

A BILL

entitled

EMPLOYMENT (WAGE COMMISSION) ACT 2019

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SCHEDULE Proceedings of Commission

WHEREAS it is expedient to provide for the establishment of a Wage Commission to be mandated to inquire into the provision of a statutory wage scheme with the objective of recommending to the Minister a minimum hourly wage and a living wage rate;

Be it enacted by The Queen'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 (Wage Commission) Act 2019.

Interpretation

- 2 In this Act, unless the context otherwise requires—
 - “employee” has the meaning given in section 3;
 - “employer” has the meaning assigned to the term in section 3 of the Employment Act 2000;
 - “living wage rate” has the meaning in section 12;
 - “minimum hourly wage” means such single hourly rate of gross pay that the Commission may recommend to the Minister with respect to a pay reference period;
 - “Minister” means the Minister responsible for labour;
 - “pay reference period” means such period in relation to the determination of the minimum hourly wage as the Commission may recommend to the Minister;
 - “recommendations” means the recommendations of the Commission to be made to the Minister with respect to the minimum hourly wage and the living wage rate;
 - “report” means the report that the Commission is to submit to the Minister under section 9;
 - “Wage Commission” or “Commission” means the Wage Commission established under section 5.

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Meaning of “employee”

- 3 (1) Subject to subsection (2), for the purposes of this Act, “employee” means—
- (a) a person who is employed wholly or mainly in Bermuda for remuneration under a contract of employment;
 - (b) any other person who performs services wholly or mainly in Bermuda for another person for remuneration on such terms and conditions that his relationship with that person more closely resembles that of an employee than that of an independent contractor.
- (2) The term “employee” defined under subsection (1)—
- (a) includes the following persons—
 - (i) a casual worker;
 - (ii) a part-time employee;
 - (iii) a temporary employee;
 - (iv) a student, subject to subsection (4);
 - (v) such other class of persons as may be prescribed by regulations;
 - (b) does not include the following persons—
 - (i) a person who is under the age of sixteen years;
 - (ii) a voluntary worker;
 - (iii) such other class of persons as may be prescribed by regulations.
- (3) The terms used to describe the classes of persons under subsection (2)(a) and (b) shall be defined as provided under section 4(3) of the Employment Act 2000.
- (4) Subject to such limitations as may be provided in any enactment, the provisions of this Act shall apply to a student.

Application to Crown

- 4 This Act binds the Crown.

PART 2

WAGE COMMISSION

Establishment of Wage Commission

- 5 (1) There is established a body to be called the Wage Commission, which shall have such functions as may be conferred upon it by this Act or other statutory provision.
- (2) The members of the Commission shall be appointed by the Minister and consist of—
- (a) a Chairman;

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- (b) five members; and
- (c) two ex-officio members representing—
 - (i) the Ministry of Finance; and
 - (ii) the Ministry responsible for labour.

(3) In appointing the Chairman and other members of the Commission, the Minister shall appoint persons who in the Minister's opinion have broad experience and expertise in economics, law, statistics and other suitable qualifications.

(4) The Minister shall, in consultation with the Chairman, appoint a Deputy Chairman from among the members of the Commission referred to in subsection (2)(b).

(5) There shall be paid to the Chairman and other members, in respect of each day on which they attend a meeting of the Commission, a fee in accordance with the scale of fees set out in the First Schedule to the Government Authorities (Fees) Act 1971.

(6) The provisions of the Schedule, with respect to procedures, meetings and other matters relating to the Commission, have effect.

Functions of Commission

6 (1) Subject to the provisions of this Act and regulations made thereunder, the Commission shall, for the purposes of performing its functions, conduct such studies, reviews and analyses as are necessary to apprise the Commission of the requirements for a basic standard of living in Bermuda and, without prejudice to the foregoing and as relates to a pay reference period, to make recommendations on the minimum hourly wage and on the living wage rate to be prescribed by the Minister.

(2) The Commission shall perform other functions and consider such other factors relating to the purposes of this Act as the Minister may direct the Commission in writing to do.

(3) The Commission shall, as it may be deemed necessary in the course of performing its functions under this Act, consult with—

- (a) employers;
- (b) employees;
- (c) organisations representing employers within and outside Bermuda;
- (d) organisations representing employees within and outside Bermuda;
- (e) Government Departments;
- (f) any other person or body of persons.

General powers of Commission

7 If, for the purposes of conducting an inquiry or consultation under this Act, a member of the Commission requires information which an employer or employee or any

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other person is likely to be able to supply, the Commission may, by notice in writing, require that person—

- (a) to supply that information;
- (b) to produce such record or documents as may be specified and permit the Commission to take copies;
- (c) to attend before the Commission at such place as the Commission may require and answer questions relevant to the inquiry or consultation as the Commission may require,

on such date or within such period as may be specified in the notice.

General powers of Minister

8 The Minister may, after consultation with the Commission, give to the Commission directions of a specific or general character as to the exercise and performance by the Commission of its functions with respect to matters relating to the purposes of this Act; and the Commission shall give effect to any such directions.

PART 3

DETERMINATION OF MINIMUM HOURLY WAGE

Determination of minimum hourly wage

9 (1) The Commission shall, every three years, make a report to the Minister, as provided under subsection (3), of the proposed minimum hourly wage.

(2) The Commission shall, for the purpose of making the report to the Minister under subsection (1), conduct relevant—

- (a) research and inquiries; and
- (b) consultations as referred to in section 6(3).

(3) The report of the Commission shall include—

- (a) findings and conclusions on the research, inquiries and consultations conducted under subsection (2);
- (b) findings and conclusions that are necessary to take into account on issues that arose in the implementation of the minimum hourly wage applicable to the previous pay reference period;
- (c) determinations of the Commission on findings and conclusions made under paragraphs (a) and (b);
- (d) recommendations of the Commission based on the determinations made with respect to a specified pay reference period or part of the period.

(4) The report of the Commission shall—

- (a) identify the members of the Commission making the report;

- (b) name any consultants and experts contracted to assist with research, inquiries and consultations;
- (c) explain the procedures adopted in respect of the studies conducted under subsection (2), the taking of evidence and the receiving of representations;
- (d) set out the methodology used to arrive at, and the calculation of, the minimum hourly wage;
- (e) if a directive of the Minister under subsection (5) below or section 6(2) identified an additional factor related to the minimum hourly wage to be taken into account in the report, state that the factor has been taken into account in the making of recommendations.

(5) The Minister may, in any year, direct the Commission in writing to make additional reports within such specified period as the Minister may determine on any matter related to the minimum hourly wage.

(6) The Minister shall as soon as practicable after receipt of a report under this section cause a copy to be laid before both Houses of the Legislature.

Recommendations of Commission

10 (1) The Commission shall set out, as provided in this section, the reasons for the recommendations contained in the report under section 9.

(2) The recommendations of the Commission shall be based on the determinations of the Commission, which shall be supported by the findings of the research, inquiries and consultations made under section 9(2) and under subsection (3).

(3) In making its recommendations, the Commission shall specifically state the effect of the determinations made under section 9(3)(c) on—

- (a) the economy of Bermuda as a whole;
- (b) the competitiveness of the economy of Bermuda; and
- (c) any other factor that may have been raised by the Minister in his directive under sections 6(2) or 9(5) or that is relevant to Bermuda.

Power of Minister to prescribe minimum hourly wage

11 The Minister may, after receipt of a report of the Commission under section 9, by order prescribe the minimum hourly wage in relation to pay reference periods commencing on a specified date not earlier than the date of the order.

PART 4

DETERMINATION OF LIVING WAGE RATE

Meaning of “living wage rate”

12 (1) For the purposes of this Act, “living wage rate” means the amount of income necessary to afford an employee and his household a socially acceptable standard of living calculated to take into account such factors as the basic cost of—

- (a) food;
- (b) housing;
- (c) clothing;
- (d) medical care;
- (e) child care;
- (f) transportation.

(2) The Minister may by order amend the provisions of this section.

Determination of living wage rate

13 (1) The Commission shall, every three years, make a report to the Minister, as may be prescribed, of the proposed living wage rate.

(2) The Minister may in the regulations provide for—

- (a) all matters to be considered by the Commission in determining the living wage rate;
- (b) the persons to whom and, where necessary, the circumstances under which the living wage rate is to apply;
- (c) the circumstances under which both the living wage rate and minimum hourly wage are to apply to an employee;
- (d) the duties and responsibilities of employers as regards the living wage rate;
- (e) such other matter relating to the living wage rate as the Minister may consider appropriate.

(3) The Minister may, after receipt of a report of the Commission under subsection (1), by order prescribe the living wage rate in relation to pay reference periods commencing on a specified date not earlier than the date of the order.

Report of Commission for living wage rate

14 The provisions of section 9(2) to (6) shall apply, with the necessary modifications, to a report for the living wage rate as they do to a report for the minimum hourly wage.

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Powers of Commission relating to living wage rate

15 The Minister may in the regulations provide for powers of the Commission relating to the process of determining the living wage rate.

PART 5

MISCELLANEOUS

Offences

16 (1) If a person, for the purposes connected with the provisions of this Act or regulations made thereunder—

- (a) fails to produce or furnish any record, document or information he is required to produce or furnish to the Commission;
- (b) produces or furnishes, or knowingly causes or allows to be produced or furnished, any record, document or information which he knows to be false in a material particular,

that person is guilty of an offence.

(2) If a person—

- (a) intentionally delays or obstructs the Commission acting for purposes of this Act in the exercise of any power conferred by this Act; or
- (b) refuses or neglects to answer any question, furnish any information or produce any record or document when required by the Commission to do so under section 7,

that person is guilty of an offence.

(3) Where the commission by any person of an offence under this section is due to the act or default of some other person, that other person is also guilty of the offence.

(4) A person may be charged with and convicted of an offence by virtue of subsection (3), whether or not proceedings are taken against any other person.

(5) In any proceedings for an offence under this section, it shall be a defence for the person charged to prove that he exercised all due diligence and took all reasonable precautions to secure that the provisions of this Act, and of any relevant regulations made under it, were complied with by himself and by any person under his control.

(6) 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.

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Offences by bodies corporate etc.

- 17 (1) Where an offence committed under this Act by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body; or
 - (b) to be attributable to any neglect on the part of such an officer,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In subsection (1), "officer", in relation to a body corporate, means a director, manager or other similar officer of the body, or a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Confidentiality

18 (1) Subject to subsection (2), a member of the Commission, or any person employed by the Commission, shall, during the performance of his functions under this Act, maintain the confidentiality of all information which such member or person knows to be or can reasonably assume to be of a confidential nature.

(2) Confidential information obtained by a person referred to in subsection (1) during the performance of his functions under this Act shall be disclosed only in pursuance of the provisions of this Act or of any other law.

(3) A person referred to in subsection (1) who fails to comply with the requirements of this section commits an offence and is liable on summary conviction to a fine of \$10,000.

Immunity from suit

19 No action, suit, prosecution or other proceeding shall lie against the members of the Commission, or any person employed by the Commission acting pursuant to powers under this Act in respect of any act done in good faith in the execution or intended execution of any function under this Act.

Regulations and orders

20 (1) The Minister may make regulations and orders for 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 and orders made under this Act are subject to the negative resolution procedure.

Consequential amendment to Government Authorities (Fees) Act 1971

21 The First Schedule to the Government Authorities (Fees) Act 1971 is amended in Part B by inserting in the appropriate alphabetical place—

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

Commencement

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

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SCHEDULE

(Section 5(6))

PROCEEDINGS OF COMMISSION

1 A member of the Commission shall be appointed for a period of three years beginning on such day as may be determined by the Minister.

2 A member of the Commission may resign his office at any time by notice in writing given to the Minister.

3 The Minister may declare the office of a member of the Commission vacant if he is satisfied that the member—

- (a) has without reasonable excuse been absent from—
 - (i) three consecutive meetings of the Commission; or
 - (ii) two-thirds of the meetings of the Commission convened in any year;
- (b) has been convicted (whether before or after his appointment) of a criminal offence;
- (c) is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged;
- (d) is otherwise unable, unfit or unwilling to carry out his functions as Chairman, Deputy Chairman or member.

4 A person appointed to fill the place of a member of the Commission before the end of the member's term of office shall hold office so long only as the vacating member would have held office.

5 A person who has held office as a member of the Commission shall be eligible for re-appointment.

6 No member of the Commission shall take part in an inquiry, consultation or decision relating to any specified business in which he or his spouse is a member or shareholder or has any private interest, direct or indirect, whereby his private interest may conflict with his duties as a member.

7 The Commission may act notwithstanding any vacancy in its membership, and no act of the Commission shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

8 The Commission shall meet as often as may be necessary for it to dispatch its business under this Act.

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9 A minute shall be made of every decision of the Commission in such form as the Minister may direct.

10 The quorum of the Commission shall be at least half of the members.

11 The Minister may designate any public officer to be Secretary to the Commission.

12 Any direction of the Commission given under this Act shall be deemed to be duly authenticated if it is given under the hand of the Chairman or, in his absence, the Secretary thereto.

13 In any matter before the Commission, the Chairman or person acting as Chairman shall have a deliberative as well as a casting vote.

14 A notice may be given to the Commission by service upon the Secretary thereto.

15 Subject to the foregoing provisions of this Schedule, the Commission may determine its procedure.

16 For the purposes of this Schedule, a reference to a member or the membership of the Commission shall, unless the context otherwise requires, be construed as including the Chairman.

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EXPLANATORY MEMORANDUM

This Bill provides for the establishment of a Wage Commission, which is to be mandated to inquire into the provision of a statutory wage scheme with the objective of recommending to the Minister a minimum hourly wage and a living wage rate.

Clause 1 is the citation for the Bill.

Clause 2 provides for the interpretation clause of the Bill.

Clause 3 provides for the meaning of the term “employee”.

Clause 4 provides for the application of the Bill to the Crown.

Clause 5 provides for the establishment of the Wage Commission. The Commission is to consist of a Chairman and five other members. The Deputy Chairman of the Commission shall be appointed from among the five members of the Commission. The Commission will also have two ex-officio members from the Ministries responsible for finance and labour.

Clause 6 provides for the functions of the Commission. The principal functions of the Commission are to recommend the minimum hourly wage and living wage rate to be prescribed by the Minister and recommend the pay reference period to apply thereto.

Clause 7 provides for the general powers of the Commission to obtain information and documentation relating to inquiries and consultations under the Bill.

Clause 8 provides for the general powers of the Minister to give directions to the Commission of a specific or general character regarding the Commission’s functions.

Clause 9 provides for the determination of the minimum hourly wage. Under this clause, the Commission is to conduct research, inquiries and consultations for the purpose of making a report to the Minister on the proposed minimum hourly wage to apply with respect to the pay reference period. The report of the Commission is to include determinations of the Commission on findings and conclusions made on the research, inquiries and consultations as well as the recommendations of the Commission based on the determinations made.

Clause 10 provides for the recommendations to be made by the Commission. In addition to the recommendations dealing with matters under clause 9, it is required under this clause that the recommendations specifically state the effect of the determinations on the economy of Bermuda as a whole; the competitiveness of the economy of Bermuda; and any other factor that may have been raised by the Minister in his directions or that is relevant to Bermuda.

Clause 11 empowers the Minister to prescribe the minimum hourly wage. The Minister may prescribe the minimum hourly wage after the receipt of the report of the Commission under clause 9.

Clause 12 provides for the meaning of “living wage rate”.

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Clause 13 provides for the Commission to make a report to the Minister, as may be prescribed, on the proposed living wage rate.

Clause 14 provides for the report to be made by the Commission for the purposes of the living wage rate.

Clause 15 provides for the Minister to prescribe powers of the Commission relating to determining the living wage rate.

Clause 16 provides for general offences. The clause provides for offences relating to failure to produce or furnish any required record, document or information to the Commission; producing or furnishing a required record, document or information to the Commission known to be false in a material particular; and intentionally delaying or obstructing the Commission or refusing or neglecting to answer questions.

Clause 17 provides for offences by bodies corporate etc.

Clause 18 requires a member of the Commission, or any person employed by the Commission acting pursuant to the powers under the Bill, to maintain the confidentiality of information he has access to in the course of the performance of his functions under the Bill. The clause further provides a penalty of \$10,000 for failure to comply with the requirement of confidentiality.

Clause 19 provides for the immunity from suit of a member of the Commission, or any person employed by the Commission, acting pursuant to powers under the Bill in respect of any act done in good faith in the execution or intended execution of any function under the Bill.

Clause 20 provides power to the Minister to make regulations and orders that are necessary or convenient for the carrying out of the provisions of the Bill.

Clause 21 provides for a consequential amendment to the Government Authorities (Fees) Act 1971.

Clause 22 provides for the Minister to bring this Act into operation by notice published in the Gazette.