

National Minimum Wage of Workers

AN ACT TO PROVIDE FOR THE PAYMENT OF NATIONAL MINIMUM WAGE BY EMPLOYERS TO WORKERS AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows

:-

Act Nos,

16 of 2021

48 of 2024

Short title and the
date of operation. **1.**

(1) This Act may be cited as the National Minimum Wage of Workers Act, No. 3 of 2016.

(2) The provisions of this Act shall be deemed, for all purposes to have come into operation on January 1, 2016.

Competent
Authority.

2. (1) The Commissioner-General shall be the competent authority for the purposes of this Act.

(2) The competent authority may delegate to any officer of the Department of Labour any power, function or duty conferred or imposed on, or assigned to, such authority by this Act.

National minimum
wage.

[2, 48 of 2024]

[2, 16 of 2021]

3. (1) The national minimum monthly wage for all workers in any industry or service shall be seventeen thousand five hundred rupees and the national minimum daily wage of a worker shall be seven hundred rupees.

(2) Notwithstanding the provisions of any other written law, no employer in any industry or service shall pay to any worker employed by him a wage which is less than the national minimum monthly or daily wage specified in subsection (1), as the case may be.

Special provisions regarding continuation of employment..

4. Every worker who has been employed by any employer shall, subject to the provisions of section 3, for so long as he continues to be a worker of such employer, continue to be so employed on such terms and conditions relating to wages or salary, allowances or other payments in money by whatsoever name or designation as are not less favourable than those which such worker had enjoyed on the day immediately prior to the date of the coming into operation of this Act.

Duty of the employer to maintain a register.

5. (1) The employer of a worker in any industry or service shall from and after the date of coming into operation of this Act, maintain and keep in the premises in which that industry or service is carried on, a register setting out-

- (a) the name of each worker employed by him;
- (b) the class of work performed by each worker employed by him; and
- (c) the amount paid to each such worker as wages.

(2) Every register maintained under subsection (1), shall be preserved for a period of six years by the employer.

Powers of competent authority.

6. The competent authority shall have power-

- (a) to enter into and inspect at all reasonable hours of the day or night, any place in which workers in any industry or service are employed, for the purpose of inspection of any register or for ascertaining whether the provisions of this Act are being complied with;
- (b) where no such register is available for examination when he inspects such place, to require the production of such register on a specified later date for examination at such place or at the office of such authority;
- (c) to take copies of the whole or any part of any such register;
- (d) to question any person whom he finds in such place and has reasonable cause to believe is the employer of workers employed in any industry or service carried on in such place; or
- (e) to direct, in writing, any employer of workers employed in any industry or service to furnish him on or before a specified date, with-

(i) a return, relating to all workers employed by any such employer in any specified class or description of such workers and containing such other particulars as he may require for the purposes of this Act;

(ii) such information or explanation as he may require in respect of particulars stated in any return furnished by any such employer; or

(iii) a true copy of the whole or any part of any register maintained by any such employer.

Duty to produce the register.

7. (1) Every employer shall, when required by the Commissioner-General, produce the register for inspection or furnish a true copy thereof or permit a copy of such register to be taken.

(2) Where an employer of any worker in any industry or service -

(a) has failed to maintain and keep the register required to be kept under subsection (1) of section 5; or

(b) fails to produce for inspection when required to do so under section 6,

the Commissioner-General shall assess the wage or the short payment thereof, as the case may be, payable to such worker under this Act on the basis of all the evidence both oral and documentary, available to him and the provisions of section 8 shall apply where default is made in the payment of any such wage or part thereof.

Action against default of payment of the national minimum wage.

8.(1) Where any employer fails to pay the national minimum monthly or daily wage payable to any worker or workers under this Act, the Commissioner-General shall, after such investigation as he may deem necessary, if he is satisfied that the employer has defaulted payment of the national minimum monthly or daily wage to such worker or workers, by notice issued to such employer, require the employer to deposit with him the amount of such part of the national minimum monthly or daily wage that is defaulted in respect of such worker or workers for the period the amount is due, within the date specified in such notice.

(2) The employer shall, upon receipt of such notice under subsection (1) deposit with the Commissioner-General the amount indicated in the notice on or before the date specified in the notice and any payment of any part of the wage in default to the worker or workers concerned made by the employer after receipt of such notice shall not be deemed to be a valid payment of such amount in default.

(3) Where an employer fails to make the payment of any sum he is liable to pay as the national minimum monthly or daily wage under this Act and contravenes subsection (2), the Commissioner-General shall issue a certificate containing particulars of the sum so due and the name and place of residence of the defaulting employer to the Magistrate having jurisdiction in the division in which the place of employment of the worker or workers in respect of whom default is made is situate. The Magistrate shall, thereupon summon such employer to appear before him to show cause why further proceedings for the recovery of the sum due under this Act should not be taken against him and if such employer fails to appear before court on the day specified in such summons or sufficient cause is not shown, as the case may be, such sum shall be deemed to be a fine imposed by a sentence of the Magistrate on such employer for an offence punishable with imprisonment and the provisions of subsection (1) of section 291 [except paragraphs (a), (d) and (i)] of the Code of Criminal Procedure Act, No. 15 of 1979 relating to the default of payment of a fine imposed for such an offence shall thereupon apply and the Magistrate may make any direction which by the provisions of that subsection he could have made at the time of imposing such sentence.

(4) The correctness of any statement in a certificate issued by the Commissioner-General for the purpose of this section shall not be called in question or examined by the Court in any proceedings under this section, and accordingly any statement in such certificate shall be sufficient evidence to the facts that the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default.

(5) In any proceedings against any employer under this section for failure to pay any sum which he is liable to pay under this Act, the burden of proving that the sum was paid shall lie on the employer.

(6) The provisions of the Prescription Ordinance (Chapter 68) shall not apply to any action brought under subsection (3).

Offences and penalties.

9.(1) Any employer in any industry or service who contravenes the provisions of section 3 or section 4 or section 8 of this Act shall be guilty of an offence and shall be liable on conviction by a Magistrate to a fine not exceeding twenty five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(2) Any person who-

(a) fails to furnish the competent authority with such assistance as is necessary for any entry or inspection or for the exercise of his powers under section 6;

(b) hinders or obstructs such authority in the exercise of the powers conferred by that section;

(c) refuses to produce any register or furnish any information which such authority requires him to produce or furnish;

(d) makes or causes to be made in any register, any false statement or makes or causes or knowingly permits to be produced, any register containing a false statement to such authority, knowing the same to be false;

(e) furnishes any information to such authority acting under the powers conferred by that section, knowing the same to be false; or

(f) fails to comply with any directions given by such authority under section 6, or who, when called upon to furnish a return under that section, knowingly makes or furnishes, or causes to be made or furnished, a return containing any false statement,

shall be guilty of an offence and shall be liable on conviction by a Magistrate to a fine not exceeding twenty five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

Liability of the directors and certain officers for offences

10. Where an offence under this Act is committed by a body of persons then –

(a) if that body of persons is a body corporate, every person

committed by a body of persons.

who at the time of the commission of the offence was a director, general manager, agent, secretary or officer holding similar office of that body;

(b) if that body of persons is a firm, every partner of that firm; or

(c) if that body of persons is not a body corporate, every person who at the time of the commission of the offence was a member of that body,

shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence so as to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions and the related circumstances.

Conditions necessary for the prosecution for offences under this Act.

11. No prosecution for any offence committed under this Act shall be instituted except by, or with the previous written sanction of, the Commissioner-General.

Construction of the Act.

12. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other written law:

Provided however, that in the event of any conflict or inconsistency between the provisions of this Act and any other written law, the provisions of this Act shall prevail.

Retrospective effect.

13. Where there remains, as on the date of coming into operation of this Act, any unpaid amount of the national minimum monthly or daily wage payable by any employer to any worker under section 3 of this Act for the period commencing on January 1, 2016 and ending on the date on which this Act comes into operation, and where such employer pays to such worker such arrears in equal monthly instalments or higher monthly installments within a period of six months commencing from the date on which this Act comes into operation, such employer shall for all purposes be deemed to have complied with the provisions of section 3 of this Act.

Interpretation.

14. In this Act, unless the context otherwise requires-

'Commissioner-General' means the person for the time being

holding the office of Commissioner-General of Labour and includes any person for the time being holding office as an Additional Commissioner General, a Commissioner of Labour, a Deputy Commissioner of Labour, an Assistant Commissioner of Labour or a Labour officer;

'employer' means any person who employs or on whose behalf any other person employs, any worker and includes a body of employers (whether such body is a firm, company, local authority or trade union), and any person who on behalf of any other person employs any worker including a competent authority of a business undertaking vested in the Government under any written law, the legal heir, successor in law, executor or administrator and liquidator of a company and in the case of an unincorporated body the president or secretary of such body, and in the case of a partnership the managing partner or manager;

'industry or service' includes –

- (a) any trade, business, manufacture and agriculture, any undertaking or occupation by way of trade, business, manufacture or agriculture and any branch or section of trade, business, manufacture or agriculture;
- (b) work or labour of any description whatsoever performed by persons in the employment of a local authority, or of a corporation established by or under any written law for carrying on an undertaking whether for purposes of trade or otherwise;
- (c) every occupation, calling or service of workers, and
- (d) every undertaking of employers,

but does not include any industry, business or undertaking which is carried on by any corporation, board or other body which was or is established by or under any written law where the Government holds a majority of the share capital with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise; or any registered society within the meaning of the Co-operative Societies Law, No. 5 of 1972 or any religious institution or any charitable institution within the meaning of the Inland Revenue Act, No. 10 of 2006;

'national minimum wage' means -

- (a) the contractual wage or salary of the worker or the wage prescribed under the Wages Boards Ordinance (Chapter 136) for the industry or service to which the worker belongs; and
- (b) wages or basic salary together with the cost of living allowance, special living allowance or any other similar allowance;

'worker' means, any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing and whether it is a contract of service or of apprenticeship excluding a contract of apprenticeship covered under the Tertiary and Vocational Education Act, No. 20 of 1990 and the Employment of Trainees (Private Sector) Act, No. 8 of 1978, or a contract personally to execute any work or labour and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time and includes any person whose services have been terminated but does not include a domestic servant.

Sinhala text to prevail in case of inconsistency.

15.In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.