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# A Guide to the Minimum Hourly Wage Rate



The Department of Labour provides confidential expert labour advice to employees, employers and their representatives on their rights, responsibilities and obligations under Bermuda’s labour and wage legislation. The Department of Labour does not provide legal advice. Contact the Department of Labour to have a confidential discussion with a Labour Relations Officer or Inspector about your rights or for further information.

**Disclaimer:** The information contained in this Guide is only for reference and informational purposes. It is general information to persons entitled to receive the minimum hourly wage rate in Bermuda. This information does not substitute independent legal advice nor shall it be used instead of legal advice in disputes or any legal or Tribunal proceedings. Please refer to the Employment (Minimum Hourly Wage Entitlement) Act 2022, which, subject to any expressed provisions to the contrary applies to all employers and employees.

For legal advice, you should get professional or specialist advice from a lawyer.

This reference guide contains links to other web sites. We are not responsible for the privacy practices or the content of such web sites.

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## **ABOUT THIS GUIDE**

### **Introduction**

The purpose of this Guide is to provide a basic overview of the rights and obligations of employers and employees as it relates to the minimum hourly wage rate in Bermuda in accordance with the Employment (Minimum Hourly Wage Entitlement) Act 2022, the Employment (Minimum Hourly Wage) Order 2023 and relevant regulations.

**In Bermuda the Employment (Minimum Hourly Wage Entitlement) Act 2022 and the Employment (Minimum Hourly Wage) Order 2023 sets out employees' rights to a minimum hourly wage and employers' obligations to provide the same.**

If you are working in Bermuda, you are entitled to receive a minimum hourly wage rate of \$16.40. The Ministry responsible for labour oversees the Employment (Minimum Hourly Wage Entitlement) Act 2022 (the "Act"), the Employment (Minimum Hourly Wage) Order 2023 (the "Order") and relevant regulations, which set out the minimum hourly wage rate which covers all employees, no matter your immigration status, working in Bermuda.

### **What is a minimum wage**

In accordance with the International Labour Organization's (ILO) Minimum Wage Policy Guide published in 2016:

"Minimum wages have been defined as 'the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract'. This definition refers to the binding nature of minimum wages, regardless of the method of fixing them. Minimum wages can be set by statute, decision of a competent authority, a wage board, a wage council, or by industrial or labour courts or tribunals. Minimum wages can also be set by giving the force of law to provisions of collective agreements. The purpose of minimum wages is to protect workers against unduly low pay. They help ensure a just and equitable share of the fruits of progress to all, and a minimum living wage to all who are employed and in need of such protection. Minimum wages can also be one element of a policy to overcome poverty and reduce inequality, including those between men and women, by promoting the right to equal remuneration for work of equal value."

### **The Wage Commission**

Established under the Employment (Wage Commission) Act 2019, the Wage Commission was created to conduct studies, reviews and analyses to apprise the Wage Commission of the requirements for a basic standard of living in Bermuda and to make recommendations on the minimum hourly wage rate and on the living wage rate to be prescribed by the Minister responsible for labour.

In April 2021, the Wage Commission provided the Minister of Economy and Labour with its [report](#) which detailed its recommendations for a minimum hourly wage rate in Bermuda.

## **Recommendations for a minimum wage**

During their deliberations, members of the Wage Commission provided feedback from their various stakeholders and it was suggested that from a business perspective, a minimum wage around \$15 per hour could be tolerable; however, one that was around \$18 per hour or more could have potential negative impacts on the targeted workforce, as employers may reduce workers, reduce hours, or close altogether. The Commission also noted that while Bermuda's high cost of living may necessitate a higher minimum wage, there was always caution expressed at setting a higher minimum wage due to the potential negative impacts that it could have on employment for the targeted workforce.

The Wage Commission determined that building a wage floor would protect Bermuda's labour force, especially those within low paid occupations, such as hospitality, horticulture and domestic work and recommended a minimum wage rate set at 50% of the median hourly wage, i.e. \$15.75 per hour. This recommendation, set at the poverty threshold, was adopted by the Minister responsible for labour.

## **Who is considered an employee?**

An employee is any person who is employed wholly or mainly in Bermuda for compensation under a contract of employment and includes:

- A casual worker;
- A part-time employee;
- A temporary employee; and
- A student.

## **Who is not considered an employee?**

The following persons are not considered employees entitled to receive the minimum hourly wage rate:

- Persons under the age of 18 years;
- Casual workers who pack groceries;
- Voluntary workers;
- Apprentices employed for the first 12 months of a training program that is registered with a Government department; and

- Persons working in family businesses who are immediate family members of the proprietor or owner of the business.

## **1. RIGHTS OF AN EMPLOYEE**

### **Entitlement to a minimum hourly wage**

According to the Act, for any pay reference period you are entitled to be paid an hourly rate that on average is not less than the minimum hourly wage. If you are a student, you are entitled to be paid an hourly rate that is not less than 70 percent of the minimum hourly wage for any pay reference period.

If at any time you work less than a full hour, your wage will be pro-rated in accordance with the minimum hourly rate.

### **Minimum hourly wage rate**

The minimum hourly wage rate will carry an inflation uplift using the annual average from the year prior. Therefore, the minimum hourly wage rate for 1 June 2023 includes an inflation adjustment using the 2022 annual average.

The minimum wage that was proposed to come into force on 1 June 2021 in accordance with the report of the Wage Commission would have been \$15.75 in addition to an inflation uplift using the annual average from 2021 and 2022. The Consumer Price Index (CPI) annual average for 2021 is published as 1.5% and as a result, the 2023 minimum wage rate will be \$16 plus the 2022 annual average. The annual average will be capped 2.5% therefore the minimum wage rate set for 1 June 2023 is \$16.40.

If you are an employee, under the Act you are entitled to receive a minimum hourly wage rate of \$16.40. This is the gross figure that you are entitled to receive per hour before deductions are taken from your wages.

If you receive payment in the form of gratuities and service charges or are a personal service employee, your employer is entitled to set a basic wage and use the gratuities, services charges and/or commissions received to make up the difference in your wage to ensure that you receive at a minimum, the minimum hourly wage rate of \$16.40.

If the combination of your basic wage along with gratuities, service charges and/or commissions does not amount to the minimum hourly wage rate \$16.40, your employer will be responsible for covering or making up the difference.

### **Pay reference period**

The pay reference period is the period of time that earnings are to be measured and upon which your wages are actually paid. The minimum hourly wage rate is calculated and paid in accordance with an employee's pay period and this is not to exceed one month. If however, you receive your wages in shorter intervals, your pay reference period will be calculated in accordance with the shorter pay period.

### **Average hourly rate of pay**

All pay received for a specific pay reference period is included in the calculation of your average hourly rate of pay.

The method of calculating your average hourly rate of pay is by dividing your remuneration by the hours worked in a specific pay reference period.

Your employer is allowed to make deductions from your wages if they are authorized by law, a collective agreement, by a term you agreed to in your Statement of Employment or by an order of any court or tribunal. Authorized deductions governed by legislation or collective agreements include:

- Social insurance
- Health insurance
- Private pension
- Payroll tax
- Full or partial union dues contributions to the union in lieu of membership

The following payments and benefits do not form part of your remuneration for the purpose of the minimum hourly wage:

- Unauthorised deductions in accordance with the Employment Act 2000
- Advanced payment for a loan or an advancement of wages
- Gratuitous payment for retirement or loss of office
- Redundancy payment
- Benefits in kind other than living accommodations
- Payment by an employee for employment expenditures.

### **Access to records**

You have a right to review your employment records/files if you believe that your employer has paid you less than the minimum hourly wage rate. In order to inspect your records you will first need to give your employer written notice (a "production notice"), requesting your employer to provide you with your records for your inspection and you may make copies of them.

### **Complaints**

If your employer has failed to pay you the minimum hourly wage, failed to produce your records following your request or has failed to allow you to exercise your rights under the Act, you may file a complaint with an inspector through the Department of

Labour. You can contact the Department of Labour on (441) 297-7716, [departmentoflabour@gov.bm](mailto:departmentoflabour@gov.bm) or at 23 Parliament Street, Hamilton HM12.

### **What are an employee's responsibilities?**

It is helpful to retain your employment documents including your pay slips and your statement of employment should you need to clarify a matter with your employer regarding your entitlement to the minimum hourly wage rate, or should you decide to make an official complaint with the Department of Labour regarding a dispute between you and your employer. .

## **2. RESPONSIBILITIES OF AN EMPLOYER**

### **Employers to keep records**

All employers are required to keep records, at their premises or a place where their employees work, that show that they are in compliance with the Act and the Order and are paying their employees at a rate that is equal to the minimum hourly wage rate.

The records must be kept for a period of six years starting with the day the pay reference period ends and they may be kept electronically.

Additionally, your employer must keep a copy of your contract of employment and any accompanying documents which include any agreements that you have made with your employer regarding your hours of employment, your remuneration and your conditions of employment. Your employer is also required to keep your pay statements in an itemized format with details of your total pay including any deductions, allowances, gratuities, service charges, absences and overtime worked.

### **Employers to produce records**

If you believe your employer is or has been paying you less than the minimum hourly wage and if you have provided your employer with a production notice, your employer should give you at least three days notice of where and when they intend to provide you with your records.

Your employer may share your records with you at your place of employment, such other place that you both agree on or any other place that it would be reasonable for you to attend and inspect your records.

Your employer is required under the Act to allow you to inspect your documents within 14 days following the date that you provided them with your production notice or at a later date that you both agree on.

### **Personal service employees and employees receiving gratuities and service charges**



If you are a personal service employee or an employee who receives payment in the form of gratuities and service charges your employer shall set a basic wage that is less than the minimum hourly wage rate. Your employer shall use gratuities, service charges or commissions, or a combination of these to ensure you receive the minimum hourly wage rate.

If at any time the combination of your basic wage and the gratuities, service charges or commissions received do not equal the minimum hourly wage rate, your employer will be responsible for making up the difference in your pay.

Your minimum hourly wage rate does not include any tips which may be voluntarily given to you.

### **Employers' right to appeal**

An employer in receipt of an enforcement notice or civil penalty from an inspector may appeal the notice or penalty to the Employment and Labour Relations Tribunal. Appeals must be filed within four weeks following the date of service of the notice or the imposition of the penalty.

With the permission of the Supreme Court, an employer may appeal a decision of the Employment and Labour Relations Tribunal to the Supreme Court on a question(s) of law pertaining to the Employment and Labour Relations Tribunal's decision.

## **3. ROLE OF THE INSPECTOR**

### **Inspectors**

Under the Act, the Minister responsible for labour may appoint inspectors to enforce the Act and the Regulations.

### **Powers of the inspectors**

Under the Act, an inspector has the power to request, inspect and copy documents pertaining to the Act, require a relevant person to explain the documents requested by the inspector and enter any relevant premises in regards to the enforcement of the Act.

### **Enforcement notices and awards**

The enforcement notice may relate to more than one employee.

If after an investigation an inspector is of the opinion that your employer has paid you less than the minimum hourly wage rate, the inspector may issue your employer with an enforcement notice requiring your employer to pay you for the pay reference

periods ending on or after the date of the notice at a rate equal to the minimum hourly wage.

If your employer has failed to pay you the minimum hourly wage, the inspector will make an award that your employer pay you the difference between your current rate of pay and the minimum hourly wage. You will also be awarded an additional ten (10) percent of the minimum hourly wage for each pay reference period that you were not paid the minimum hourly wage rate.

If your employer fails to produce some or all of your records after receiving your production notice or has failed to allow you to exercise some or all of your rights under the Act, the inspector will make an award that your employer pay you an amount not less than \$500.

### **Civil penalty for non-compliance**

If an inspector is satisfied that your employer has failed to keep the necessary records according to the Act or has failed to comply with an enforcement notice, the inspector may serve your employer with a penalty notice requiring them to pay a civil penalty to the Accountant General.

If requested within 30 days, your employer will be entitled to a hearing before the inspector. If your employer does not wish to be heard by the inspector, the inspector may proceed to impose the civil penalty.

If a hearing is requested, subsequent to the hearing the inspector may impose the penalty, modify the amount of the penalty or not impose the penalty. The inspector may also add terms and conditions to their decision.

At the hearing the inspector may be accompanied by another inspector or any person as the Minister deems appropriate. Likewise, your employer may be accompanied by any person they deem appropriate.

Where an inspector decides to impose a civil penalty, the amount of the penalty will be calculated at a rate equal to twice the amount of the minimum hourly wage in respect of each employee to whom the failure to comply relates, for each day during which the failure to comply has continued in respect of the employee(s).

The civil penalty will be recoverable by the Accountant General in the Supreme Court.

If your employer is convicted of an offence under the Act, they will also be liable to a civil penalty under this Act in regards to the same offence.

### **Offences**

Any person is guilty of an offence if they fail to comply with any requirement under the Act. An individual will be liable on summary conviction to a fine not exceeding \$2,000 and a daily fine of \$100 for continued contravention while a body corporate

will be liable on summary conviction to a fine not exceeding \$7,000 and a daily fine of \$500 for continued contravention.

A person who commits an offence against the Regulations is liable on summary conviction to a fine not exceeding \$5,000.

## Glossary

Casual employee	A person who works from time to time for remuneration/compensation for one or more employers, but who does not seek the rights and obligations of a contract of employment.
Contract of employment	Any contract, whether express or implied, whether oral or in writing and whether or not in compliance with the requirements of the Employment Act 2000, which provides for an employee to perform specified services for an employer.
Gratuity	A payment for services rendered commonly collected by the employer and paid to the employee.
Part-time employee	A person who is employed by an employer for less than 15 hours each week.
Personal Service Employee	A person referred to in the Bermuda Standard Classification of Occupations under the occupational title of barber or hairdresser, code number 5161 or beautician, code number 5162.
Relevant Person	Has the meaning given in section 10(4) of the Act.
Relevant Premises	Has the meaning given in section 10(5) of the Act.
Service charge	A service charge is a payment for a service or similar charge imposed by the employer upon a customer.
Statement of Employment	Otherwise known as a contract of employment, a statement of employment (SOE) is a legally binding document that puts the main terms of employment, including but not limited to, wages, working days and hours and paid leave in writing.
Statutory deductions	Deductions required by statute, or law. The law requires employers to withhold these deductions from employee paychecks.
Temporary employee	A person who is employed for no more than three months in a year.
Tip	A payment voluntarily made to or left for an employee by a customer that a reasonable person would be likely to infer that the customer intended or assumed that the payment would be kept by the

employee or shared by the employee with other employees.

Voluntary worker

A person who works on a voluntary basis usually for a charity or other philanthropic organization.

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