

**THE ¹[KHYBER PAKHTUNKHWA]
(PAYMENT OF DEARNESS ALLOWANCES TO
CERTAIN EMPLOYEES) ACT, 1991.**

²[KHYBER PAKHTUNKHWA] ACT NO. II OF 1991.

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¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

²Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

³Substituted vide Khyber Pakhtunkhwa Act No. IX of 1992

Note:-Amendment of section 3 has been given effect from the 1st day of December 1990

⁴Substituted vide Khyber Pakhtunkhwa Act No.X of 1991

Note:- Amendment of section 4 has been given effect from the 26th day of March 1991

⁵Substituted vide Khyber Pakhtunkhwa Act No. IX of 1992

⁶Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

Note:- Amendment of section 9 has been given effect from the 1st day of December 1990

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CERTAIN EMPLOYEES) ACT, 1991.**

²[KHYBER PAKHTUNKHWA] ACT NO. II OF 1991.

[First published having received the assent of the Governor of the ³[Khyber Pakhtunkhwa] in the Gazette of ⁴[Khyber Pakhtunkhwa] (Extraordinary), dated the 26th March, 1991].

**AN
ACT**

*to provide for payment of
dearness allowance to certain employees.*

Preamble.

WHEREAS it is expedient to provide for payment of dearness allowance to certain employees and for matters ancillary thereto in the manner hereinafter appearing;

It is hereby enacted as follows:

Short title,
extent and
commencement.

1. (1) This Act may be called the ⁵[Khyber Pakhtunkhwa] (Payment of Dearness Allowance to Certain Employees) Act, 1991.

(2) It shall extend to the whole of the ⁶[Province of the Khyber Pakhtunkhwa].

(3) It shall come into force at once and shall be deemed to have taken effect on and from the 1st day of December, 1990.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context;

⁷[(a) “Court” means a Labour Court established under section 35 of the Industrial Relations Ordinance, 1969 (W.P. Ord. XXIII of 1969);]

⁸[(aa) “dearness allowance” means an amount payable under the provisions of this Act;]

(b) “employees” means any person employed whether directly or through or by any other person for wages, to do any skilled or unskilled, intellectual, technical clerical, electrical, manual or other work in, or in connection with the affairs of, an undertaking,

¹Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

²Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

³Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

⁴Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

⁵Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

⁶Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

⁷Inserted vide Khyber Pakhtunkhwa Act IX of 1992

Note:- Amendment of section 2 has been given effect from the 1st day of December 1990

⁸Re-numbered vide Khyber Pakhtunkhwa Act IX of 1992

Note:- Amendment of section 2 has been given effect from the 1st day of December 1990

under any contract of service or apprenticeship, whether written or oral, express or implied and includes such a person when laid off;

- (c) “employer” in relation to an undertaking, means any person who employs, either directly or through or by any other person, any employee and includes:
- (i) a body of persons, whether incorporated or not;
 - (ii) a person who has ultimate control over the affairs of an undertaking, including the owner of the undertaking or where the affairs of any undertaking are entrusted to any other person (whether called a Managing Agent, Director, Manager, Agent, Superintendent, Secretary, representative of the owner or by any other name), such other persons, or in any other case, any person responsible to the owner for supervision and control of an employee or for payment of his wages; and
 - (iii) an heir, successor, administrator or assignee, as the case may be, of such person or association of persons;
- (d) “Government” means the Government of the ¹[Khyber Pakhtunkhwa];
- (e) “undertaking” means-
- (i) an establishment to which the West Pakistan Shops and Establishment Ordinance, 1969, for the time being applies, and notwithstanding anything contained in section 5 thereof, includes clubs, hotels and messes not maintained for profit or gain and establishment for the treatment or care of the sick, infirm and destitute or mentally unfit persons;
 - (ii) a construction industry to which the West Pakistan Industrial and commercial Employment (Standing Orders) Ordinance, 1968, for the time being applies;
 - (iii) a factory as defined in the Factories Act, 1934;
 - (iv) a mine as defined in the Mines Act, 1923;
 - (v) a road transport service as defined in the Transport Workers Ordinance, 1961; and
 - (vi) a newspaper establishment as defined in the Newspaper Employees (Conditions of Service) Act, 1973; and includes any class of establishment which Government may, by notification in the Official Gazette, declare to be an undertaking for the purposes of this Act; and

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- (f) “wages” means remuneration for services, payable in cash to an employee without taking account of deduction for any purpose, under a contract of service or apprenticeship written, oral, express or implied and includes any dearness allowance or other addition in respect of the cost of living payable under any law for the time being in force; but does not include-
- (i) any payment for overtime; or
 - (ii) any sum paid to an employee to defray special expenses entitled by the nature of his employment; or
 - (iii) contribution of Provident Fund; or
 - (iv) any gratuity payable on discharge; or
 - (v) any sum paid as bonus.

¹[**3. Dearness Allowance.-** Every employee shall, with effect from the 1st day of December, 1990, be paid by his employer a dearness allowance-

- (a) equal to two hundred rupees per month, if his monthly wages in respect of his employment do not exceed four thousand rupees; and
- (b) at such rate, as, together with his wages in respect of his employment, make a total of four thousand and two hundred rupees per month, if his wages exceed four thousand rupees per month, but does not exceed four thousand and two hundred rupees per month.”.]

²[**4. Dearness Allowance to be in addition to existing wages.-** The Dearness Allowance shall be paid alongwith wages in accordance with any custom, usage, practice, or law applicable to the undertaking.]

Responsibility
for payment of
dearness
allowance.

5. Every employer shall be responsible for the payment of the dearness allowance required to be paid under this Act.

Claim for
Recovery.

6. Where contrary to the provisions of this Act, the dearness allowance of any employee has been withheld or its payment delayed, such worker himself or through any other person authorized by him in this behalf may apply-

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²Substituted vide Khyber Pakhtunkhwa Act No. X of 1991

Note:- Amendment of section 4 has been given effect from the 26th day of March 1991.

- (a) in the case of establishment to which the West Pakistan Shops and Establishment Ordinance, 1969, for the time being applies, to the authority appointed under sub-section (1) of section 12 thereof having jurisdiction and the provisions of the said section and sections 11, 13, 21, 23, 24, 28, 30 and 32 of that Ordinance and so far as may be and with necessary modifications apply for the purposes of recovery of the dearness allowance; and
- (b) in any other case, to the authority appointed under sub-section (1) of section 15 of the Payment of Wages Act, 1936, having jurisdiction and the provisions of the said section and sections 6, 16, 17, 18, 22, 23 and 26 of the said Act shall so far as may be and with necessary modifications apply for the purposes of recovery of the dearness allowance.

7. Notwithstanding anything contained in this Act or any other law for the time being in force the dearness allowance shall not form part of wages of a worker for the purpose of any other law including the purposes of contribution to provident fund, gratuity, bonus and calculating wages for overtime work. Not to form part of wages.

¹**[8. Penalty.-** Any employer who fails to pay the dearness allowance admissible to any employee under this Act shall be punishable with simple imprisonment for a term which may extend to six months or with fine which shall not be less than two thousand rupees per employee in the undertaking concerned or with both.]

²**[9. Cognizance.-** The Court shall not take cognizance of an offence under this Act save on a complaint made by an aggrieved employee or by an office-brarer of a registered trade union of which such employee is a member, or by an Inspector, having jurisdiction in the area, appointed under section 10(1) of the Factories Act, 1934 (Act XXV of 1934).]

10. The ³[Khyber Pakhtunkhwa] (Payment of Dearness Allowance to Certain Employees) Ordinance, 1991 ⁴[Khyber Pakhtunkhwa] Ordinance No. II of 1991) is hereby repealed. Repeal.

BY ORDER OF THE SPEAKER
PROVINCIAL ASSEMBLY OF
⁵[KHYBER PAKHTUNKHWA.]

¹Substituted vide Khyber Pakhtunkhwa Act No. IX of 1992

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