Minister may make regulations for carrying out the purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations-

Regulations.

- (a) providing for the payment of any wages of an employee to the Minister or to some other person in the event that the employee cannot be found, or in any other case;
- (b) providing for the establishment of committees to advise the Minister on any matters arising in relation to the administration

- of this Act; and
- (c) for any other matter required or authorised by this Act to be prescribed.