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SRI LANKA**

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SUPPLEMENT

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**BUDGETARY RELIEF ALLOWANCE
OF WORKERS**

A

BILL

**to provide for the payment of a Budgetary Relief Allowance by employers
to workers and for matters connected therewith or incidental thereto.**

*Ordered to be published by the Minister of Labour and Trade Union
Relations*

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Budgetary Relief Allowance of Workers

L.D.—O. 27/2015.

AN ACT TO PROVIDE FOR THE PAYMENT OF A BUDGETARY RELIEF
ALLOWANCE BY EMPLOYERS TO WORKERS AND FOR MATTERS
CONNECTED THEREWITH OR INCIDENTAL THERETO

BE it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows:—

1. This Act may be cited as the Budgetary Relief Allowance of Workers Act, No. of 2016. Short title.

5 2. (1) The Commissioner-General shall be the competent authority for the purposes of this Act. Competent Authority.

(2) The competent authority may delegate to any officer of the Department of Labour any power, function or duty conferred or imposed on, or assigned to, such authority by
10 this Act.

3. (1) With effect from May 1, 2015, every employer in any industry or service shall, in respect of each month pay to every worker employed by him, a Budgetary Relief Allowance (hereinafter referred to as “the allowance”),
15 calculated on the following basis:- Payment of Budgetary Relief Allowance.

(a) in the case of a worker whose monthly wages or salary for the month of May, 2015 (hereinafter referred to as the “relevant month”) is rupees forty thousand or below, the allowance payable shall be
20 one thousand five hundred rupees:

Provided however, that in the case of a worker who for any reason other than the failure of the employer to provide work for such worker, does

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5 not work for the required number of days in a month as prescribed by any written law or contract of employment, the allowance payable to such worker for such month shall be in proportion to the number of days he has worked during such month;

10 (b) in the case of a worker who is paid a daily rate not exceeding rupees one thousand six hundred for the relevant month, the allowance payable shall be sixty rupees per day for each day he has worked during the month;

15 (c) in the case of a worker who is employed in the relevant month on a piece-rate basis, the allowance payable in respect of a month shall be not less than fifteen *per centum* of the total wages or salary payable to such worker for that month:

Provided however, the total allowance payable for a month under paragraph (a), (b) or (c) shall not exceed one thousand five hundred rupees;

20 (d) in the case of a worker whose monthly wages or salary for the relevant month exceeds rupees forty thousand and does not exceed rupees forty one thousand five hundred, the allowance payable shall be the difference between rupees forty one thousand five hundred and the amount of wages or salary for the relevant month;

30 (e) in the case of a worker who is paid a daily rate of a sum exceeding rupees one thousand six hundred and not exceeding rupees one thousand six hundred sixty for the relevant month, the daily allowance payable shall be one twenty fifth of the difference between rupees forty one thousand five hundred and the total wages for the relevant month.

(2) Notwithstanding the provisions of subsection (1), every employer in any industry or service shall, in respect of each month commencing from January 1, 2016 pay to every worker referred to in subsection (1) employed by him, an allowance calculated on the following basis:—

- (a) in the case of a worker whose monthly wages or salary for the relevant month is rupees forty thousand or below, the allowance payable shall be one thousand rupees:

10 Provided however, that in the case of a worker who for any reason other than the failure of the employer to provide work for such worker, does not work for the required number of days in a month as prescribed by any written law or contract of employment, the allowance payable to such worker for such month shall be in proportion to the number of days he has worked during such month;

- (b) in the case of a worker who is paid a daily rate not exceeding rupees one thousand six hundred for the relevant month, the allowance payable shall be a sum of forty rupees per day for each day he has worked during the month;

- (c) in the case of a worker who is employed in the relevant month on a piece-rate basis, the allowance payable in respect of a month shall be not less than ten *per centum* of the total wages or salary payable to such worker for that month:

30 Provided however, the total allowance payable for a month under paragraph (a), (b) or (c) shall not exceed one thousand rupees.

(3) (a) The allowance payable under subsection (1) or (2) or both subsections (1) and (2), as the case may be, shall be subjected to a maximum limit of the total wages or salary of rupees forty one thousand five hundred to a worker for a month.

(b) For the avoidance of doubt, it is declared that any worker who has received the allowance under paragraph (d) or (e) of subsection (1) shall not be entitled to any allowance under subsection (2).

5 (4) An employer in any industry or service who had made wages or salary increase of the workers employed by him, during the period between October 1, 2014 and April 30, 2015 if such increases added together exceed the amount to be increased under subsection (1) or under subsections (1) and (2), such employer shall be exempt from the application of subsection (1) or both subsections (1) and (2), as the case may be.

15 (5) A worker who has received wages or salary increase of a sum less than one thousand five hundred rupees during the period between October 1, 2014 and April 30, 2015 shall be entitled to an allowance under subsection (1) which is equivalent to the difference between one thousand five hundred rupees and the amount of such wages or salary increase.

20 (6) A worker who has received wages or salary increase of a sum more than one thousand five hundred rupees and less than two thousand five hundred rupees during the period between October 1, 2014 and April 30, 2015 shall be entitled to an allowance under subsection (2) which is equivalent to the difference between two thousand five hundred rupees and the amount of such wages or salary increase.

(7) A worker who is covered by-

(a) a Collective Agreement; or

30 (b) an order under subsection (2) of section 10 of the Industrial Disputes Act (Chapter 131), extending the application of a Collective Agreement in respect of such worker,

shall not be entitled to the allowance under subsection (1) or subsection (2).

(8) A worker who is employed –

(a) by any charitable institution within the meaning of the Inland Revenue Act, No. 10 of 2006; or

5 (b) by any religious institution maintained for, or connected with worship,

shall not be entitled to the allowance under this Act.

For the purpose of this subsection, “religious institution” means any temple, kovil, church, mosque or other similar institution and includes any institution owned and
10 maintained by such temple, kovil, church or mosque for the purpose of, or connected with worship.

(9) The Minister may, taking into consideration the relevant economic conditions prevailing in relation to any industry or service, defer by Order published in the *Gazette*,
15 the operation of the provisions of this section in relation to any industry or service specified in such Order, to such date as may be specified therein :

Provided that, any deferment in terms of this subsection shall not extend beyond a period of twelve months from the
20 date of the making of such Order.

(10) For the purposes of subsections (4), (5) and (6), the expression “wages or salary increase” means any increase of wages or salary connected to Budgetary Relief Allowance under this Act but does not include any annual or periodical
25 increments given to a worker or to which a worker is entitled:

Provided however, any increase paid to a worker by any employer, which is in the nature of increment connected to the allowance under this Act within the period commencing from October 1, 2014 and ending on April 30, 2015 shall be
35 deemed as a part of the wages or salary for the purpose of this section.

4. Every worker who had been employed by any employer in the relevant month subject to the provisions of section 3, for so long as he continues to be a worker of such employer, shall continue to be so employed on such terms and conditions relating to wages or salary, allowances or other payments in money by whatsoever name or designation as are not less favourable than those which such worker had enjoyed on the day immediately prior to the date of the coming into operation of this Act.
5. (1) The employer of a worker in any industry or service shall from and after the date of the coming into operation of this Act, maintain and keep in the premises in which that industry or service is carried on, a register setting out—
- (a) the name of each worker employed by him;
- (b) the class of work performed by each worker employed by him; and
- (c) the amount paid to each such worker as allowance in accordance with the provisions of this Act.
- (2) Every register maintained under subsection (1) shall be preserved for a period of six years by the employer. Every employer shall when required by the Commissioner-General, produce such register for inspection or furnish a true copy thereof or permit a copy of such register to be made.
- (3) Where an employer of any worker in any industry or service has failed to maintain and keep in the premises where that industry or service is carried on the register required to be kept under subsection (1) or fails, when required to do so under subsection (2) to produce such register for inspection, the Commissioner-General is hereby empowered to assess the allowance or the short payment of allowances, as the case may be, payable to such worker under this Act on the basis of all the evidence, both oral and documentary,

Special provisions regarding continuation of employment.

Duty of the employer to maintain a register.

available to him and the provisions of section 11 shall apply where default is made in the payment of any such allowance.

6. The competent authority shall have power—

Powers of
competent
authority.

- 5 (a) to enter into and inspect at all reasonable hours of the day or night, any place in which workers in any industry or service are employed, for the purpose of examining any register or for ascertaining whether the provisions of this Act are being complied with;
- 10 (b) where no such register is available for examination when he inspects such place, to require the production of such register on a specified later date for examination at such place or at the office of such authority;
- 15 (c) to take copies of the whole or any part of any such register;
- 20 (d) to question any person whom he finds in such place and whom he has reasonable cause to believe is an employer of workers employed in any industry or service carried on in such place; or
- (e) to direct, in writing, any employer of workers employed in any industry or service to furnish him on or before a specified date, with—
- 25 (i) a return, relating to all workers employed by any such employer in any specified class or description of such workers and containing such other particulars as he may require for the purposes of this Act;
- 30 (ii) such information or explanation as he may require in respect of particulars stated in

any return furnished by any such employer; or

(iii) a true copy of the whole or any part of any register maintained by any such employer.

5 **7.** (1) Any employer in any industry or service who Offences and
 contravenes the provisions of section 3 or section 4 or section penalties.
 5 of this Act shall be guilty of an offence and shall be liable
 on conviction by a Magistrate to a fine not exceeding twenty
 five thousand rupees or to imprisonment of either description
 10 for a term not exceeding six months or to both such fine and
 imprisonment.

(2) Any person who—

- 15 (a) fails to furnish the competent authority with such
 assistance as is necessary for any entry or
 inspection or for the exercise of his powers under
 section 6;
- 20 (b) hinders or obstructs such authority in the exercise
 of the powers conferred by that section;
- 25 (c) refuses to produce any register or furnish any
 information which such authority requires him
 to produce or furnish;
- 30 (d) makes or causes to be made in any register, any
 false statement or makes or causes or knowingly
 permits to be produced, any register containing
 a false statement to such authority, knowing the
 same to be false;
- (e) furnishes any information to such authority
 acting under the powers conferred by that
 section, knowing the same to be false; or
- (f) fails to comply with any directions given by
 such authority under section 6, or who, when

called upon to furnish a return under that section, knowingly, makes or furnishes, or causes to be made or furnished, a return containing any false statement,

5 shall be guilty of an offence and shall be liable on conviction by a Magistrate to a fine not exceeding twenty five thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

- 10 **8.** Where an offence under this Act is committed by a body of persons then—
- (a) if that body of persons is a body corporate, every person who at the time of the commission of the offence was a director, general manager, agent, secretary or officer holding similar office of that body;
- 15
- (b) if that body of persons is a firm, every partner of that firm; or
- (c) if that body of persons is not a body corporate, every person who at the time of the commission of the offence was a member of that body,
- 20

Liability of the directors and certain officers for offences committed by a body of persons.

shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence so as to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions and the related circumstances.

25

- 9.** The allowance payable to a worker under this Act shall be deemed for all purposes to include—
- 30 (a) contributions to Employees' Provident Fund, Employees Trust Fund and pension;

Payment due under this Act to constitute part of a worker's wages or salary.

10 *Budgetary Relief Allowance of Workers*

- (b) wages or salary of annual holiday or leave;
- (c) overtime remuneration;
- (d) maternity benefit payment; and
- (e) gratuity,

5 and shall constitute part of the wages or salary of such worker.
Every employer of any such worker shall pay such allowance
within the period within which such employer is required
by any relevant written law to pay the wages or salary of
such worker.

10 **10.** (1) Any employer who fails to pay the allowance
required to be paid to a worker under this Act shall be guilty
of an offence and shall be liable on conviction by a
Magistrate to a fine not exceeding twenty five thousand
15 rupees or to imprisonment of either description for a term
not exceeding six months or to both such fine and
imprisonment.

Failure to
pay sums due
to workers.

(2) Upon conviction by the Magistrate of an employer
for failure to pay any sum required to be paid to a worker
under this Act, the court shall, in addition to the penalty
20 imposed for such offence, order such employer to pay such
sum to such worker within a period specified in the Order,
and if the sum is not so paid, such sum shall be recovered by
Order of court, as if it were a fine imposed by the court and
paid to such worker.

25 **11.** (1) Where any employer defaults in payment of the
allowance payable to any worker or workers the
Commissioner-General shall, after such investigation as he
may deem necessary, if he is satisfied that the employer has
defaulted payment of the allowance to such worker or
30 workers, by notice issued to such employer, require the
employer to deposit with him the amount of the allowance
defaulted in respect of such worker or workers for the period
the amount is due, within the date specified in such notice.

Action
against
default of
payment of
the
allowance.

(2) The employer shall, upon receipt of such notice under subsection (1), deposit with the Commissioner-General the amount indicated in the notice on or before the date specified in the notice and any payment of allowance to the worker or
5 workers made by the employer after receipt of such notice shall not be deemed to be a valid payment of the allowance in default.

(3) Where an employer fails to make the payment of any sum he is liable to pay as the allowance under this Act and
10 contravenes subsection (2), the Commissioner-General shall issue a certificate containing particulars of the sum so due and the name and place of residence of the defaulting employer to the Magistrate having jurisdiction in the division in which the place of employment of the worker or
15 workers in respect of whom default is made is situate. The Magistrate shall, thereupon summon such employer to appear before him to show cause why further proceedings for the recovery of the sum due under this Act should not be taken against him and if such employer fails to appear before court
20 on the day specified in such summons or sufficient cause is not shown, as the case may be, such sum shall be deemed to be a fine imposed by a sentence of the Magistrate on such employer for an offence punishable with imprisonment and the provisions of subsection (1) of section 291 [except
25 paragraphs (a), (d) and (i)] of the Code of Criminal Procedure Act, No. 15 of 1979 relating to the default of payment of a fine imposed for such an offence shall thereupon apply and the Magistrate may make any direction which by the provisions of that subsection he could have made at the
30 time of imposing such sentence.

(4) The correctness of any statement in a certificate issued by the Commissioner-General for the purpose of this section shall not be called in question or examined by the court in any proceedings under this section, and accordingly any
35 statement in such certificate shall be sufficient evidence to the facts that the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default.

(5) In any proceedings against any employer under this section for failure to pay any sum which he is liable to pay under this Act, the burden of proving that the sum was paid shall lie on the employer.

5 **12.** No prosecution for any offence committed under this Act shall be instituted except by, or with the previous written sanction of, the Commissioner-General. Conditions necessary for the prosecution for offences under this Act.

13. (1) Section 3 of this Act shall be deemed for all purposes to have come into operation on May 1, 2015. Retrospective effect.

10 (2) Where there remains, as on the date of coming into operation of this Act, any unpaid amount of the allowance payable by any employer to any worker under subsection (1) or subsection (2) of section 3 of this Act for the period commencing on May 1, 2015 and ending on the date on
15 which this Act comes into operation, and where such employer pays to such worker such arrears of the allowance in equal monthly instalments or higher monthly installments within a period of twelve months commencing from the date on which this Act comes into operation, such employer
20 shall for all purposes be deemed to have complied with the provisions of subsection (1) or (2) of section 3 of this Act.

14. In this Act, unless the context otherwise requires— Interpretation.

 “Collective Agreement” shall have the same meaning as in the Industrial Disputes Act (Chapter 131);
25

 “Commissioner-General” means the person for the time being holding the office of Commissioner-General of Labour and includes any person for the time being holding office as an Additional Commissioner-General, a Commissioner of Labour, a Deputy Commissioner of Labour, an Assistant Commissioner of Labour or a Labour officer;
30

5 “employer” means any person who employs or on
whose behalf any other person employs, any
worker and includes a body of employers
(whether such body is a firm, company, local
authority or trade union), and any person
10 who on behalf of any other person employs
any worker including a competent authority
of a business undertaking vested in the
Government under any written law, the legal
heir, successor in law, executor or
15 administrator and liquidator of a company
and in the case of an unincorporated body
the president or secretary of such body, and
in the case of a partnership the managing
partner or manager;

“industry or service” includes—

- 20 (a) any trade, business, manufacture and
agriculture, any undertaking or
occupation by way of trade, business,
manufacture or agriculture and any
branch or section of trade, business,
manufacture or agriculture;
- 25 (b) work or labour of any description
whatsoever performed by persons in
the employment of a local authority,
or of a corporation established by or
under any written law for carrying
on an undertaking whether for
purposes of trade or otherwise;
- 30 (c) every occupation, calling or service
of workers, and
- (d) every undertaking of employers,

35 but does not include any industry, business
or undertaking which is carried on by any
corporation, board or other body which was

5 or is established by or under any written law where the Government holds a majority of the share capital with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise; or any registered society within the meaning of the Co-operative Societies Law, No. 5 of 1972;

“wages or salary” means—

10 (a) the contractual wage or salary of the worker or the wage prescribed under the Wages Boards Ordinance (Chapter 136) for the industry or service to which the worker belongs; and

15 (b) wages or basic salary together with the cost of living allowance, special living allowance or any other similar allowance;

20 “worker” means, any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, oral or in writing and whether it is a contract of service or of apprenticeship, or a contract personally to
25 execute any work or labour and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time and includes any person whose services have
30 been terminated but does not include a domestic servant.

15. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

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