

THE WAGES ACT

Date of commencement: 19th June, 1964.
Arrangement of Sections

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An Act to provide for the establishment of a Wages advisory Board and wages councils and otherwise for the regulation of the minimum wages and conditions of employment of employees and for other matter incidental thereto and connected therewith.

PART I
PRELIMINARY

Short title.

- 1. This Act may be cited as the Wages Act, 1964.

Interpretation.

- 2. In this Act, unless the context otherwise requires-
"authorized officer" means officer-

- (a) deemed, by section 20(1), to be an authorized officer, or
- (b) authorized under subsection (2) of such section;

"board" means the Wages Advisory Board established under section 4;
"council" means wages council established under section 6;

"employee" means a person who has entered into or works under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise, expressed or implied, orally or in writing, and whether it is a contract of service or apprenticeship or a contract personally to execute any work or labour, whether for money or other reward;

"employer" means-

- (a) an individual, company, firm, corporation, local authority or body of persons who or which has entered into a contract of service with any employee; or
- (b) an agent, foreman, manager, recruiter or factor of such an employer, and if the Government, the officer of the Government under whom an

employee is working shall be deemed to be the employer of the employee for the purpose of this Act:

Provided that no such officer of the Government so deemed to be an employer shall be personally liable for anything done by him in good faith as an officer of the Government;

"Labour Commissioner" has the same meaning as in the Employment Act, No. 51 of 1962;

"Minister" means the Deputy Prime Minister;

"statutory minimum wage" means wage fixed by a wage regulation order;

"wage council established order" means an order made under section 6 establishing a council;

"wage order" means an order made under section 5(5);

"wages regulation order" means made under section 11(5);

"wages regulation proposals" means an proposals made under section 11(1).

Application.

3. this Act shall apply to employment by or under the Government in the same way and to the same extent as if the Government were a private person but shall not apply to-
 - (a) persons in the armed services of the Government;
 - (b) persons in the police force or prison services of he Government.

STATUS OF SWAZILAND

ESTABLISHMENT OF WAGES ADVISORY BOARD

Establishment of Wages Advisory Board, (First Schedule)

4. (1) The Minister may by order establish a Wages Advisory, Board, which shall, upon being required so to do by the Minister in terms of section 5, inquire into the wages and conditions of employment of any employees in Swaziland or in any part of Swaziland.

(2) The First Schedule shall apply to the constitution, officers and proceedings of the board.

Functions of board.

5. (1) The Minister, if he is of the opinion that it is expedient to fix the minimum wage of any employees in Swaziland or in any part of Swaziland or to

prescribe conditions of employment of any such employees, shall require the board to inquire into the matter.

- (2) The board shall thereupon inquire into the matter and submit to the Minister recommendations as to the minimum wage which should be paid and the conditions of employment which should apply to all or any of the employees coming within its terms reference.
- (3) Before submitting p the Minister any recommendations under subsection (2), the board shall publish in the Gazette, and in at least one newspaper published in Swaziland, a notice of the intention to submit recommendations, stating a place where copies of the recommendations may be obtained and the period, not being less than thirty days, within which written representations with respect tot the recommendations may be sent to the board.
- (4) The board consider any such written representations made to it within the set period and may make such further inquiries as it considers as it considers necessary and may then submit to the Minister the recommendations, either with or without amendment having regard to those representations.
- (5) The Minister, after consideration has been given to the recommendations of the board submitted in accordance with the provisions of this section, may, after informing the board of his decision, by a wages order published in the Gazette, prescribe the minimum wage to be paid and the conditions of employment to be applied to any employees:

Provided that subject to the proviso to section 11(5) a wages order shall not be made in relation to any employees in respect of whom a council is in existence or in relation to any industry in which there is a voluntary agreement the parties to which are representative of a substantial proportion of the employers and employees in that industry (Amended K. O-I-C. 33/1974.)

- (6) The board may, when submitting to the Minister recommendations in accordance with this section, or of its own volition at any time, recommend the establishment of a council.
- (7) Subject to the proviso to section 11(5) the board shall cease to exercise any functions in relation to any employees in respect of whom a council is in existence: (Amended K.O-I-C. 33/1974.)

Provided, that even if a council is in existence, the board may, at any time, either of its own volition or if so requested by the Minister, submit to the Minister recommendations that the council should be abolished or that the terms of the wages council establishment order establishing the council should be varied.

PART III

ESTABLISHMENT OF WAGES COUNCILS

Establishment of wages councils, (Second Schedule).

6. (1) Subject to section 7(2) and section 8, the Minister may, by a wages council establishment order, establish a wages council to perform, in relation to the employees specified in the order and their employers, the functions specified in this Act in any case in which he is satisfied that no adequate machinery, other than the board, exists for their effective regulation of the wages or conditions of employment of those employees, or that existing machinery is likely to cease to exist or be adequate for that purpose, and that it is expedient that such a council be established.

(2) The Second Scheduled shall apply to the constitution, officers and proceedings of a council.

Jurisdiction of councils.

7. (1) The functions of a council may be exercised in relation to

- (a) all or any employees in any trade, industry or occupation either generally or in any area of Swaziland.
- (b) Any class or category of those employees.

(2) When making a wages council establishment order, the Minister may limit the functions of a council in such manner as he may specify in the order.

Making of wages council establishment order.

8. (1) Before making wages council establishment order, the Minister shall take into account, but shall not be bound by any representations made to him in terms of section 10 and any recommendations made to him by the board in terms of section 5(6).

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- (2) Before making a wages council establishment order, the minister may seek the advice of employers and employees in the industry concerned, or appoint a Board of Inquiry to make recommendations as to whether a council should be established.
- (3) Before making a wages council establishment order, the Minister shall publish, in the Gazette and in a newspaper published in Swaziland, a notice of his intention to make the order, specifying a place where copies of a draft thereof may be inspected and a time, any objection to the draft order shall be sent to the Minister.

- (4) Every objection made in accordance with subsection (3) shall be in writing and shall state the specific ground of objection, and the omissions,, additions or modifications to the draft wages council establishment order asked for.
- (5) The Minister shall consider any such objections made by or on behalf of any person appearing to him to be affected if the objection has been sent to the Minister within the time specific in the notice but shall not be bound to consider any other objection.
- (6) The Minister, having considered any objection which he is required to consider in accordance with subsection (5), may make a wages council establishment order in the terms of the draft order or subject to such modifications thereof as are, in his opinion, necessary.
- (7) If the Minister makes a wages council establishment order, he shall publish it in the same manner as is provided in subsection (3) for the publication of notice of his intention to make a wages council establishment order, and the wages council establishment order shall come into operation on the date on which it is published in the gazette or on such later date as is specified in the wages council establishment order.

Variation and revocation of wages council establishment order.

9. (1) The Minister may at any time, by order abolish a council or vary the terms of a wages council establishment order, and section 8 shall, mutates mutandis, apply in all such cases.
 - (2) Before making an order abolishing a council or varying the terms of wages council establishment order, the Minister shall seek and take into account, but shall not be bound by, the views of employers and employees in the industry concerned or the recommendations of the board thereon.

Representations by employers and employees.

10. Employers and employees in any industry may make representations to the Minister for the establishment of wages council for that industry, or the abolition of a council where one has been established.

PART IV

WAGES REGULATION ORDERS

Power to fix wages and conditions of employment.

11. (1) Subject to subsections (2) and (3), a council may submit to the Minister wages regulations proposals as to the minimum wage which should be paid and the conditions of employment which should be applied to all or any of the employees in relation to whom the council operates.

- (2) Before submitting any wages regulation proposals to the Minister, a council shall make such investigations as it thinks fit and shall publish in the gazette and in a newspaper published in Swaziland a notice of the intention to submit proposals stating the place where copies of the proposals may be obtained and the period, not being less than thirty days, within which written representations with respect to the proposals may be sent to the council.
- (3) The Council shall consider any such written representations made to it within the sent period and may take make such further inquiries as it considers necessary and may then submit the proposals to the Minister, either with or without amendment having regard to those representations.
- (4) If wages regulation proposals have been submitted to the Minister he may, if he thinks fit, refer the proposals back once to the council and the council shall thereupon reconsider them, having regard to any recommendations made by the Minister and may, if it thinks fit, resubmit the proposals to the Minister, either with or without amendment having regard to those recommendations. (Amended K.O-IC. 33/1974)
- (5) If wages regulation proposals have been submitted to the Minister or if referred back to the Council under subsection (4), have been resubmitted to him with an amendment made in accordance with all his recommendations, the Minister shall give effect to such proposals by a Wages Regulations Order published in the Gazette:

Refer such proposals to the Board and shall, after considering any recommendations made by the Board, give effect to the proposals in which such recommendations shall be incorporated (Amended K.O-I-C. 17/1978)

(a) give effect to such proposals by a wages Regulations Order published in the Gazette; or

(b) refer such proposals to the board and shall, after considering recommendation of the Board, give effect to such proposals. (Amended K.O-I-C. 33/1974)

The date to be specified in accordance with subsection (5) shall be a date subsequent to the date of the wages regulation order, and where the date so specified does not correspond with the beginning of the period for which wages are paid the order shall, in respect of any employee effected, become operative from the beginning of the next such period following the date specified in the order.

7. Any wages regulation proposals and any wages regulation order may make different provisions for different cases and may also contain

provision for the amendment or revocation of previous wages regulations orders.

Saving as to rights conferred by other laws.

12. No order made under section (5) or (11) shall have effect so as to prejudice any rights touching conditions of employment, holidays or remuneration conferred upon any worker by or under the provisions of any other law.

Agreement and arbitration awards.

13. If the Minister is satisfied that an agreement or arbitration award, relating to wages or conditions of employment, has been made by parties representative respectively of the whole, or substantially the greater proportion, of the employers and the employees in an industry, he shall make an order regulating wages or conditions of employment in accordance with the terms of the agreement or award and cause such order to be published in the Gazette and in newspaper published in Swaziland and, from the date of such publication, or such other date, as the order may prescribe, the order shall take effect in relation to all the employers and the employees in that industry as though it had been a wages regulation order made as a result of wages proposals made by a council.

Benefits provided by the employer.

14. (1) Subject to this section, any reference in this Act to wages be constructed as a reference to the amount obtained or to be obtained in cash by the employee from his employer, clear of all deductions, except those lawfully made for the purpose of a contribution to any provident or pension fund scheme approved by the Labour Commissioner or in respect of deferred pay.
- (2) Notwithstanding subsection (1), wages regulation proposals and wages regulation order may contain provision authorizing specific benefits or advantages, being benefits or advantages provided by the employer or by some other person under arrangement with the employer in pursuance of the terms and conditions of any legal or contractual obligation imposed upon the employer, and not being benefits or advantages the provision of which is illegal by virtue of any other law, to be reckoned as payment of wages by the employer in lieu of payment in cash and defining the value at which any such benefits or advantages are to be reckoned as payment of wages by the employer in lieu of payment in cash and defining the value at which any such benefits or advantages are to be reckoned.

Effect and enforcement of wages regulation orders.

15. (1) If a contract between an employee to whom a wages regulation order applies and his employer provides for the payment of a lesser wage than the statutory minimum wage or does not provide for the conditions of employment prescribed in the wages regulation order, the contract shall

have effect as if there were substituted, for such lesser wage, the statutory minimum wage and as if there were inserted in the contract such prescribed conditions of employment, as the case may be.

- (2) An employer who fails to pay to an employee, to whom a wages regulation order applies, at least the statutory minimum wage or fails to provide such employee with the conditions of employment prescribed in the order, shall be guilty of an offence and liable on conviction, to a fine not exceeding one hundred emalangeni for each such offence, and if the employer or any other person charged as the person to whose act default the offence, was due has been found guilty of an offence under this section consisting of a failure to pay at least the statutory minimum wage, the court shall order the employer to pay such sum as is found by the court to represent the difference between the amount which ought to have been paid to the employee by way of wages if the provisions of the wages regulation order had been complied with and the amount actually so paid.
- (3) If proceedings are brought under this section in respect of an offence consisting of failure to pay at least the statutory minimum wage then, after guilty notice so to do had been served with the summons, warrant or complaint-
- (a) evidence may, on the employer or any other person charged to whose act or default the offence was due having found guilty of the offence, be given of any like contravention on the part of the employer or such other person in respect of any period during the twelve months immediately proceeding the date of the offence; and,
- (b) on proof of the failure, the court shall order the employer to pay such sum as is found by the court to represent the difference between the amount which ought to have been paid by the employer, during such period, to any employee by way of wages if the provisions of this Act had been complied with and the amount actually so paid.

(4) The power given by this section for the recovery of sums due from an employer to an employee shall be in addition to, and not in derogation of, any right to recover such sums by civil proceedings:

Provided that no person shall be liable to pay twice in respect of the same cause of action.

Permits to infirm and incapacitated persons.

16. If the Labour Commissioner is satisfied that any person, employed or desiring to be employed in such circumstances that a wages regulation order applies or will apply to him, is affected by any infirmity or physical or disablement, the Labour Commissioner may, if he thinks fit, issue to that person, subject to such terms, if any as he may determine, a permit

exempting the employer of the person from the provisions of this Act relating to the payment of the statutory minimum wage or observance of conditions of employment and, while the permit is in force, the employer is not liable to any penalty for paying wages to the person employed at a rate less than the statutory minimum wage or failing to observe those conditions so long as any terms determined by the Labour Commissioner on the grant of the permit are complied with.

Prohibition of premiums.

17. (1) If an employee to whom a wages regulation order applies is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf on his account, any payment by way of premium:

Provided that nothing in this subsection shall apply to any such payment duly made in pursuance of any valid instrument of apprenticeship.

- (2) An employer who contravenes this section shall be guilty of an offence and liable on conviction in respect of each offence, to a fine of fifty emalangeni, and the court may, in addition to imposing a fine, order him to repay to the employee, or other person by whom the payment was made, the improperly received by way of premium.

Records and notices.

18. (1) The employer of any employees to whom a wages regulation order applies shall keep in English such records as may be prescribed or, if not prescribed, as are necessary to show whether or not the provisions of this Act are being complied with in respect of those employees and the records shall be retained by the employer for two years.

- (2) When a wages regulation order is published in the Gazette, the Labour Commissioner shall forthwith prepare notices in the siSwati languages setting out full details of the order and such matters as may be prescribed. (Amended Act 3/1969)
- (3) Such employer shall, not later than one month after the publication of the wages regulation order in the gazette, obtain from the Labour Commissioner such number of the notices referred to in subsection (2) as will enable him adequately to comply with subsection (4). (Added Act 3 1969)
- (4) On receiving the notices from the Labour Commissioner, the employer shall so display them that his employees, when at work can at all time readily inform themselves of the contents. (Added Act 3/1969).
- (5) An employer who fails to comply with any of the requirement of this section shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred emalangeni.

Criminal liability of superior employer and special defence open to employer.

19. (1) If the immediate employer of any employee is himself in the employment of some other person and such employee is employed on the premises and in connection with the business of that other person, such other person shall, for the purposes of this Act, be deemed to be the employer of such employee jointly with the immediate employer.

(2) If an employer is charged with an offence under this Act he is entitled, on giving to the prosecution not less than three days' notice in writing of his intention, to have any other person, to whose act or default he alleges that the offence in question was due, brought before the court at the time appointed for the hearing of the charge; and if, after the commission of the offence has been proved, the employer proves that the offence was due to the act or the default of such other person, such other person may be convicted of the offence, and any relevant regulation or order made there under are complied with, he shall be acquitted of the offence.

(3) If a defendant seeks to avail himself of the provisions of subsection (2) -

(a) the prosecution, as well as the person to whom the defendant alleges to have committed the offence, shall have the right to cross-examine him if he gives evidence and any witnesses called by him in support of his defence, and to call rebutting evidence, and

(b) the court may make such order as it thinks fit for the payment of costs, by any party to the proceedings, to any other party thereto.

(4) If it appears to an authorized officer that an offence has been committed in respect of which proceedings might be taken under this Act against an employer, and the authorized officer is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the employer could establish a defence under subsection (2), the authorized officer may cause proceedings to be taken against the other person without first causing proceedings to be taken against the employer.

(5) In proceedings so taken, the default may be charged with and, on proof that the offence was due to his act or default, be convicted of the offence with which the employer might have been charged.

Authorized officers.

20. (1) All officers appointed as, or deemed to be labour officers or labour inspectors in accordance with the provisions of the Employment Act, No. 51 of 1962, are hereby deemed to be authorized officers for the purpose of this Act.

(2) The Minister may authorize such other public officers as he may deem necessary for carrying out this Act.

- (3) Every authorized officer shall be furnished by the Labour Commissioner with a certificate of his appointment or authority so to act when so acting shall, if so required.

Penalty for obstructing authorized officers, etc.

22. Any person who obstructs an authorized officer in the exercise of any power conferred by this Act, or refuses to comply with any requirement of such officer made in the exercise of such power, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred Emalangeni.

Penalty for false entries or records, producing false information.

23. Any person shall be guilty of an offence and liable, on conviction, to a fine not exceeding two hundred Emalangeni in imprisonment not exceeding six months, or both, who –
- (a) makes or causes to be made or knowingly allows to be made an entry, in a record required by this Act to be kept by employers, which entry he knows to be false in a material particular, or,
 - (b) for any purpose connected with this Act, produces or furnishes, or causes or knowingly allows to be produced or furnished, any wages sheet, record, list or information which he knows to be false in a material particular.

PART V

GENERAL

Regulations.

24. The Minister may make regulations prescribing anything which, by this Act, may be prescribed and, generally, for the better carrying into effect of the provisions of this Act.

Expenses

25. Any expenses incurred in carrying this Act into operation shall be defrayed out of the general revenues of Swaziland.

FIRST SCHEDULE

(Section 4 (2))

Constitution, Officers and proceedings of Wages Advisory Board

1. The Wages Advisory Board shall consists of persons appointed by the Minister being –
 - (a) not more that three persons chosen by the Minister as being independent persons;
 - (b) such number, as the Minister thinks fit, of persons who, in his opinion, represent employers;
 - © such number, as the Minister thinks fit, of persons who, in his opinion, represent employees.
2. Of the persons appointed under paragraph 1a) one shall be appointed by the Minister to act as chairman, and another may be appointed by the Minister to act as deputy-chairman in the absence of the chairman.
3. Before appointing persons under paragraph 1(b) or (c), the Minister shall consult any organizations appearing to him to represent employers or, as the case may be, employees concerned, and the persons appointed under those sub-paragraphs shall be equal in number.
4. (1) The Minister may appoint such number of persons, as he thinks fit, as assessors to be available to the board, being persons who, in his opinion, have³ an expect knowledge of any of the matters with which the inquiry of the board is concerned.

(2) An assessor shall not vote or otherwise be a party to any report or recommendation of the board.
2. The Minister may appointment to the board a secretary and such other officers as he considers necessary.
3. The proceedings of the board shall not be invalidated by reason of any vacancy therein or by defect in the appointment of a member.
4. Subject to anything which may be prescribed as to the meetings and procedure of the board, including the quorum and method of voting, and subject to the other provisions of this Act, the board may regulate its own procedure in such manner as it thinks fit.
5. The term for which a member of the board is to hold office shall be determined by the Minister at the time of the appointment, and the conditions subject to which the member is to hold office shall be as prescribed.
6. There shall be paid to the member of the board appointed under paragraph 1(a) such remuneration, and to any member and assessor,

such travelling and other allowances (including compensation for loss of working time) as may be approved by the Minister.

7. (1) No member of the board, or other person present at or concerned in any proceedings of the board, shall in any way disclose or information, or the contents of any document, which has been furnished to the board, except with the written consent of the person who furnished the information, or the document, and of the board.
2. Any person who contravenes this paragraph shall be guilty of an offence, and liable on conviction to a fine of fifty emalangeni or imprisonment of three months of both.

SECOND SCHEDULE

(Section 6(2))

Constitution, officers and proceedings of Wages Councils.

1. A wages council shall consist of persons appointed by the Minister, being-
 - (a) not more than three persons chosen by the Minister as being independent persons;
 - (b) such member, as the Minister thinks fit, of persons who, in his opinion, represent employers in relation to whom the wages council is to operate;
 - (c) such number, as the Minister thinks fit, of persons who, in his opinion, represent employees in relation to whom the wages council is to operate.
2. Of the persons appointed under paragraph 1(a), one shall be appointed by the Minister to act as chairman, and another may be appointed by the Minister to act as deputy-chairman in the absence of the chairman.
3. Before appointing persons under paragraph 1(b) or (c), the Minister shall consult any organizations appearing to him to represent employees or, as the case may be, employees concerned, and the persons appointed under those sub-paragraphs shall be equal in number.
4. (1) The Minister may appoint such number of persons, as he thinks fit, as assessors to be available to the board, being persons who, in his opinion, have an expert knowledge of any of the matters with which the inquiry of the board is concerned.

(2) An assessor shall not vote or otherwise be a party to any report or recommendation of the board.
5. The Minister may appoint to the board a secretary and such other officers, as he considers necessary.

6. The proceedings of the board shall not be invalidated by reason of any vacancy therein or by defect in the appointment of a member.
7. Subject to anything which may be prescribed as to the meetings and procedure of the board, including the quorum and method of voting, and subject to the other provisions of this Act, the board may regulate its own procedure in such manner as it thinks fit.
8. The term for which a member of the board is to hold office shall be as determined by the Minister at the time of the appointment, and the conditions subject to which the member is to hold office shall be as prescribed.
9. There shall be paid to the members of the board appointed under paragraph 1 (a) such remuneration, and to any member and assessor, such travelling and other allowances (including compensation for loss of working time) as may be approved by the Minister.
10. (1) No member of the board, or other person present at or concerned in any proceedings of the board, shall in any way disclose any information, or the contents of any document, which has been furnished to the board, except with the written consent of the person who furnished the information, or the document, and of the board.

Any person who contravenes this paragraph shall be guilty of an offence and liable on conviction to a fine of fifty Emalangeneni or imprisonment of three months or both.

SECOND SCHEDULE

(Section 6 (2))

Constitution, officers and proceedings of Wages Councils.

1. A wages council shall consist of persons appointed by the Minister, being –
 - (a) not more than three persons chosen by the Minister as being independent persons;
 - (b) such member, as the Minister thinks fit, of persons who in his opinion, represent employers in relation to whom the wages council is to operate.
 - (c) Such member, as the Minister thinks fit, of persons who, in his opinion, represent employees in relation to who the wages council is to operate.
2. Of the persons appointed under paragraph 1(a), one shall be appointed by the Minister to act as chairman, and another may be appointed by the Minister to act as deputy-chairman in the absence of the chairman.

3. Before appointing person under paragraph 1(b) or (c), the Minister shall consult any organisations appearing to him to represent employers or, as the case may be, employees concerned, and the persons appointed under those sub-paragraph shall be equal in number.
4. The Minister may appoint to a wages council a secretary and such other officers as he considers necessary.
5. The proceedings of a wages council shall not be invalidated by reason of any vacancy therein or by any defect in the appointment of a manner.
6. A wages council may, if it thinks fit, delegate any of its functions under this Act (except the power to submit wages regulation proposals) to a committee consisting of such number of persons, being members of wages council, as the wages council thinks fit:

Provided that the members of the committee representing employers and the members of the committee representing shall be equal in number.

7. Subject to anything which may be prescribed as to the meetings as to the meetings and procedure of a wages council and of a committee thereof, including the quorum and method of voting, and subject to the other provisions of this Act, a wages council, and any committee thereof, may regulate the procedure in such manner as it thinks fit.
8. The term for which a member of a wages council is to hold office shall be as determined by the Minister at the time of the appointment, and the conditions subject to which the member is to hold office shall be as prescribed.
9. There shall be paid to the member of a wages council a appointed under paragraph 1(a) such remuneration, and to any member of any such council, such travelling and other allowances (including compensation for loss of working time), as may be approved by the Minister.
10. (1) No member of wages council, or other person present at or concerned in any proceedings of a wages council, shall in any way disclose any information, or the contents of any documents, which has been furnished to that wages council, except with the written consent of the person who furnished the information, or the document, and of the wages council.

(2) Any person who contravenes this paragraph shall be guilty of an offence and liable on conviction to a fine of fifty Emalangeneni or imprisonment of three months of both.

