

BERMUDA

**EMPLOYMENT (MINIMUM HOURLY WAGE ENTITLEMENT)
REGULATIONS 2023**

BR / 2023

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The Minister responsible for labour, in exercise of the power conferred by sections 6(2) and 7(2) of the Employment (Minimum Hourly Wage Entitlement) Act 2022, makes the following Regulations:

Citation

1 These Regulations may be cited as the Employment (Minimum Hourly Wage Entitlement) Regulations 2023.

Interpretation

2 In these Regulations—

“Act” means the Employment (Minimum Hourly Wage Entitlement) Act 2022;

“employee” has the meaning given in section 3 of the Employment (Wage Commission) Act 2019;

“hour” includes a fraction of an hour;

“minimum hourly wage” means the minimum hourly wage prescribed in paragraph 3(1) of the Employment (Minimum Hourly Wage) Order 2023;

“pay reference period” means the pay reference period prescribed in paragraph 3(2) of the Employment (Minimum Hourly Wage) Order 2023;

“remuneration” shall be construed as provided in regulation 4.

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Calculation of employee's average hourly rate of pay

3 For the purposes of section 6(2) of the Act, an employee shall be treated as remunerated by the employer in a pay reference period at the hourly rate determined by the calculation—

$$\frac{R}{H}$$

where—

“R” is the remuneration in the pay reference period; and

“H” is the hours worked in the pay reference period.

Remuneration in a pay reference period

4 Remuneration in the pay reference period is the payments from the employer to the employee in relation to the pay reference period that includes the components of pay as provided in regulation 5(1), less the deductions determined in accordance with regulation 5(2).

Components of pay forming employee remuneration

5 (1) Subject to paragraph (2), the following components of pay shall be treated as payments by the employer to the employee in relation to the pay reference period—

- (a) payments paid by the employer to the employee in the pay reference period (other than payments to be included in an earlier pay reference period);
- (b) payments paid by the employer to the employee in the following pay reference period in relation to the pay reference period (whether in relation to work or not);
- (c) where an employee's contract terminates, then in relation to the employee's final pay reference period, payments paid by the employer to the employee in the period of a month, beginning with the day after that on which the contract was terminated.

(2) Deductions shall be made by an employer from the payments of an employee made under paragraph (1) as follows—

- (a) payroll tax, at the standard rate determined under section 3(1) of the Payroll Tax Rates Act 1995;
- (b) social insurance contributions; and
- (c) such other deductions required or authorized to be made by virtue of the Employment Act 2000 or any other enactment, a collective agreement or a provision of the employee's contract, or by order of any court or tribunal.

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Components of pay not forming employee remuneration

6 The following payments and benefits in kind do not form part of an employee's remuneration—

- (a) unauthorised deductions in accordance with the Employment Act 2000;
- (b) payments by way of an advance under an agreement for a loan or by way of an advance of wages;
- (c) payment of an allowance or gratuity in connection with an employee's retirement or as compensation for loss of office;
- (d) payments referable to the employee's redundancy;
- (e) benefits in kind provided to the employee, whether or not a monetary value is attached to the benefit, other than living accommodation;
- (f) payments paid by the employer to the employee as respects the employee's expenditure in connection with the employment.

Records to be kept by employers

7 (1) For the purposes of section 7(2) of the Act, an employer shall keep, in respect to each employee who qualifies for the minimum hourly wage, records that sufficiently demonstrate that the employer is remunerating the employee at a rate at least equal to the minimum hourly wage.

(2) The records required to be kept under this regulation shall be in such form as will enable the information kept about an employee in respect of a pay reference period to be produced in a single document.

(3) The employer shall keep a copy of the employee's contract of employment and any accompanying documents which contain the agreements reached between the employer and employee about—

- (a) the hours of employment;
- (b) the remuneration to be paid for the employment; and
- (c) the conditions of employment.

(4) The employer shall keep the employee's pay statements in an itemized format with details of total pay including—

- (a) pay deductions;
- (b) allowances;
- (c) gratuities;
- (d) service charges;
- (e) absences and overtime.

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(5) The records required to be kept under this regulation shall be kept by the employer for a period of six years beginning with the day upon which the pay reference period immediately following that to which they relate ends.

(6) The records required to be kept by this regulation may be kept electronically.

Offences

8 An employer who fails to comply with any requirement under these Regulations commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Made this 31st day of May 2023



Minister of Economy and Labour