

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

EMPLOYMENT (MINIMUM HOURLY WAGE ENTITLEMENT) ACT 2022

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WHEREAS it is expedient to provide for the procedure to apply to determine entitlement for an employee to a minimum hourly wage; provide for the enforcement of the minimum hourly wage determined as applicable and provide for matters related and connected to the foregoing;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1
PRELIMINARY

Citation

- 1 This Act may be cited as the Employment (Minimum Hourly Wage Entitlement) Act 2022.

Interpretation

- 2 In this Act, unless the context otherwise requires—
“employee” has the meaning given in section 3 of the Employment (Wage Commission) Act 2019;
“employee records” means the records relating to an employee required to be kept by an employer under section 7;
“employer” has the meaning given in section 3 of the Employment Act 2000;
“Employment and Labour Relations Tribunal” means the Employment and Labour Relations Tribunal established under section 44B of the Employment Act 2000;
“enforcement notice” means an enforcement notice referred to in section 12(1);
“inspector” has the meaning given in section 3 of the Employment Act 2000;
“Minister” means the Minister responsible for labour;

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“pay reference period” means such period in relation to the determination of the minimum hourly wage as the Minister may prescribe;

“records” means records which an employer is required to keep, maintain and retain under section 7;

“relevant person” has the meaning given in section 10(4);

“relevant premises” has the meaning given in section 10(5);

“minimum hourly wage” has the meaning given in section 2 of the Employment (Wage Commission) Act 2019;

“Wage Commission” or “Commission” means the Wage Commission established under section 5 of the Employment (Wage Commission) Act 2019.

PART 2

EMPLOYEE ENTITLEMENT TO MINIMUM HOURLY WAGE

Entitlement to minimum hourly wage

3 (1) Subject to sections 4 and 5—

- (a) an employee shall, subject to regulations made under subsection (2), be remunerated by his employer for any pay reference period, at an hourly rate of pay that on average is not less than the minimum hourly wage for that pay reference period; and
- (b) a student shall be remunerated by his employer for any pay reference period, at an hourly rate of pay that on average is not less than 70 per cent of the minimum hourly wage.

(2) A person who—

- (a) enters employment for the first time after attaining the age of 18 years; or
- (b) having entered into employment before attaining the age of 18 years and continues in employment on attaining that age,

shall be remunerated by his employer in respect of his working hours in any pay reference period at an hourly rate of pay that on average is not less than such percentage of the minimum hourly wage, in relation to his first and second year after attaining the age of 18, as the Minister may in the regulations prescribe.

(3) Regulations made under subsection (2) may provide for such additional restrictions and conditions with respect to the application of the minimum hourly wage as the Minister, after consultation with the Commission, may deem appropriate.

Pro-rata entitlement to minimum hourly wage for less than full hour

4 The wages that a person is entitled to in accordance with this Part shall be calculated pro-rata in respect of any time that is less than a full hour.

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Calculations for purpose of this Act

5 (1) Nothing in this Act prevents the deduction from any wage to which an employee is entitled in accordance with this Act, or the payment by an employee to an employer, of any amount permitted in accordance with any other enactment or instrument made under an enactment.

(2) No such deductions as referred to in subsection (1) shall be made or payment allowed for in calculating the hourly rate of pay of an employee for the purpose of determining under this Act whether the employee is being paid not less than the minimum hourly wage to which he is entitled in accordance with this Act.

Average hourly rate of pay

6 (1) For the purposes of determining under this Act whether an employee is being paid not less than the hourly rate of pay that is in accordance with the minimum hourly wage to which he is entitled for that pay reference period, all the pay of an employee in a specific pay reference period shall be included in calculating the employee's average hourly rate of pay in that period, subject to section 5.

(2) The Minister may, for the purpose of calculating an employee's average hourly rate of pay, in the regulations provide for—

- (a) the method of calculation;
- (b) the components of pay that must be included in and excluded from the calculation; and
- (c) the responsibilities of the employer with respect to the pay to be included in the calculation.

PART 3

RECORDS OF EMPLOYERS

Duty of employers to keep records

7 (1) Every employer shall keep, at the premises or place where his employee works or, if the employee works at two or more premises or places, the premises or place from which the activities that the employee is employed to carry on are principally directed or controlled, such records as are necessary to show whether this Act is being complied with in relation to the employee.

(2) The Minister may, for the purposes of subsection (1), in the regulations prescribe—

- (a) the type of records an employer is to keep;
- (b) the form and manner in which the records are to be kept; and
- (c) the period for which the records are to be retained.

(3) An employer who, without reasonable excuse, fails to comply with this section shall be liable to a civil penalty under section 14.

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(4) Without prejudice to subsection (2), where an employer fails to keep records as required under this section in respect of his compliance with a particular provision of this Act in relation to an employee, the onus of proving, in proceedings before the Employment and Labour Relations Tribunal or the Supreme Court, that the provision was complied with, lies on the employer.

Employee's right of access to records

8 (1) An employee may, in accordance with the provisions of this section—

- (a) require his employer to produce any relevant records; and
- (b) inspect and examine those records and copy any part of them.

(2) The rights conferred by subsection (1) are exercisable only if the employee believes on reasonable grounds that he is or is possibly being, or has or may have been, remunerated for any pay reference period by his employer at a rate which is less than the minimum hourly wage.

(3) The rights conferred by subsection (1) are exercisable only for the purpose of establishing whether or not the employee is being, or has been, remunerated for any pay reference period by his employer at a rate which is less than the minimum hourly wage.

(4) The rights conferred by subsection (1) are exercisable—

- (a) by the employee alone; or
- (b) by the employee accompanied by such other person as the employee may think fit.

(5) The rights conferred by subsection (1) are exercisable only if the employee gives notice (a “production notice”) to his employer requesting the production of any relevant records relating to such period as may be described in the notice.

(6) If the employee intends to exercise the right conferred by subsection (4)(b), the production notice must contain a statement of that intention.

(7) Where a production notice is given, the employer shall give the employee notice of at least three days of the place and time at which the relevant records will be produced.

(8) The place at which the relevant records are produced shall be—

- (a) the employee's place of work;
- (b) such other place as may be agreed between the employee and the employer; or
- (c) any other place at which it is reasonable, in all the circumstances, for the employee to attend to inspect the relevant records.

(9) The relevant records must be produced—

- (a) before the end of the period of 14 days following the date of receipt of the production notice; or

- (b) at such later time as may be agreed between the employee and the employer.

PART 4

INSPECTIONS AND ENFORCEMENT NOTICE

Inspectors

9 (1) The Minister may designate inspectors for the purpose of the enforcement of this Act and the regulations, and shall furnish every inspector with a certificate of his designation signed by the Minister and the person so designated.

(2) An inspector designated under this section shall, where required, produce the certificate of his designation as proof of his authority.

Powers of inspectors

10 (1) An inspector shall, for the purposes of this Act, have power for the performance of his duties—

- (a) to require the production by a relevant person—
 - (i) of any records required to be kept and retained in accordance with section 7;
 - (ii) of such other documents relating to such records as the inspector may determine,
and to inspect and examine those records and documents and to copy any material part of them;
- (b) to require a relevant person to furnish to him (either alone or in the presence of any other person) an explanation of any such records or documents;
- (c) to require a relevant person to furnish to him (either alone or in the presence of any other person) any additional information known to the relevant person which might reasonably be needed in order to establish whether this Act and regulations made under this Act are being or have been complied with;
- (d) at all reasonable times to enter any relevant premises in order to exercise any power conferred on the inspector by paragraphs (a) to (c).

(2) No person shall be required under subsection (1)(b) to answer any question which might incriminate the person.

(3) The powers conferred by subsection (1) include power, on reasonable written notice, to require a relevant person—

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- (a) to produce any such records or other documents as are mentioned in subsection (1)(a) to an inspector at such time and place as may be specified in the notice; or
- (b) to attend before an inspector at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in subsection (1)(b) or (c).

(4) In this section “relevant person” means any person whom an inspector acting for the purposes of this Act has reasonable grounds to believe to be—

- (a) the employer of an employee;
- (b) a person who supplies work to an individual who qualifies for the minimum hourly wage;
- (c) a worker or an agent of a person falling within paragraph (a) or (b) of this section; or
- (d) a person who qualifies for the minimum hourly wage.

(5) In this section “relevant premises” means any premises which the inspector has reasonable grounds to believe to be—

- (a) premises at which an employer carries on business; or
- (b) premises which an employer uses in connection with his business.

Employee complaints

11 An employee may submit a complaint to an inspector on the ground that the employer—

- (a) has failed to pay the employee the minimum hourly wage;
- (b) has failed to produce some or all of the employee records in accordance with the rights accorded to the employee; or
- (c) has failed to allow the employee to exercise some or all of the rights conferred,

under Parts 2 and 3 and the regulations made thereunder.

Power of inspector to issue enforcement notice and make award

12 (1) If the inspector acting for the purposes of this Act is of the opinion that an employee who qualifies for the minimum hourly wage has not been remunerated for any pay reference period by his employer at a rate at least equal to the minimum hourly wage, the inspector may serve a notice (an “enforcement notice”) on the employer requiring the employer to remunerate the employee for pay reference periods ending on or after the date of the notice at a rate equal to the minimum hourly wage.

(2) An enforcement notice may also require the employer to pay to the employee within such time as may be specified in the notice the sum due and owing to the employee

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in respect of any previous failure by the employer to remunerate the employee at a rate at least equal to the minimum hourly wage.

(3) The same enforcement notice may relate to more than one employee (and, where it does so, may be so framed as to relate to employees specified in the notice or to employees of a description so specified).

(4) A person on whom an enforcement notice is served may appeal to the Employment and Labour Relations Tribunal against the notice before the end of the period of four weeks following the date of service of the notice.

(5) Where the inspector finds a complaint under section 11 well-founded, the inspector shall—

- (a) make a declaration to that effect; and
- (b) make an award that the employer pay to the employee—
 - (i) for the purposes of section 11(a)—
 - (A) the difference between the current rate of pay and the minimum hourly wage, with respect to the period from the date of the failure to pay the minimum hourly wage to the date of payment of the difference; and
 - (B) an additional ten percent of the minimum hourly wage for each pay reference period that the employee was not paid the minimum hourly wage;
 - (ii) for the purposes of section 11(b) and (c), an amount not less than \$500.

PART 5

PUBLIC CENSURE AND CIVIL PENALTY

Public censure and procedure

13 (1) Where the Minister considers that a body corporate has contravened a requirement imposed on it by or under this Act, the Minister may publish a statement to that effect.

(2) If the Minister proposes to publish a statement in respect of a body corporate under subsection (1), he must give the body corporate a warning notice.

(3) If the Minister decides to publish a statement under subsection (1) (whether or not in the terms proposed), he must give the body corporate concerned a decision notice.

(4) After a statement under this section is published, the Minister shall send a copy of it to the body corporate.

Service of a penalty notice for non-compliance

14 (1) Where an inspector is satisfied that a person—

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- (a) has failed to comply with the requirements of section 7; or
- (b) on whom an enforcement notice has been served under section 12 has failed, in whole or in part, to comply with the notice,

the inspector may serve on that person a notice (a "penalty notice") requiring the person to pay a civil penalty to the Accountant General in accordance with the procedure set out in section 15.

(2) A penalty notice must state—

- (a) the amount of the civil penalty;
- (b) the time within which the civil penalty is to be paid (which must not be less than four weeks from the date of service of the notice);
- (c) the period to which the civil penalty relates;
- (d) the respects in which the inspector is of the opinion that the enforcement notice has not been complied with; and
- (e) the calculation of the amount of the civil penalty in accordance with section 16(1).

(3) Where a person has appealed against an enforcement notice and the appeal has not been withdrawn or finally determined, then, notwithstanding the appeal—

- (a) the enforcement notice shall have effect; and
- (b) the inspector may serve a penalty notice in respect of the enforcement notice.

Civil penalty procedure

15 (1) Where an inspector proposes to impose a civil penalty—

- (a) under section 7, to an employer who has failed to comply with the requirements to keep records; or
- (b) under section 12, to a relevant person on whom an enforcement notice has been served,

he shall serve a notice of such proposal to such employer or person.

(2) A notice under subsection (1) shall inform the person concerned that he is entitled to a hearing by the inspector if, after the notice under subsection (1) is served on him, he delivers a notice in writing, within a period of 30 days from the date of receipt of the notice from the inspector, requiring a hearing with the inspector.

(3) Where the person concerned does not require a hearing by the inspector in accordance with subsection (2), the inspector may proceed to impose the penalty.

(4) Where the person concerned requires a hearing by the inspector in accordance with subsection (2), the inspector shall appoint a time for and hold the hearing and, subsequent to the hearing, may—

- (a) impose the penalty;
 - (b) modify the amount of the penalty; or
 - (c) refrain from imposing the penalty.
- (5) The inspector may attach such terms and conditions to his decision under subsection (4) as he considers appropriate to give effect to the purposes of this Act.
- (6) For the purposes of a hearing by the inspector under subsection (4)—
- (a) the inspector may be accompanied at the hearing by another inspector or such other person as the Minister may deem appropriate; and
 - (b) the person requiring the hearing may be accompanied by such person as he may deem appropriate.

Calculation of civil penalty for breach of requirements

16 (1) Where, following the procedure set out in section 15, an inspector determines to impose a civil penalty on the employer or relevant person, the amount of the civil penalty shall be calculated at a rate equal to twice the amount of the minimum hourly wage (as in force at the date of the penalty notice) in respect of each worker to whom the failure to comply relates for each day during which the failure to comply has continued in respect of the worker.

(2) The Minister may by regulations, from time to time amend the multiplier for the time being specified in subsection (1) in relation to the minimum hourly wage.

(3) Subject to subsection (4), a civil penalty under this section shall be recoverable by the Accountant General in the Supreme Court.

(4) An employer or relevant person on whom a civil penalty is imposed may appeal to the Employment and Labour Relations Tribunal against the civil penalty before the end of the period of four weeks following the date of the imposition of the civil penalty.

Civil penalty not to be imposed on a person convicted for the same matter

17 Where a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed under this Act in relation to the same matter.

PART 5

EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL TO HEAR APPEALS

Appeals to be made to Employment and Labour Relations Tribunal

- 18 (1) An appeal may be made to the Employment and Labour Relations Tribunal—
- (a) under section 12(4) of this Act by a person served with an enforcement notice; and
 - (b) under section 16(4) of this Act by a person on whom a civil penalty for non-compliance has been imposed.

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(2) The proceedings of the Employment and Labour Relations Tribunal pursuant to Part VA of the Employment Act 2000 shall apply, with the necessary modifications, for the purposes of appeals under subsection (1).

Appeal against decision of Employment and Labour Relations Tribunal

19 (1) A party to an appeal before the Employment and Labour Relations Tribunal who is aggrieved by a decision of the Employment and Labour Relations Tribunal may appeal to the Supreme Court on any question of law arising from the decision on the appeal by the Employment and Labour Relations Tribunal; and if the Supreme Court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the Employment and Labour Relations Tribunal for rehearing and determination by it.

(2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1), except with leave of that court.

PART 6

MISCELLANEOUS

Offences

20 (1) Any person who fails to comply with any requirement under this Act is guilty of an offence.

(2) A person guilty of an offence under this section shall—

(a) in the case of an individual, be liable on summary conviction to a fine not exceeding \$2,000 and, for continued contravention, to a daily fine of \$100;

(b) in the case of a body corporate, be liable on summary conviction to a fine not exceeding \$7,000 and, for continued contravention, to a daily fine of \$500.

Regulations and orders

21 (1) The Minister may make regulations and orders for the purposes of this Act prescribing anything that is necessary or convenient to be prescribed for the carrying out of the provisions of this Act or to give effect to it.

(2) Regulations made under this Act may create offences and provide that a person who commits an offence against the regulations is liable on summary conviction to a fine not exceeding \$5,000.

(3) Regulations and orders made under this Act are subject to the negative resolution procedure.

Consequential amendments to Employment (Wage Commission) Act 2019

22 The Employment (Wage Commission) Act 2019 is amended in section 3—

(a) by repealing subsection (2)(b) and substituting the following—

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“(b) does not include the following persons—

- (i) a person who is under the age of 18 years;
- (ii) a casual worker who is employed to be a grocery packer;
- (iii) a voluntary worker;
- (iv) an employee employed as an apprentice for the first 12 months of a training programme that is registered with the appropriate Department of the Government of Bermuda;
- (v) an employee employed in a family business, where such employee is an immediate family member of the proprietor or an owner of the business;
- (vi) such other class of persons as may be prescribed by regulations.”;

(b) in subsection (3), by deleting “section 4(3)” and substituting “section 4”.

Commencement

23 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill provides for the procedure to apply to determine the entitlement of an employee to a minimum hourly wage; for the enforcement of the minimum hourly wage determined as applicable and for matters related and connected to the foregoing.

Clause 1 is the citation for the Bill.

Clause 2 provides for the interpretation of terms in the Bill.

Clause 3 provides for an employee's entitlement to a minimum hourly wage. The clause requires an employer to remunerate his employee for any pay reference period at a rate that is on average not less than such percentage of the minimum hourly wage.

Clause 4 provides for the pro-rata entitlement to a minimum hourly wage for less than a full hour.

Clause 5 provides for calculations to be made with respect to the minimum hourly wage. The clause provides for the deductions from the wages of an employee or payments to the employer by the employee that are statutorily permitted.

Clause 6 provides for the average hourly rate of pay. The clause requires that for the purpose of determining whether an employee is being paid the minimum hourly wage to which he is entitled for a pay reference period, all of his pay in a specific pay reference period is to be included in calculating his average hourly rate of pay in that period.

Clause 7 provides for the duty of employers to keep records. The clause requires every employer to keep, at the premises where the employee works or the premises where the employee is principally directed or controlled, such records as are necessary to demonstrate compliance with the Bill in relation to the employee.

Clause 8 provides for the employee's right of access to records. The clause gives a right to an employee, subject to the limitations set out in the clause, to require his employer to produce any relevant records and to be able to inspect, examine and copy the records. An employee may exercise his rights under this clause only where he believes on reasonable grounds that he is or may have been remunerated at a rate that is less than the minimum hourly wage or if he wishes to establish that he is being remunerated at a rate less than the minimum hourly wage.

Clause 9 empowers the Minister to designate inspectors for the purpose of the enforcement of the Bill and the regulations made under the Bill.

Clause 10 provides for the powers of inspectors. The clause gives the inspector, for the performance of his duties, power: to require the production of records and other related documents; to inspect, examine and copy the records and documents; to require an explanation of the records or documents; to require additional information and to enter relevant premises for the exercise of his powers.

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Clause 11 provides for employee complaints. The clause enables an employee to complain to an inspector if his employer has failed as required under Parts 2 and 3 of the Bill to pay him the minimum hourly wage or give him access to his records or to allow the employee to exercise some or all of the rights conferred under those Parts.

Clause 12 empowers inspectors to issue enforcement notices. The clause empowers an inspector, in the case where an employer has failed to pay his employee the minimum hourly wage, to serve an enforcement notice on the employer requiring the employer to remunerate the employee for pay reference periods ending on or after the date of the notice at a rate equal to the minimum hourly wage. The inspector, where he finds a complaint under clause 11 well-founded, is empowered under the clause to make a declaration to that effect and to award the employee the difference between the wages he was paid and the minimum hourly wage.

Clause 13 provides for the power of the Minister to publicly censure a body corporate that has contravened a requirement imposed upon it under the Bill. The clause also provides for the procedure to be followed where the Minister proposes to publicly censure a body corporate.

Clause 14 empowers an inspector to serve a penalty notice imposing a civil penalty on an employer who has failed to comply with the requirement to keep records under clause 7 and on a person on whom an enforcement notice has been served under clause 12 who has failed, in whole or in part, to comply with the enforcement notice.

Clause 15 provides for the civil penalty procedure. The clause enables a person on whom a notice for a civil penalty has been served to require a hearing before the inspector and the inspector is required to hear the person before making a determination as to whether to impose the civil penalty.

Clause 16 provides for the calculation of the civil penalty imposed for noncompliance with requirements under clauses 7 and 12 of the Bill. An employer or relevant person found liable for failing to comply with such requirements under the Bill, shall be liable to a civil penalty calculated at a rate equal to twice the amount of the minimum hourly wage in force in respect of each worker affected for each day during which the failure to comply has continued.

Clause 17 provides for a person convicted with an offence under the Act not to also be made liable to a civil penalty in relation to the same matter.

Clause 18 provides for appeals against a decision of an inspector to be made to the Employment and Labour Relations Tribunal established under section 44A of the Employment Act 2000. The clause enables persons on whom an enforcement notice has been served under clause 12 and those on whom a civil penalty is imposed under clause 16 to appeal to the Employment and Labour Relations Tribunal.

Clause 19 provides for appeals against decisions of the Employment and Labour Relations Tribunal on a point of law to be made to the Supreme Court.

Clause 20 provides to make it an offence for any person to fail to comply with any requirement under the Bill.

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Clause 21 provides power to the Minister to make regulations and orders that are necessary or expedient for the carrying out of the provisions of the Bill.

Clause 21 provides consequential amendments to the Employment (Wage Commission) Act 2019, so as to provide for additional categories of employees that are exempt from the provisions of that Act.

Clause 23 provides for the Minister to bring the Act into operation by notice published in the Gazette.