

MINIMUM WAGE ACT, 2017-4

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SCHEDULE

Constitution and management of the Board

BARBADOS

I assent
ELLIOTT F. BELGRAVE
Governor-General
3rd February, 2017.

2017-4

An Act to make provision for

- (a) the establishment of a Minimum Wage Board;
- (b) the making of Minimum Wage Orders by the Minister to establish either a minimum wage to be applied generally or a minimum wage for employees in a specified group or sector;
- (c) the repeal of the *Wages Councils Act*, Cap. 362; and
- (d) related matters.

[Commencement: 9th February, 2017]

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Minimum Wage Act, 2017*.

Interpretation

2. In this Act,

“Board” means the Minimum Wage Board established under section 3;

“CARICOM” means the Caribbean Community, established by the Revised Treaty of Chaguaramas signed in the Bahamas on the 5th day of July, 2001, which includes the members of the CARICOM Single Market and Economy as set out by section 5 of the *Caribbean Community Act, Cap. 15*;

“Chief Labour Officer” includes the Deputy Chief Labour Officer, a Labour Officer or any person authorised in writing by the Chief Labour Officer to act on his behalf;

“employee” has the meaning assigned to it by section 2 of the *Employment Rights Act (Act 2012- 9;)*

“employer” means a person who employs one or more employees and includes any agent, manager or representative of that person where the agent, manager or representative is directly or indirectly responsible for the payment, whether in whole or in part, of the remuneration of an employee;

“national minimum wage” means a sum prescribed under a Minimum Wage Order as the lowest sum which an employer shall pay an employee in Barbados.

Establishment of a Minimum Wage Board

3.(1) There is hereby established a Minimum Wage Board to advise the Minister on all matters relating to the fixing of a minimum wage including the

- (a) national minimum wage to be paid to an employee;
- (b) minimum wage to be paid to a specified group or sector of employees; and
- (c) terms and conditions of service and the minimum work conditions of an employee to whom a minimum wage applies.

(2) The *Schedule* has effect with respect to the constitution and management of the Minimum Wage Board.

Functions of the Board

4. The Board shall perform the following functions:

- (a) obtain and record information in relation to wages, other forms of benefits, terms and conditions of service and all other factors affecting the circumstances of employment and remuneration of employees paid a minimum wage;
- (b) keep the information referred to in paragraph (a) under continuous review and periodically make reports to the Minister on this information;
- (c) consider and advise the Minister on all matters relating to
 - (i) a national minimum wage; or
 - (ii) a minimum wage for a specified group or sector of employees;
- (d) recommend a national minimum wage or a minimum wage for a specified group or sector of employees;

- (e) record and keep under review any minimum wage fixed by the Minister as well as the minimum terms and conditions of service in relation thereto; and
- (f) make recommendations to the Minister in respect of a minimum wage and the minimum terms and conditions of service in relation thereto.

The Board to make recommendations to the Minister

5.(1) The Board may, where it is of the opinion that the Minister should fix a minimum wage or make specific provision regarding the minimum terms and conditions of service in respect of employees generally or in respect of a specified group or sector of employees, forward a recommendation to the Minister and the recommendation may include

- (a) the proposed minimum wage;
 - (b) the proposed change in the minimum terms and conditions of service of employees generally or in relation to a specified group or sector of employees; and
 - (c) any other related matter.
- (2) Before making a recommendation under subsection (1), the Board shall consider
- (a) the rate of inflation, cost of living and general level of wages in Barbados;
 - (b) contributions payable and benefits provided under the *National Insurance Act, Cap. 47*;
 - (c) the taxes to be deducted in accordance with the provisions of the *Income Tax Act, Cap. 73*;
 - (d) economic factors, including the requirements of economic development, level of productivity and the desirability of attaining and maintaining high levels of employment;

- (e) payment for similar jobs or tasks in other countries in CARICOM, the Commonwealth or similar jurisdictions; and
 - (f) any other relevant or related factors.
- (3) The Minister may accept the recommendations or advice of the Board or implement such measures as he considers appropriate in the circumstances.

Minimum Wage Orders

- 6.(1) The Minister may by Order
- (a) prescribe a national minimum wage and specify the minimum terms and conditions of service in respect of all employees; or
 - (b) prescribe a minimum wage and specify the minimum terms and conditions of service in respect of employees in a specified group or sector.
- (2) The Minister may amend or revoke any Order made under subsection (1).
- (3) Where the Minister makes an Order under subsection (1)(b) the minimum wage to be paid to that specified group or sector of employees shall not be less than the national minimum wage.

Public notification

- 7.(1) Before making a Minimum Wage Order under section 6 the Minister shall publish a notice of his intention to make the Minimum Wage Order in a newspaper in circulation in Barbados.
- (2) The notice referred to in subsection (1) shall state
- (a) where a copy of the proposed Minimum Wage Order may be obtained; and
 - (b) the minimum period, being no less than 40 days from the date of the initial notification, during which objections may be received.

(3) A person objecting to the making of a Minimum Wage Order shall forward his objection to the Minister, and that objection shall state

- (a) the grounds of his objection;
- (b) the nature of his interest in the matter; and
- (c) any additions or amendments which should be made to the Order.

(4) The Minister shall refer all objections received under subsection (3) to the Board for the review of the Board.

(5) The Board shall submit their comments on the objections to the Minister and may also submit such additions or amendments to the Minimum Wage Order as the Board considers necessary and the Minister may, after considering all the documentation from the Board, make the Minimum Wage Order in such terms as he thinks fit.

Requirement to pay minimum wage

8.(1) An employer to whom this Act applies shall not pay to any employee any sum which is less than the sum stipulated in a Minimum Wage Order and shall not retain or withhold any sum therefrom other than an amount to be deducted under the provisions of the *Protection of Wages Act*, Cap. 351 or in accordance with the provisions of any other enactment.

(2) Where an employer pays an employee

- (a) an incentive based payment or commission;
- (b) a monetary allowance;
- (c) a payment for overtime worked; or
- (d) any other additional sums

the payment of these sums shall not be discontinued, but shall, where the terms and conditions of the employee's contract and the duties performed so require, continue to be paid in addition to the sum prescribed in the Minimum Wage Order.

Records

9. An employer to whom this Act applies shall keep such records as are necessary to show that the required wage is being paid to each employee to whom this Act applies and these records shall be kept in the form or manner required by the Chief Labour Officer.

Duty of employer to inform employee of an existing Minimum Wage Order

10.(1) An employer to whom this Act applies shall, where a Minimum Wage Order will affect the remuneration or conditions of service of an employee, notify that employee of the making of the Minimum Wage Order.

(2) An employer referred to in subsection (1)

- (a) shall affix a copy of the Minimum Wage Order in a place where it will be easily seen and can be easily read by an employee ; and
- (b) may also send copies of the Minimum Wage Order by electronic means to an employee.

Powers of the Chief Labour Officer

11. The Chief Labour Officer shall, in addition to any other powers provided for in the provisions of the *Labour Department Act*, Cap. 23 or under any other enactment, have the power to

- (a) require the production of wage sheets or other records of wages kept by an employer as well as the production of other related records that employers are required to keep under this Act and to inspect and examine those sheets or records and to copy any material or part thereof;
- (b) at a reasonable time, enter any premises where an employer carries on his business or enter any premises which the Chief Labour Officer has reasonable cause to believe is being used by the employer to provide

living accommodation an for employee to whom a Minimum Wage Order applies;

- (c) examine, either alone or in the presence of any other person, with respect to any matter under this Act, any person whom he has reasonable cause to believe to be or to have been an employee to whom a Minimum Wage Order applies or applied; or
- (d) examine, either alone or in the presence of any other person, with respect to any matter under this Act, an employer or an agent of the employer, employed in the employer's business; and
- (e) require every person who is examined pursuant to paragraph (c) or paragraph (d) to sign a declaration of the truth in respect of the information he has given in the matter, but no person shall be required to incriminate himself under this paragraph.

Power to institute proceedings

12.(1) The Chief Labour Officer may institute proceedings in his own name against an employer for any offence under this Act and may appear and conduct the proceedings including civil proceedings to collect sums due to an employee where an employer pays the employee less than the amount prescribed by a Minimum Wage Order.

(2) The power given under subsection (1) for the recovery of sums due from an employer to an employee shall not be in derogation from any right of the employee to recover such sums by civil proceedings.

Expenses of the Board

13. There shall be paid out of the Consolidated Fund monies voted for the purpose by Parliament to pay any expenses incurred by the Board or generally for the purposes of carrying into effect the purposes of this Act.

Offences

- 14.(1)** A person who
- (a) fails to comply with his duty as an employer, or an agent of an employer
 - (i) to keep the records required under section 9; or
 - (ii) to notify an employee of the matters required under section 10;
 - (b) makes or causes to be made, or knowingly allows to be made in any record required to be kept under this Act by an employer an entry which he knows to be false in a material particular;
 - (c) for purposes connected with this Act produces or furnishes, any wage sheet, record, list or information which he knows to be false in a material particular;
 - (d) pays an employee less than the sum prescribed by a Minimum Wage Order irrespective of whether the person making the payment is the employer, or an employee or agent of the employer;
 - (e) contrary to section 8(2), reduces or adjusts overtime rates or additional sums usually paid to an employee by contract or custom due to the requirement to pay a minimum wage; or
 - (f) obstructs the Chief Labour Officer, Deputy Chief Labour Officer or a Labour Officer in the exercise of any power conferred under section 11

is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for a term of 2 years or to both.

- (2) Where a person is convicted of an offence under subsection (1) in respect of which the court imposes a fine and that person fails to comply with the Order of the court in respect of that fine, that person is liable to a further fine of \$500 for each day during which the failure to comply continues.

Duty of non-disclosure

15.(1) A person who is

- (a) a member of the Board; or
- (b) invited to and was present at a Board meeting;

and who discloses any information or the contents of any document which has been furnished by or to the Board, except with the written consent of the person to whom the information belongs, is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or imprisonment for a period of 2 years or to both.

(2) Where a person is convicted of an offence under subsection (1), in respect of which the court imposes a fine and that person fails to comply with the Order of the court in respect of that fine, that person is liable to a further fine of \$500 for each day during which the failure to comply continues.

Limitation period

16. No prosecution for any offence under this Act shall be instituted after the expiration of one year from the date of the commission of the offence.

Regulations

17.(1) The Minister may make regulations for carrying out the purposes of this Act, and to prescribe anything which is required or authorised to be prescribed under this Act.

(2) All regulations made under this Act shall be subject to negative resolution.

Act binds the Crown

18. This Act binds the Crown.

Savings

19. Any

(a) decision of a Wages Council; or

(b) Order made by the Minister under the *Wages Council Act*, Cap. 362

made prior to the commencement of this Act, shall be in force and shall remain in force until it is reviewed by the Board and, where necessary, revoked by the Minister to effect the purposes of this Act.

Repeal Cap. 362

20. The *Wages Council Act*, Cap. 362 is hereby repealed.

SCHEDULE*(Section 3(2))**Constitution and management of the Board***Constitution and appointment of the Board**

1. Subject to paragraph 2, the Board shall be comprised of 9 persons appointed by the Minister by an instrument in writing.

Composition of the Board

2. The Board shall be comprised of
- (a) such a number of persons being no more than 3 persons chosen by the Minister;
 - (b) such a number of persons being no more than 3 persons ,who are representative of employers to whom the Act applies; and
 - (c) such a number of persons being no more than 3 persons, who are actively involved with or who hold office in an organization which represents employees to whom this Act applies.

Requirement for consultation

3. Before appointing a person under paragraph 2(b) or paragraph 2(c) the Minister shall
- (a) consult with organizations or associations which represent employers and organizations or associations which represent employees; and
 - (b) receive written recommendations from those organizations or associations.

Chairman and Deputy Chairman

- 4.(1) The Minister shall appoint a member to be the Chairman of the Board and another member to be Deputy Chairman.
- (2) The Board shall appoint from among its members a person to be the Secretary of the Board.

Tenure

- 5.(1) A member of the Board shall hold office for a term of 3 years.
- (2) A member is eligible for re-appointment for a further term on the expiration of the term of his appointment.

Vacancy in the Board

- 6.(1) A vacancy shall be deemed to arise in the membership of the Board in the case of
- (a) the death or resignation of a member;
 - (b) the absence of a member without leave of the Minister from 3 or more consecutive meetings of the Board; or
 - (c) a revocation under paragraph 7.
- (2) A person appointed to fill a vacancy in the membership of the Board shall
- (a) be from the same category of persons in paragraph 2 as the former member; and
 - (b) be eligible for re-appointment.
- (3) A person appointed to fill a vacancy by the Minister shall hold office only for the unexpired portion of the term of that former member.

Revocation of appointment

7. The Minister may by an instrument in writing, revoke the appointment of the Chairman, Deputy Chairman or any other member if he is satisfied that the member

- (a) fails to carry out any of the functions conferred or imposed on him under the Act,
- (b) is incapacitated physically or mentally to such an extent as to impair his ability to perform his duties, or is otherwise unable or unfit to perform his duties;
- (c) is bankrupt; or
- (d) is guilty of serious misconduct in relation to his duties under this Act.

Gazetting of appointments

8. The appointment, temporary appointment, removal or resignation of any member of the Board shall be published in the *Official Gazette*.

Leave of absence

9. The Minister may in writing grant a leave of absence to any member, and in case of the inability of any member of the Board to act, the Minister may appoint another person to act temporarily in the place of that member.

Resignation

10.(1) The Chairman may, at any time resign his office by an instrument in writing addressed to the Minister, and such resignation shall take effect from the date of the receipt of the instrument by the Minister, and the Chairman ceases to be Chairman unless some other date is stated in the instrument, and the Chairman also ceases to be a member of the Board.

(2) Any member other than the Chairman may at any time resign his office by an instrument in writing addressed to the Chairman, who shall forthwith forward

it to the Minister, and that member shall cease to hold office as from the date of the receipt of the instrument by the Minister, unless some other date is stated in the instrument.

Temporary Appointment

11.(1) In the absence of a member, or in case of his inability to act, the Minister may by an instrument in writing appoint another person to act temporarily in the place of that member.

(2) A person appointed to fill a temporary vacancy in the membership of the Board shall

- (a) be from the same category of persons in paragraph 2 as the former member; and
- (b) be eligible for re-appointment.

Meetings of Board

12.(1) The Board shall meet as often as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such places and times and on such days as the Board may determine.

(2) The Chairman shall preside at the meetings of the Board and in the absence of the Chairman, the Deputy Chairman shall preside.

(3) Where neither the Chairman nor the Deputy Chairman is present the members present and constituting a quorum may elect a person from among the members who shall preside over that meeting as chairman.

(4) The Chairman, or if he is for any reason whatsoever unable to act the Deputy Chairman, may by issuing an instrument in writing to each member call a special meeting of the Board at anytime.

(5) Any member of the Board may by an instrument in writing addressed to the Chairman request a special meeting of the Board and the Chairman, or if he is for any reason whatsoever unable to act, the Deputy Chairman may call a

special meeting of the Board or notify the member that the request has been denied.

Attendance of non-members at meetings

13.(1) The Chairman may by an instrument in writing require any person to attend a meeting of the Board where the Board considers it necessary to do so.

(2) A person referred to in sub-paragraph (1) may take part in the deliberations of the Board but shall not vote on any matter.

Decisions of the Board

14. A decision of the Board shall be by a majority of votes and, in any case in which the voting is equal, the Chairman, the Deputy Chairman or the temporary Chairman presiding at the meeting has, in addition to his original vote, a second or casting vote.

Minutes

15.(1) Minutes of a meeting of the Board shall be kept by the secretary of the Board and those minutes shall be confirmed by a decision of Board at the next meeting of Board.

(2) The Board shall forward a copy of the confirmed minutes from each meeting to the Minister within one month of the date of the meeting at which the minutes were confirmed.

Quorum

16. A quorum shall consist of 5 members including

(a) the Chairman, and in the absence of

(i) the Chairman, the Deputy Chairman; or

(ii) both the Chairman and the Deputy Chairman, any person appointed to act as chairman for that meeting;

- (b) a person appointed under paragraph 2(a)
- (c) a person appointed under paragraph 2(b); and
- (d) a person appointed under paragraph 2(c).

Seal and execution of documents

17.(1) The seal of the Board shall be kept in the custody of the Chairman, Deputy Chairman or such officer of the Board as the Board approves, and may be affixed to documents or instruments pursuant to a resolution of the Board in the presence of the Chairman or Deputy Chairman and the Secretary.

(2) The seal of the Board shall be authenticated by the signature of the Chairman and Secretary.

(3) All documents or instruments, other than those required by law to be under seal, and all decisions of the Authority may be signified under the hand of the Chairman or Deputy Chairman.

Signature

18. All decisions made by the Board and all documents of the Board shall be signed by the Chairman, and in his absence the Deputy Chairman, and in the absence of the Chairman and Deputy Chairman, such documents shall be signed by any person authorised to act as chairman.

Proceedings of the Board

19.(1) Subject to this *Schedule*, the Board may regulate its own procedure and may delegate to any of its members or to a committee of its members the power and authority to carry out, on behalf of the Board, such duties as the Board determines.

(2) The Minister may assign such persons as are necessary to assist the Board with discharging its functions.

Remuneration

20. The Chairman, Deputy Chairman and other members of the Board are entitled to such remuneration and allowances as the Minister may determine.