

THE MINIMUM WAGE ACT

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SCHEDULES

THE MINIMUM WAGE ACT

[22nd December, 1938.]

Cap. 252.
Laws
58 of 1954,
9 of 1956,
34 of 1956,
25 of 1957.
Acts
45 of 1974,
7 of 2007,
2 of 2011.

1. This Act may be cited as the Minimum Wage Act.

Short title.

2. In this Act—

Interpreta-
tion.

“Advisory Commission” means the Minimum Wage Advisory Commission established under section 4;

45/1974
S. 2(a).

“minimum wage” means any national minimum wage or the minimum rate of wages fixed as hereinafter provided in respect of the particular occupation followed by the person concerned and applicable to that person;

45/1974
S.2(b).

“national minimum wage” means any minimum wage fixed under section 3 as a national minimum wage.

45/1974
S. 2(d).

3.—(1) The Minister may by order published in the *Gazette* fix minimum rates of wages for any occupation in the Island either generally or in any specified area, place or district in any case in which he is satisfied that the wages being paid to any persons employed in any such occupation are unreasonably low, and may, if he is satisfied that it is desirable so to do, fix a national minimum wage applicable, subject to the provisions of this section, to occupations generally.

Fixing of
minimum
wage.

45/1974
S. 3(a).

(2) An order under this section may contain such ancillary provisions as the Minister thinks fit and, without prejudice to the generality of the foregoing—

45/1974
S. 3(b).

(a) may regulate hours of work and other terms and conditions of employment or service in relation to any minimum rates of wages;

MINIMUM WAGE

- (b) may fix different minimum rates of wages for workers employed in different categories of establishments engaged in the same occupation;
- (c) may, notwithstanding that the order fixes a national minimum wage, provide that the national minimum wage shall not apply to any category of workers, or to workers in any area, specified therein or shall apply to such workers subject to such conditions or modifications as may be specified therein.

(3) The Minister may by order vary or cancel a minimum wage.

(4) Any minimum wage fixed as aforesaid or the cancellation or variation of any such wage shall become effective as from the date specified in that behalf in the order.

(5) Any order under this section in relation to a national minimum wage shall be subject to affirmative resolution of the House of Representatives.

45/1974
S. 3(c).

Establishment
of Advisory
Commission.

4.—(1) There shall be established for the purposes of this Act a body to be known as the Minimum Wage Advisory Commission.

Second
Schedule.

(2) The provisions of the Second Schedule shall have effect as to the constitution of the Advisory Commission and otherwise in relation thereto.

Functions
of Advisory
Commission.

4A. The functions of the Advisory Commission shall be—

- (a) to consider and to advise the Minister on all matters relating to national minimum wages and any other minimum wages which may be fixed under this Act;
- (b) to obtain and record information in relation to wages and other remuneration, terms and conditions of work and all other factors affecting the circumstances of employment and remuneration of

the various categories of workers, to keep such information under continuous review and advise the Minister from time to time as respects the categories of workers in relation to which a minimum wage should be fixed, the wage to be fixed and other matters related thereto;

- (c) to keep under review all minimum wages fixed by the Minister and the terms and conditions in relation thereto, and to make recommendations to the Minister as respects any variation thereof.

4B.—(1) The Advisory Commission shall have power, for the purpose of the performance of its functions under this Act—

Power to
summon
witnesses.
45/1974
S. 4.

- (a) by summons signed by the chairman or by the secretary of the Advisory Commission, to summon and enforce the attendance of witnesses and parties concerned, and to compel the production of books or other documents by the same means and, so far as may be, in the same manner as provided in the Witnesses Expenses Act in the case of any legal proceedings before a court; and
- (b) to examine witnesses and parties concerned on oath (which oath the chairman or secretary of the Advisory Commission is hereby empowered to administer) so as to elicit all such information as the Advisory Commission may consider necessary and relevant to its deliberations.

(2) All persons summoned to attend and give evidence or to produce any book or other document before the Advisory Commission shall be—

- (a) bound to obey the summons served upon them; and
- (b) entitled in respect of such evidence or the disclosure of any communication or the production

of any such book or other document to the same right or privilege as before a court of law.

(3) Any person who—

- (a) without sufficient cause, fails or refuses to attend before the Advisory Commission in obedience to a summons issued under this Act, or fails or refuses to produce any book or other document which he was required by the summons to produce; or
- (b) being a witness, leaves a meeting of the Advisory Commission without the permission of the Advisory Commission; or
- (c) being a witness, refuses without sufficient cause to answer any question put to him by, or with the permission of the Advisory Commission; or
- (d) willfully obstructs or interrupts the proceedings of the Advisory Commission,

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred and fifty thousand dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months.

7/2007
S. 2.

Penalty for
not paying
wages in
accordance
with mini-
mum rate
fixed under
the provisions
of section 3.
7/2007
S. 3.

5.—(1) Where any minimum wage has been fixed by the Minister under this Act an employer shall in cases to which the minimum wage is applicable pay wages to the person employed at not less than the minimum wage and if he fails so to do shall be liable on summary conviction before a Resident Magistrate in respect of each offence to a penalty not exceeding one hundred thousand dollars.

(2) On the conviction of an employer under the provisions of subsection (1) the court may by the conviction adjudge the employer convicted to pay in addition to any

penalty such sum as appears to the court to be due to the person employed on account of wages, calculated on the basis of the minimum wage :

Provided that the power to order the payment of wages under this subsection shall not be in derogation of any right of the person employed to recover wages by any other proceedings.

6.—(1) Where an employer has been convicted under section 5 for failing to pay wages at not less than the minimum wage to any worker, then, if notice of intention so to do has been served at least seven days before the hearing of the information or complaint, evidence may be given of any failure on the part of the employer to pay wages at not less than the minimum wage to that worker during the period between the date of the coming into operation of the order fixing the minimum wage and the date on which the information or complaint was laid or during the period of six years immediately preceding the latter date (whichever be the shorter period), and on proof of the failure the court may order the employer to pay such sum as in the opinion of the court represents the difference between the amount which having regard to the provisions of this Act and of the order fixing the minimum wage ought properly to have been paid to the worker by way of wages and the amount actually so paid.

Miscellaneous provisions with respect to legal proceedings. 9/1956 S. 2 (a) & (b).

9/1956 S. 2 (c).

(2) Where it appears to the Attorney-General that any sum is due by an employer to a worker by reason of the fact that wages have been paid to that worker at less than the minimum wage applicable, and that it is not possible to recover the sum so appearing to be due, or some part of that sum, by means of proceedings under section 5 the Attorney-General may, if it appears expedient so to do by reason of the refusal or neglect of the worker to take the necessary proceedings, on behalf of and in the

name of the worker institute civil proceedings before a court of competent jurisdiction for the recovery of the said sum :

Provided always that the court before which any such civil proceedings are instituted shall have the same power to make an order for the payment of costs by the Attorney-General as if the Attorney-General were a party to the proceedings.

Offence by
agent.

7.—(1) Where an offence for which an employer is by virtue of this Act liable to a penalty has in fact been committed by some agent of the employer or other person, that agent or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer, and either together with, or before or after the conviction of the employer and shall be liable on conviction to the same punishment as that to which the employer is liable.

(2) Where the employer who is charged with an offence against this Act proves to the satisfaction of the court that he has used due diligence to enforce the execution of this Act, and that the offence was in fact committed by his agent or some other person without his knowledge, consent, or connivance, he shall, in the event of the conviction of that agent or other person for the offence, be exempt from any penalty in respect of the offence, without prejudice, however, to the power of the court under this Act to adjudge him to pay any sum which appears to the court to be due to the person employed on account of wages.

(3) Where the immediate employer of any worker to whom a minimum wage applies is himself in the employment of some other person and that worker is employed on the premises of that other person that other person shall for the purpose of the provisions of this Act

relating to the penalty for not paying wages in accordance with the minimum wage be deemed to be an employer of the worker jointly with the immediate employer.

8.—(1) Where a worker in any trade being a person to whom a minimum wage fixed under this Act applies 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 where minimum rates in force. 25/1957 S. 2.

(2) If any employer acts in contravention of the provisions of subsection (1) he shall be liable on summary conviction before a Resident Magistrate in respect of each offence to a penalty not exceeding two hundred and fifty thousand dollars, and the court may by the conviction in addition to imposing a penalty adjudge him to pay to the worker or other person by whom the payment was made the sum improperly received by way of premium.

7/2007 S. 4.

9. Any shop-keeper, dealer or trader who by way of trade makes any arrangements express or implied with any worker in pursuance of which the worker performs any work for which a minimum wage has been fixed under this Act shall be deemed for the purpose of this Act to be the employer of the worker and the net remuneration obtainable by the worker in respect of the work after allowing for his necessary expenditure in connection with the work shall be deemed to be wages.

Prevention of evasion.

10. On any prosecution of a person for failing to pay wages at not less than the minimum wage, it shall lie on that person to prove that he has not paid wages at less than the minimum wage.

Burden of proof.

11. It shall be the duty of every employer in any occupation to which a minimum wage is applicable—

Records to be kept. 58/1954 S. 2.

- (a) to keep such records as the Minister by notice published in the *Gazette*, may in relation to such occupation require to be kept (in this Act referred to as "occupation records") to enable minimum rates of wages to be fixed or for any purposes connected therewith; and
- (b) to keep such records of wages as are necessary to show that the provisions of this Act are being complied with in respect of persons in his employment; and
- (c) to exhibit and keep exhibited in a conspicuous position at the place of employment a copy of the order whereby such minimum wage is fixed,

9/1956
S. 3(b).

and if he fails so to do he shall be liable on summary conviction before a Resident Magistrate in respect of each offence to a penalty not exceeding one hundred thousand dollars.

7/2007
S. 5.

Appoint-
ment of
officers and
power of
entry and
inspection.

12.—(1) The Minister may assign such officers as he may think necessary for the purpose of investigating any complaints and otherwise securing the proper observance of the provisions of this Act.

45/1974
S. 8.

58/1954
S. 3.

(2) Any such officer shall have power to enter at any reasonable time upon the premises of an employer in an occupation to which a minimum wage is applicable and to require the production of wage sheets or other record of wages or occupation records by any employer and to inspect and examine same and copy any material part thereof:

9/1956
S. 4(a).
Schedule.

Provided that he shall be furnished with a certificate of appointment in the form prescribed in the Schedule, and upon entering any premises as aforesaid he shall, if required to do so, produce the certificate to the employer.

(3) If any person hinders or molests any officer in the exercise of the powers given by this section or fails or refuses to produce any wage sheet or any other record of wages or any occupation record being a wage sheet or other record which was made or should have been made within the preceding six years that person shall be liable on summary conviction before a Resident Magistrate in respect of each offence to a penalty not exceeding two hundred and fifty thousand dollars.

58/1954
S. 4(a).

9/1956
S. 4(b).

34/1956
S. 2.

7/2007
S. 6(a).

(4) Any person who—

9/1956
S. 4(d).

(a) makes or causes to be made or knowingly allows to be made any wage sheet or record of wages or record of payments or occupation record which is false in any material particular or produces or causes to be produced or knowingly allows to be produced any such sheet or record to any officer acting in the exercise of the powers given by this section knowing the same to be false; or

(b) not being an officer appointed under subsection (1), with intent to deceive any employer or worker in an occupation to which a minimum wage is applicable, holds himself out or pretends to be such officer,

shall be liable on summary conviction before a Resident Magistrate to a penalty not exceeding seven hundred and fifty thousand dollars or to imprisonment with or without hard labour for a term not exceeding nine months, or to both such fine and imprisonment.

7/2007
S. 6(b)(i)
(ii).

(5)(a) Proceedings against any person for an offence against this Act or for the recovery of any penalties under this Act or any regulations made thereunder may be instituted by any officer assigned under subsection (1) who is authorized in that behalf by the special or general directions of the Minister and any such officer may prosecute or conduct such proceedings.

9/1956
S. 4(d).

(b) In any action or other legal proceedings brought against any such officer in respect of any act done in pursuance or execution or intended execution of this Act, the plaintiff shall not recover unless he alleges in his pleading and proves at the trial that such act was done either maliciously or without reasonable and probable cause.

(c) Any damages or costs recovered against any such officer in any such action or other legal proceedings, and the costs of the defendant as between attorney-at-law and client, shall be paid out of the Consolidated Fund.

7/2007
S. 6(c).

Regulations.
2/2011
S. 2.

13.—(1) The Minister may make regulations generally for giving effect to the provisions of this Act.

(2) Notwithstanding the provisions of section 29(b) of the *Interpretation Act*, regulations made under this Act may provide for the imposition of greater penalties than those specified in that section so, however, that the maximum penalty that may be imposed on summary conviction in a Resident Magistrate's Court shall be a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or both such fine and imprisonment.

Minister may
amend fines
by order.
7/2007
S. 8.

14. The Minister may, by order, subject to affirmative resolution, amend or vary any fine under this Act.

FIRST SCHEDULE

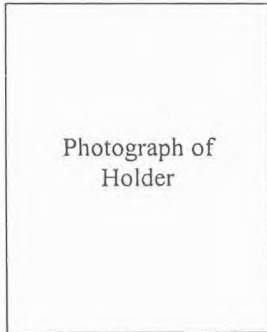
(Section 12)

9/1956
S. 5.
45/1974
S. 10.

Certificate of appointment of Officer

This is to certify that.....whose photograph and signature appear hereunder is an officer assigned by the Minister pursuant to subsection (1) of section 12 of the Minimum Wage Act for the purpose of investigating complaints and otherwise securing the proper observance of the provisions of the said Act.

.....
Permanent Secretary
to the Ministry of Labour.



.....
Signature of Holder

45/1974
S. 11.

SECOND SCHEDULE

(Section 4)

Constitution
of the
Advisory
Commission.

1. (1) The Advisory Commission shall consist of a chairman and two members appointed by the Minister by instrument in writing, sitting together.

(2) Notwithstanding the provisions of sub-paragraph (1) the Minister may, by instrument in writing, appoint such number of special members to the Advisory Commission as he thinks necessary for the purpose of assisting the Advisory Commission in any matter being dealt with by them, so, however, that any special member so appointed shall have to no right to vote during the proceedings of the Advisory Commission, to make any recommendations to the Minister nor to sign any report of the Advisory Commission.

(3) The number of special members to be appointed shall be—

(a) not less than two from the panel supplied to the Minister in accordance with sub-paragraph (4) by organizations representing employers or constituted by him, as the case may be; and

(b) an equal number from the panel supplied to him by organizations representing workers, or constituted by him, as the case may be:

Provided that where the Advisory Commission is dealing with any particular matter, and it is considered expedient to appoint special members in relation thereto, due regard shall be had to the selection of special members who in the opinion of the Minister, have experience as respects the matter being dealt with.

(4) The Minister shall issue an invitation to organizations representing employers and to organizations representing workers asking each group to supply him within a time specified in the invitation with a panel of persons from whom appointments may be made pursuant to sub-paragraph (2) and where no panel is supplied in response to such an invitation, the Minister may, in lieu of the panel which should have been supplied for the purpose, constitute a panel in such manner and consisting of such persons as he thinks fit.

Tenure of
office.

2. (1) The members of the Advisory Commission (other than special members) shall, subject to the provisions of this Schedule, hold office for such period not exceeding three years as the Minister may determine and shall be eligible for re-appointment.

(2) The appointment of a special member of the Advisory Commission shall, subject to paragraphs 3 and 5, be for the period during which the Advisory Commission is dealing with the particular matter in relation to which he was appointed, or such other period as the Minister may specify.

SECOND SCHEDULE, *contd.*

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|---|------------------------------------|
| <p>3. The Minister may at any time revoke the appointment of any member or special member.</p> | <p>Revocation of appointments.</p> |
| <p>4. The Minister may appoint any person to act in the place of the chairman or any other member or special member of the Advisory Commission in the case of the absence or inability to act of the chairman or other member or special member.</p> | <p>Acting appointments.</p> |
| <p>5. (1) Any member or special member of the Advisory Commission other than the chairman may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument, such member or special member, as the case may be, shall cease to be a member of the Advisory Commission.</p> | <p>Resignations.</p> |
| <p>(2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.</p> | |
| <p>6. If any vacancy occurs among the members or special members of the Advisory Commission, such vacancy shall be filled by the appointment of another member or special member, as the case may require, and in making such appointment the Minister shall have regard to the provisions of paragraph 1.</p> | <p>Filling of vacancies.</p> |
| <p>7. The names of all members and special members of the Advisory Commission as first constituted and every change in the membership thereof shall be published in the <i>Gazette</i>.</p> | <p>Publication of membership.</p> |
| <p>8. The secretary of the Advisory Commission shall be a public officer nominated for that purpose by the Minister.</p> | <p>Secretary.</p> |
| <p>9. (1) The Advisory Commission shall meet at such times as may be necessary or expedient for the transaction of its business and such meetings shall be held at such places and times as the Advisory Commission may determine:</p> <p>Provided that the Minister may at any time summon a meeting of the Advisory Commission.</p> | <p>Procedure and meetings.</p> |
| <p>(2) The chairman shall preside at meetings of the Advisory Commission, and minutes in proper form of each meeting of the Advisory Commission shall be kept.</p> | |
| <p>(3) The decisions of the Advisory Commission shall be by a majority of votes of the members appointed under sub-paragraph (1) of paragraph 1</p> | |

SECOND SCHEDULE, *contd.*

but any such member may submit a minority report or recommendation to the Minister.

(4) Subject to the provisions of this Schedule the Advisory Commission shall regulate its own proceedings.

(5) The validity of the proceedings of the Advisory Commission shall not be affected by any vacancy amongst the members or special members thereof or by any defect in the appointment of any member or special member thereof.

Remuneration of members.

10. There shall be paid to the chairman and other members and special members of the Advisory Commission such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine.

Protection of members.

11. No action, suit or other proceedings shall be brought or instituted personally against any member or any special member of the Advisory Commission in respect of any act done *bona fide* in the course of the operations of the Advisory Commission.

Office of member not public office.

12. The office of chairman, member or special member of the Advisory Commission shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.