

Bermuda Minimum Hourly Wage in effect from 1 June 2023

Briefing Summary: From 1 June 2023, all employees in Bermuda will be entitled to receive a minimum hourly wage rate of at least \$16.40, pursuant to the Employment (Minimum Hourly Wage) Order 2023 (the "Order").

Service Area: Employment, Pensions and Incentives, Employee Incentives, Employment Law

Location: Bermuda

Created Date: 06 April 2023

Employer obligations

From the date the Order takes effect, all employers will need to ensure they are paying at least the minimum wage and that their contracts and/or Statements of Employment are updated where necessary to ensure that they are compliant.

Note that only 'employees' are entitled to the minimum wage, not self-employed contractors. Persons under the age of sixteen years, voluntary workers, casual grocery packers and certain apprentices and employees of family businesses are also excluded.

Employers will also be required to retain records to show that they are complying with their obligations. If an employee believes that their employer has paid them at a rate less than the minimum wage, they can make a request to access their records.

Enforcement

Aggrieved employees can also file a complaint with an Inspector designated by the Minister of Labour. That Inspector will have the authority to investigate the complaint and issue an enforcement notice if the employer has failed to remunerate the employee correctly. The employer can also be required to make up shortfall, plus an extra 10%. The Inspector also has the power to impose a civil penalty on employers who breach the Order, calculated at a rate equal to twice the amount of the minimum hourly wage for each day that the failure persists.

Criminal conviction for an offence carries a potential fine for individuals of up to \$2,000 and \$100 per day for continued contraventions, or \$7,000 and \$500 per day for corporates.

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Notably, the Minister of Labour also has the power to 'name and shame' offending employers.

Employees who receive gratuities and service charges

Gratuities, service charges and commissions required to be paid to the employee or paid by the employer to the employee can be counted toward the minimum hourly wage of \$16.40.

In other words, where an employee receives a gratuity, service charge or commission that is attached to the bill, this can be included in the minimum hourly wage. However, tips voluntarily given to an employee, such as cash given directly by the customer, cannot be counted towards the minimum hourly wage.

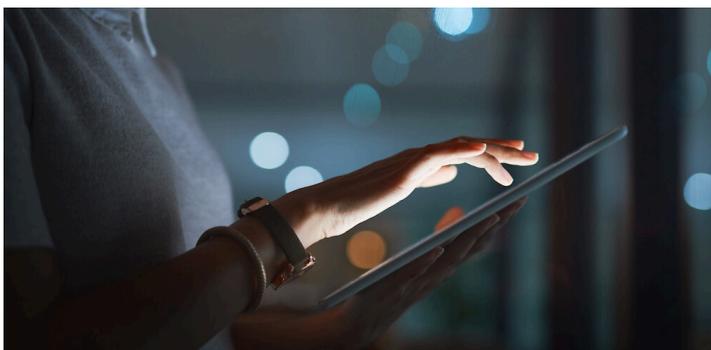
Further information

Please note that we are awaiting clarification regarding the 'pay reference period' for the purposes of the Order, which is the period of time over which an employee's receipt of the minimum wage is to be assessed. This detail is important as, without knowing the reference period, it will be difficult to assess compliance, particularly with respect to employees whose wages may vary over time, e.g. because their working hours are changeable. We expect to receive confirmation prior to 1 June 2023.

If you would like to discuss further how the new minimum hourly wage might impact you or your organisation, please contact the Carey Olsen employment team.

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