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PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 1st February 2013.

No.PA/Khyber Pakhtunkhwa/Bills/2013/4058.— The Khyber Pakhtunkhwa Payment of Wages Bill, 2013 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 15th January, 2013 and assented to by the Governor of the Khyber Pakhtunkhwa on 28th January, 2013 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA PAYMENT OF WAGES ACT, 2013

(KHYBER PAKHTUNKHWA ACT NO. IX OF 2013)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 1st February, 2013).

AN ACT

to regulate the payment of wages to certain classes of persons employed in factories, industrial establishment and commercial establishments in the Province of the Khyber Pakhtunkhwa.

WHEREAS it is expedient to regulate the payment of wages to certain classes of persons employed in factories, industrial establishments and commercial establishments in the Province of the Khyber Pakhtunkhwa and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:

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

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

- (3) It shall apply to-
- (a) persons employed in factories or industrial establishments or commercial establishments;
 - (b) the payment of wages to persons employed (otherwise than in a factory) upon any railway by a railway administration;
 - (c) all persons employed directly or through a contractor, sub-contractor, headman, middleman; and
 - (d) Persons employed in the factories, industrial establishments or commercial establishments under the control of Federal Government or Provincial Government, as the case may be, situated in the territorial jurisdiction of the province.

(4) It shall come into force at once.

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

- (i) "Authority" means an Authority appointed under sub-section (1) of section 15;
- (ii) "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, private educational institutions, private health centres, private 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;
- (iii) "employer" means any person who employs either directly or through another person, whether on behalf of himself or any other person, and includes-
 - (a) an 'occupier' of the establishment;
 - (b) in relation to a factory, a manager or other person who has overall control over the affairs of the factory; and
 - (c) in other cases, any person responsible to the owner for supervision and control of such worker or for payment of his wages;
- (iv) "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);

- (v) "Government" means the Government of the Khyber Pakhtunkhwa;
- (vi) "Industrial establishment" means any-
 - (a) tramway or motor omnibus service;
 - (b) dock, wharf or jetty;
 - (c) inland steam-vessel;
 - (d) mine, quarry, oil-field, or gas-field;
 - (e) plantation;
 - (f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;
 - (g) establishment of a contract who, directly or indirectly, employs persons to do any skilled or unskilled, manual or clerical labour for hire or reward in connection with the execution of a contract to which, he is a party, and includes the premises in which, or the site at which, any process connected with such execution is carried on;

Explanation.-Contractor includes a sub-contractor, headmen or agent.

- (vii) "Inspector" means Inspector appointed under section 14 of this Act;
- (viii) "manager" means a person who has overall control over the affairs of the factory, industrial establishment or commercial establishment;
- (ix) "plantation" means any estate which is maintained for the purpose of growing cinchona, rubber, coffee or tea, and on which twenty or more persons are employed for that purpose;
- (x) "prescribed" means prescribed by rules made under this Act;
- (xi) "Province" means the Province of the Khyber Pakhtunkhwa;
- (xii) "railway administration" has the meaning assigned to it in clause (6) of section 3 of the Railways Act, 1890 (IX of 1890);
- (xiii) "rules" mean rules made under this Act;
- (xiv) "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 not include,-

- (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.

(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. Responsibility for payment of wages.---Every employer including a contractor, sub-contractor, headman, middleman or agent shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed otherwise than by a contractor, sub-contractor, headman, middleman or agent,-

- (a) in factory, the manager;
- (b) in industrial establishment or commercial establishment, if there is a person responsible to the employer for the supervision and control of the industrial establishment or commercial establishment, as the case may be; and
- (c) upon railways (otherwise than in factories, or industrial establishment or commercial establishment), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,

the person so named, the person so responsible to the employer or the person so nominated, as the case maybe, shall be responsible for such payment.

4. Fixation of wage-periods.---(1) Every person responsible for the payment of wages under section 3 shall fix periods, hereinafter referred to as wage-periods, in respect of which such wages shall be payable.

(2) No wage-periods shall exceed one month.

5. Time of payment of wages.---(1) The wages of every person employed upon or in-

- (a) any railway, factory, industrial establishment or commercial establishment, as the case may be, upon or in which less than one thousand persons are employed, shall be paid before the expiry of seventh day after the last day of the wage period in respect of which the wages are payable; and
- (b) any railway, factory, industrial establishment or commercial establishment, as the case may be, shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable.

(2) Where the employment of any person is terminated by or on behalf of the 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.

(3) Government may, by general or special order exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway otherwise than in a factory, or industrial establishment or commercial establishment from the operation of this section in respect of the wages of any such person or class of such persons.

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

6. Wages to be paid in current currency through Scheduled Bank.---All wages shall be paid to the employed persons in current currency through Scheduled Banks in a prescribed manner.

7. Deductions which may be made from wages.---(1) Notwithstanding anything contained in any other law, the wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under this Act.

Explanation.---Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

- (a) fines;
- (b) deductions for absence from duty;
- (c) deductions for damages to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- (d) deductions for house-accommodation supplied by the employer;
- (e) deductions for such amenities and services supplied by the employer as Government may, by general or special order authorize.

Explanation.---The word 'services' in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment;

- (f) deductions for recovery of advances or for adjustment of overpayments of wages;
- (g) deductions of income-tax Payable by the employed person;
- (h) deductions required to be made by order of a Court or other Authority competent to make such order;

- (i) deductions for subscriptions to, and for re-payment of advances from, any provident fund to which the Provident Funds Act, 1925 (XIX of 1925) applies or any recognized provident fund as defined in clause (48) of section 2 of the Income-Tax Ordinance, 2001 (XLIX of 2001), or any provident fund approved in this behalf by Government during the continuance of such approval;
- (j) deductions for payments to co-operative societies approved by Government or to a scheme of insurance maintained by the Pakistan Post Office; and
- (k) deductions, made with the written authorization of the employed person, in furtherance of any war Savings scheme, approved by Government, for the purchase of securities of the Federal Government.

8. **Fines.**---(1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of Government or of the prescribed Authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway otherwise than in a factory or, industrial establishment or commercial establishment, at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the acts or omissions or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-periods on any employed person shall not exceed an amount equal to three percent of the wages payable to him in respect of that wage-periods.

(5) No fine imposed on an employed person shall be recovered from him after the expiry of sixty days from the day on which it was imposed.

(6) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(7) All fines and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3, in such form as may be prescribed and all such realizations shall be applied only to such purposes beneficial to the persons employed in the factory, industrial establishment or commercial establishment as are approved by the prescribed authority notified by Government.

Explanation.---When the persons employed upon or in any railway, factory, industrial establishment or commercial establishment are part only of a staff employed under the same management, all such realizations may be credited to a common fund maintained for the staff as a whole; provided that the fund shall be applied only to such purposes as are approved by the prescribed Authority in section 7.

9. Deductions for absence from duty.---(1) Deductions may be made under clause (b) of sub-section (2) of section 7 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-periods for which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage-periods, during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation.---For the purpose of this section, an employed person shall be deemed to be absent from the place where he is required to work, if, although present in such place, he refuses, in pursuance of a stay-in-strike or any other cause which is not reasonable in the circumstances, to carry out his work.

10. Deductions for damage or loss.---(1) A deduction under clause (c) of sub-section (2) of section 7 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deduction.

(2) All such deductions and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

11. Deductions for services rendered.---A deduction under clause (d) or clause (e) of sub-section (2) of section 7 shall not be made from the wages of an employed person unless the house-accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of house-accommodation, amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as Government may impose.

12. Deductions for recovery of advances.---Deductions under clause (f) of sub-section (2) of section 7 shall be subject to the following conditions, namely, -

- (a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-periods, but no recovery shall be made of such advances given for traveling-expenses; and
- (b) recovery of advances of wages not already earned shall be subject to any rules made by Government regulating the extent to which such advances may be given and the installments by which they may be recovered.

13. **Deductions for payments to co-operative societies and insurance schemes.**---Deductions under clause (j) and clause (k) of sub-section (2) of section 7 shall be subject to such conditions as Government may impose.

14. **Inspectors.**---(1) Government may, by notification in the official Gazette, appoint such persons as it may deem fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

(2) No person shall be appointed to be an Inspector under sub-section (1) or shall continue to hold office, who is or becomes directly or indirectly interested in a factory or in any process or business carried on herein or in any patent or machinery connected therewith.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Pakistan Penal Code, 1860 (XLV of 1860).

15. **Claims out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.**---(1) Government may, by notification in the official Gazette, appoint any Commissioner for Workmen's Compensation or other officer to be the Authority to hear and decide for any specified area all claims arising out of less payments, deductions from the wages, or non-payment of dues relating to provident fund or gratuity, bonus, overtime, leave encashment, notice pay or travelling allowance or any other emoluments payable under any law or delay in the payment of wages, of persons employed or paid in that area.

(2) Where contrary to the provisions of this Act, any deduction has been made from the wages of an employed person, or any payment of wages or of any dues relating to provident fund or gratuity payable under any law has been delayed, such person himself, or any legal practitioner, or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector under this Act, or of any heirs of an employed person who has died or any other person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for direction under sub-section (3):

Provided that every such application shall be presented within three years from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of three years when 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 employer or other person responsible for the payment of wages under section 3, 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 is liable under this Act, direct the refund to the employed person or, if the applicant is one of the heirs of an employed person the payment to such applicant of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the Authority may deem fit, not exceeding ten times the amount deducted in the former case and not exceeding one thousand rupees in the latter:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the Authority is satisfied that the delay was due to-

- (a) a bonafide error or bonafide dispute as to the amount payable to the employed person; or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment; or
- (c) the failure of the employed person to apply for or accept payment.

(4) If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, the Authority may direct that a penalty not exceeding five hundred rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(5) Any amount directed to be paid under this section maybe recovered by the Authority as an arrear of land-revenue, or, in the prescribed manner, by distress and sale of the moveable property belonging to the person by whom the amount is to be paid, or by attachment and sale of the immoveable property belonging to such person.

(6) The Authority, appointed under sub-section (1), shall have the powers of Collector Grade-I and may exercise such powers for the purposes of this Act.

(7) The Authority, with prior approval of the Director Labour of the Province, shall also have the powers to utilize the amount, of profits accrued out of the amounts deposited at the time of appeals, for the general welfare of the workers and the matters incidental thereto.

(8) The Authority may also determine the rates of wages payable to the employed person.

16. Single application in respect of claims from an unpaid group.---(1) Employed persons are said to belong to the same unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed by section 5.

(2) A single application may be presented under section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group and in such case the maximum compensation that may be awarded under sub-section (3) of section 15 shall be one hundred rupees per head.

(3) The Authority may deal with any number of separate pending applications, presented under section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this section, and the provisions of that sub-section shall apply accordingly.

17. Appeal.---(1) An appeal against a direction made under sub-section (3) or sub-section (4) of section 15 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 or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds five thousands 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; or

- (b) by an employed person or, if he has died, by any of his heirs, if the total amount of wages claimed to have been withheld from the employed person or from the unpaid group to which he belonged exceeds three thousands rupees; or
- (c) by any person directed to pay a penalty under sub-section (4) of section 15;

(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of section 15 shall be final.

18. Powers of Authority.---Every Authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

19. Power to recover from employer in certain cases.---When the Authority referred to in section 17 is unable to recover from any person (other than employer) responsible under section 3 for the payment of wages any amount directed by such Authority under section 15 or section 17 to be paid by such person, the Authority shall recover the amount from the employer of the employed person concerned.

20. Penalty for offences.---(1) Whoever contravenes any of the provisions of this Act, shall be punishable with a fine which may extend to ten thousand rupees or simple imprisonment for a term which may extend to one month or both.

(2) Whoever continues to contravene shall be punishable with fine which may extend to twenty thousand rupees or simple imprisonment which may extend to two months or both.

21. Procedure in trial of offences.---(1) No Court shall take cognizance of a complaint against any person for an offence under sub-section (1) of section 20, unless an application in respect of the facts constituting the offence has been presented under section 15 and has been granted wholly or in part and the Authority empowered under the latter section or the Appellate Court granting such application has sanctioned the making of the complaint.

(2) Before sanctioning the making of complaint against any person for an offence under sub-section (1) of section 20, the Authority empowered under section 15 or the Appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the Authority or Court that his default was due to-

- (a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or
- (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment; or
- (c) the failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of contravention of section 4 or of section 6 or of a contravention of any rules except on a complaint made by or with the sanction of an Inspector under this Act.

(4) In imposing any fine for an offence under sub-section (1) of section 20, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 15.

22. Bar of suits.---No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed-

- (a) forms the subject of an application under section 15 which has been presented by the plaintiff and which is pending before the Authority or of an appeal under section 17; or
- (b) has formed the subject of a direction under section 15 in favour of the plaintiff; or
- (c) has been adjusted, in any proceeding under section 15, not to be owed to the plaintiff; or
- (d) could have been recovered by an application under section 15.

23. Contracting out.---Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act, shall be null and void in so far as it purports to deprive him of such right.

24. Display by notice of abstracts of this Act.---The person responsible for the payment of wages to persons employed in an establishment shall cause to be displayed in such establishment a notice containing such abstracts of this Act and of the rules made there under in English and in the Language of the majority of the persons employed in the establishment, as may be prescribed.

25. Power to make rules.---(1) Government may make rules to regulate the procedure to be followed by the Authorities and Courts referred to in sections 15 and 17.

(2) Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may-

- (a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the forms thereof;
- (b) require the display in a conspicuous place on premises where employment is carried on of notices specifying rates of wages payable to persons employed on such premises;
- (c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;
- (d) prescribe the manner of giving notice of the days on which wages will be paid;
- (e) prescribe the Authority competent to approve under sub-section (1) of section 8, acts and omissions in respect of which fines may be imposed;
- (f) prescribe the procedure for the imposition of lines under section 8 and for the making of the deductions referred to in section 10;
- (g) prescribe the conditions subject to which deductions may be made under the proviso to sub-section (2) of section 9;
- (h) prescribe the Authority competent to approve the purposes on which the proceeds of fines shall be expended;
- (i) prescribe the extent to which advances may be made and the installments by which they may be recovered with reference to clause (b) of section 12;
- (j) regulate the scales of costs which may be allowed in proceedings under this Act;
- (k) prescribe the amount of court-fees payable in respect of any proceedings under this Act; and
- (l) prescribe the abstracts to be contained in the notices required by section 24.

(4) In making any rules under this section, Government may provide that a contravention of the rules shall be punishable with fine which may extend to five thousand rupees.

(5) All rules made under this section shall be subject to the condition of previous publication.

26. Protection against discrimination.---There shall be no discrimination on the basis of gender, religion, sect, colour, cast, creed, ethnic back ground in the wages and other benefits for work of equal value.

27. Removal of difficulties.---If any difficulty arises, in giving effect to any provision 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.

28. Repeal and Savings.---(1) The Payment of Wages Act, 1936 (Act No. IV of 1936) is hereby repealed in its application to the extent of the Province.

(2) Notwithstanding the aforesaid repeal, anything done, action taken, rules made, and notification or order issued under the aforesaid Act, shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done; taken, made or issued, under this Act, and shall have effect accordingly.

(3) Any document referring to the repealed Act shall be construed as referring to the corresponding provisions of this Act.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLHA)
Secretary,
Provincial Assembly of Khyber
Pakhtunkhwa