

# **The Essential Services (Maintenance) Ordinance, 2001**

JAMMU & KASHMIR

India

## **The Essential Services (Maintenance) Ordinance, 2001**

### **Act 9 of 2001**

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The Essential Services (Maintenance) Ordinance, 2001 Ordinance No. 9 of 2001 [Promulgated by His Highness under section 5 of the Jammu and Kashmir Constitution Act, 1996 and published in Government Gazette dated 6th Magh, 2001.] An Ordinance to make provision for the maintenance of certain essential service. Preamble. - Whereas the Essential Services (Maintenance) Ordinance No. 1 of 2001 was by virtue of section 38 of the Jammu and Kashmir Constitution Act, 1996, to remain in force for a period of six months from the date of its promulgation, and the period of enforcement of the said Ordinance has since terminated : And whereas an emergency still exists which renders it necessary to make provision for the maintenance of certain essential services ; Now, therefore, in exercise of the inherent powers reserved to His Highness by section 5 of the Jammu and Kashmir Constitution Act, 1996. His Highness is pleased to issue the following Ordinance

### **1. Short title, extent and commencement.**

(1) This Ordinance may be called the Essential Services (Maintenance) Ordinance IX of 2001. (2) It shall extend to the whole of the Jammu and Kashmir State. (3) It shall be deemed to have come into force on and from 2nd Katik, 2001.

### **2. Interpretation.**

- In this Ordinance, unless there is anything repugnant in the subject or context, "employment" includes employment of any nature and whether paid or unpaid.

### **3. Employment to which this Ordinance applies.**

- This Ordinance shall apply to all employment under the Government and to any employment or class of employment which the Government being of opinion that such employment or class of

employment is essential for securing the defence of the State, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies or services necessary to the life of the community may, by notification in the Government Gazette, declare to be an employment to which this Ordinance applies.

#### **4. Power to order persons engaged in certain employments to remain in specified areas.**

(1) In respect of any employment under the Government and the respect of any employment or class of employment declared under section 3 to be an employment or class of employment to which this Ordinance applies, the Government making the declaration, or an officer authorised in this behalf by the Government may, by general or special order, direct that any person or person engaged in such employment shall not depart out of such area as may be specified in such order. (2) An order made under sub-section (1) shall be published in such manner as the Government or officer making the order consider best calculated to bring it to the notice of the persons affected by the order.

#### **5. Offences.**

- Any person engaged in any employment or class of employment to which this Ordinance applies who - (a) disobeys any lawful order given to him in the course of such employment, or (b) without reasonable excuse abandons such employment or absents himself from work, or (c) departs from any area specified in an order under sub-section (1) of section 4 without the consent of the authority making that order, and any employer of a person engaged in an employment or class of employment declared under section 3 to be an employment or class of employment to which this Ordinance applies who, without reasonable cause, - (i) discontinues the employment of such person, or (ii) by closing an establishment in which such person is engaged, cause the discontinuance of his employment, is guilty of an offence under this Ordinance. Explanation 1. - The fact that a person apprehends that by continuing in his employment he will be exposed to increased physical danger is not a reasonable excuse within the meaning of clause (b). Explanation 2. - A person abandons his employment within the meaning of clause (b) who, notwithstanding that, it is an express or implied term of his contract of employment that he may terminate his employment on giving notice to his employer of his intention to do so, so terminates his employment without the previous consent of his employer.

#### **6. Regulation of wages and conditions of service.**

(1) The Government may make rules regulating or empowering a specified authority to regulate the wages and other conditions of service of persons or of any class of persons engaged in any employment or class of employment declared under section 3 to be an employment or class of employment to which this Ordinance applies. (2) When any such rules have been made or when any directions regulating wages or conditions of service have been given by an authority empowered by such rules to give them, any person failing to comply therewith is guilty of an offence under this Ordinance.

## **7. Penalties and procedure.**

(1) Any person found guilty of an offence under this Ordinance shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine. (2) Where the person accused of an offence under this Ordinance is a company or other body corporate, every director, manager, secretary or other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence, be liable to the punishment provided for the offence. (3) No Court shall take cognizance of any offence under this Ordinance except upon complaint in writing made by—(i) a servant of [the Government] [Substituted by Act X of 2010 for 'His Highness'.], or (ii) any other person authorised in this behalf by the Government. (4) Notwithstanding anything contained in the Code of Criminal Procedure, an offence under this Ordinance shall be cognizable.

## **8. Bar of legal proceedings.**

- No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Ordinance or the rules made thereunder.

## **9. Saving of effect of law imposing liability to national service.**

- Nothing contained in this Ordinance or in any declaration or order made thereunder shall have effect in derogation of any provision of law for the time being in force imposing upon a person engaged in any employment or class of employment to which this Ordinance applies any liability to be called up for national service or to undertake employment in the national service.

## **10. Saving.**

- All orders issued, declarations made and persons authorised under the Essential Service (Maintenance) Ordinance No. 1 of 2001 shall be deemed to have been respectively issued, made and authorised under this Ordinance.