

THE SIKKIM PAYMENT OF WAGES RULES, 1992

1. Short title and Commencement:-

- (1) These rules may be called the Sikkim Payment of Wages Rules, 1992.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions:-

In these rules, unless there is anything repugnant in the subject or context:—

- (a) “Act” means the Payment of Wages Act, 1936
- (b) “authority” means the authority appointed under sub-section (1) of section 15 of the Act;
- (c) “Chief Inspector” means the Chief Inspector appointed under sub-section (2) of section 68 of the Sikkim Shops and Commercial Establishment, Act 1983;
- (d) “Court” means the Court mentioned in sub-section (i) of section z of the Act;
- (e) “deduction for breach of contract” means a deduction made in accordance with the provisions of the proviso to sub-section (2) of section 9;
- (f) “deduction for damage or loss” means a deduction made in accordance with the provisions of clause (c) of sub-section (2) of section 7,
- (g) “Form” means a form appended to the rules
- (h) “Inspector” means the Inspector authorised by or appointed under section 14 of this Act;
- (i) “person employed” includes all persons to whom the Act apply;
- (j) “paymaster” means an employer or other person responsible for payment of wages; under section of the Act;

3. Register of Fines:-

- (1) In any factory or industrial establishment in respect of which the employee has obtained approval under sub-section (1) of Section 8 to a list of acts and mission in respect of which fines may be imposed, the paymasters shall maintain a Register of Fines in Form I.
- (2) At the beginning of the Register of Fines there shall be entered serially numbered the approved purpose or purposes on which the fines are to be expended.
- (3) When any disbursements are made from the fines realized, an entry of the amount so expended shall be made in the Register of Fines and a voucher or a receipt in respect of the amount shall be affixed to the Register. If more than one purpose have been approved, the entry of the disbursement shall also indicate the purpose for which it is made.

4. Register of deductions for damage or loss: -

In every factory or industrial establishment in which the deductions for damage or loss are made, the paymaster shall maintain the register required by sub-section (2) of section 10 in Form II.

5. Register of Wages: -

In every factory or industrial establishment, the paymaster shall maintain a register of wages in such form as he finds convenient including inter-alia the following particulars: -

- (a) the rate of wages of each person employed;
- (b) the gross wages earned by each person employed for each wage period;
- (c) all deductions made from these wages, with an indication in each case of the clause of sub-section (2) of section 7 under which the deduction is made;
- (d) the wages actually paid to each person employed for each wage period;
- (e) date of payment.

6. Maintenance of Registers:-

- (1) The registers required by rules 3, 4, 5 and 17 shall be maintained in English/Nepali language.
- (2) All entries in the register shall be in ink, shall be legible and shall be maintained up-to-date.

- (3) All registers for the preceding three calendar years shall be preserved and shall be made available in the factory or industrial establishment as the case may be, for examination by the Inspector.

7. Weights and measures:-

- (1) All weights, measures or weighing machines which are used in checking or ascertaining the wages of persons employed in any factory shall be examined at least biennially by an Inspector who may prohibit the use of any weight, measure or weighing machine he find to register incorrectly.
- (2) If the Inspector considers that any action should be taken under the Standard of Weights and Measures Act, 1956 (89 of 1956) or the Indian Penal Code (45 of 1860), he may seize the article in question and shall record his opinion and send it to the District Magistrate for such action as he may think fit.

8. Notice of Dates of Payment:-

The paymasters shall display in a conspicuous place at or near the main entrance of the factory or industrial establishment a notice, in English and in the language of the majority of the persons employed therein, specifying for not less than one month in advance, the wage-period and the date or dates on which wages are not to be paid.

9. Prescribed Authority:-

The Labour Secretary shall be the authority competent to approve, under sub-section (1) of section 8, acts and omissions in respect of which fines may be imposed and under sub-section (8) of section 8, the purposes on which the proceeds of fines shall be expended.

10. Applications in respect of fines:-

Every employer requiring the power to impose fines in respect of any acts and omissions on the part of employed persons shall be send to the Labour Secretary-

- (a) a list, in English/in duplicate/clearly defining such acts and omissions;
- (b) In case where the employer himself does not intend to be the sole person empowered to impose fines, a list, in duplicate, showing those appointments in his factory or industrial establishments of which the incumbents may pass orders imposing fines and the class of establishment of which the incumbent of each such appointment may impose fine.

11. Approval of list of acts and omissions: -

The authority appointed under rule 9, on receipt of the list under clause (a) of rule 10 may after such enquiry as he considers necessary, pass orders either: -

- (a) disapproving the list or
- (b) approving the list either in their original form or as amended by him, in which case, such list shall be considered to be an approved list & provided that no order disapproving or amending the list shall be passed unless the employer is given an opportunity of showing cause orally or in writing why the list as submitted by him should be approved.

12. Posting of list of acts and omissions :-

The employer shall display at or near the main entrance of the factory or industrial establishment, a copy in English together with a literal translation thereof, in the language therein, of the list approved under rule 11.

13. Persons authorised to impose fines: -

No fine shall be imposed by any person other than an employer, or a person holding an appointment named in the list submitted under clause (b) of rule 10.

14. Procedure imposing fines and deductions : -

Any person desiring to impose a fine on an employed person or to make a deduction for damage or loss shall explain personally to the said person the act or omission, or damage or loss, in respect of which the fine or deduction is proposed to be imposed and the amount of the fine or

deduction, which it is proposed to impose, and if any such employed person has any explanation to offer in this behalf, he shall hear the employed person in the presence of at least one other person.

15. Information of pay master : -

The person imposing a fine or directing the making of a deduction for damage or loss shall at once inform the paymaster of all particulars so that the register prescribed in rule 3 or rule 4 may be duly completed.

16. Deduction of or breach of contract: -

- (1) No deduction for breach of contract shall be made from the wages of an employed person who is under the age of fifteen years or is a woman.
- (2) No deduction for breach or contract shall be made from the wages of any employed person unless: -
 - (a) there is a provision in writing forming part of the terms of the contract of employment requiring him to give notice of the termination of his employment, and
 - (i) the period of the notice does not exceed fifteen days or the wage period, whichever is less, and
 - (ii) the period of the notice does not exceed the period of notice which the employer is required to give of the termination of that employment;
 - (b) this rule has been displayed in English and in the language of the majority of the employed persons at or near the main entrance of the factory or industrial establishment and has been so displayed for not less than one month before the commencement of the absence in respect of which the deduction is made;
 - (c) a notice has been displayed at or near the main entrance of the factory or industrial establishment giving the names of the persons from whom the deduction is proposed to be made, the number of days wages to be deducted and the conditions (if any) on which
- (4) If any conditions have been specific in the notice displayed under clause (c) of sub-rule (2), no deduction for breach of contract shall be made from any person who has complied with these conditions.

17. Advances :—

- (1) An advance of wages not already earned shall not, without the previous permission of an Inspector, exceed an amount equivalent of the wages earned by the employed person during the preceding two calendar months, or if he has not been employed for that period, an amount equivalent to the wages he is likely to earn during the two subsequent calendar months.
- (2) The advance may be recovered in installments by deductions from wages ordinarily spread over not more than twelve months. No installment shall exceed one-third, or where the wages for any wage-period are not more than twenty Rupees one-fourth of the wages for the wage-period in respect of which the deduction is made.
- (3) The amounts of all advances sanctioned and the repayments thereof shall be entered in a register in Form III.

18. Annual Return: -

In respect of every factory or industrial establishment in which during the calendar year any fines have been imposed or any deductions for breach of contract or for damage or loss have been made from wages, the paymaster shall submit a return in Form IV to the Labour Commissioner so as to reach him not later than the 5th February following the end of the calendar year to which it relates.

19. Costs :—

- (1) Where the Authority or the Court, as the case may be, directs that any costs shall not follow the event he shall state his reasons for so doing in writing.
- (2) The costs which may be awarded shall include:—
 - (a) the charges necessarily incurred on account of court fees;
 - (b) the charges necessarily incurred on subsistence money to witnesses; and

- (c) pleader's fees which shall ordinarily be Rs.10/- (Rupees ten) provided that the Authority or the Court, as the case may be in any proceedings may reduce the fee to a sum not less than Rs.5/- (Rupees five) or increase it to a sum not exceeding Rs.30/- (Rupees thirty).
- (3) When a party engages more pleaders than one to defend a case, he shall be allowed one set of costs only.

20. Fees for copies of documents: -

The Authority or the Court, as the case may be, may fix fees on the payment of which any person entitled to do so may obtain copies of any documents filed with the Authority or the Court, as the case may be:

Provided that the Authority or the Court, as the case may be, may, in consideration of the poverty of the applicant, grant copies free of cost,

21. Other Fees: -

The fee payable in respect of proceedings under the Act shall be

- (1) for every certificate of authorisation - one rupee.
- (ii) for every application to summon a witness-
 - (a) for the first witness mentioned in the application-fifty paise;
 - (b) for each subsequent witness in the application - twenty five paise;
- (iii) for every other application made by or on behalf of a individual person before the Authority-fifty paise;
- (iv) for every other application made by or on behalf of an unpaid group before the Authority-twenty paise for each member of the group, subject to maximum of five rupees.
- (v) for every appeal lodged with the Court - Five rupees

Provided that the Authority or the Court may, in consideration of the poverty of the applicant, reduce or remit this fee;

Provided further that no fee shall be chargeable in respect of an application presented by an Inspector.

22. Manner of payment of amount directed to be paid under Section 15: -

- (1) Any amount directed to be paid under section may be deposited with the authority along with a statement in Form V.
- (2) When any deposit is made under Sub-rule (1), the authority shall grant a receipt for the amount so deposited in Form VI and this receipt shall be a sufficient discharge in respect of any amount deposited with him;

Provided that the said receipt in Form VI may be signed under the direction of the authority and on his behalf by any officer subordinate to him appointed by him in writing for this purpose.

- (3) Any sum deposited with the authority under sub-rule (1) or recovered under sub-section (5) of section 15 shall, on application, be paid by the authority to the person entitled thereto.

23. Abstracts: -

The abstracts of the Act and of the rules made thereunder to be displayed under section 25 shall be in Form VII.

24. Penalties: -

Any breach of rules 3,4, 5, 6, 8, 12, 15, and 18 of these rules shall be punishable with fine which may extend to two hundred rupees.

FORM I
REGISTER OF FINES
See sub-rule (1) of rule 3

FACTORY AND INDUSTRIAL ESTABLISHMENTS

Sl. No.	Name	Token or Ticket number of the worker or father's or husband's name.	Department	Act or omission for which fine imposed.
1	2	3	4	5

Wages payable during the wage period	Date and amount of fine imposed	Date on which fine realised	Remark.
6	7	8	9

Note :- A title page should be attached to each register showing the acts or omission for which fines may be imposed.

FORM II
(See Rule)

Register of Deduction for damage or loss caused to the employer, by the neglect or default of the employed persons.

FACTORY OR INDUSTRIAL ESTABLISHMENTS.

Sl. No.	Name	Token or Ticket No. number of the worker and father's or husband's name.	Department	Damages or loss caused
1	2	3	4	5

Date and amount of deduction imposed	Number of instalments, if any	Date on which total amount realised	Remarks
6	7	8	9

FORM III
(sub-rule (3) of rule 17)

REGISTER OF ADVANCES MADE TO EMPLOYED PERSONS
FACTORY AND INDUSTRIAL ESTABLISHMENTS.

SI. No.	Name	Token or Ticket number of the worker and father's or husbands name.	Department	Date and amount of advance made	Date and amount of each instalment by which the advance is repaid	Remarks
1	2	3	4	5	6	7

FORM IV

**WAGES AND DEDUCTIONS FROM WAGES
(See Rule 17)**

Annual Return under the Sikkim Payment of Wages Rules, 1992 for the year ending 31st.
December, 19.....

1. (a) Name of the factory or industrial establishment and postal address.
(b) Industry
2. Number of days worked during the year.....
3. (a) Average daily number of persons employed during the year
Adults
Children
- (b) Gross wage amount paid as remuneration to those persons including deductions under section 7(2) of which the amount due to bonus is and that due to money value of concession money is
4. Total wages paid including deduction under section 7(2) on the following accounts
(a) Basic wages including overtime.
(b) Dearness and other allowance in cash.
(c) Arrear of pay in respect of the previous years paid during the year

5. Number of cases and amounts realised as:-

Number of Cases	Amount RS.
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- (a) Fines
- (b) Deduction for damage or loss
- (c) Deductions for breach of contract.

6. Disbursement from the fine fund:-

Purposes	Amount Rs.
(a) _____	
(b) _____	
(c) _____	
(d) _____	

7. Balance of fines found in hand at the end of the year

Date _____ Signature _____
Designation _____

The average daily number of persons is obtained by dividing the aggregate number of attendance during the year by the number of working days.

FORM V
[See sub-rule (1) of rule 22]
FORM FOR DEPOSIT

The sum Rs. _____ (Rupees _____) is hereby presented for deposit in accordance with the direction issued on _____ (date) in the matter of an application No: _____ of 19 _____ filed by _____
_____ (Applicant) against _____ (Opposite Party).

DATE _____

SIGNATURE OF THE DEPOSITOR.

FORM VI
[See sub-rule (2) of rule 22]
RECEIPT

Name of depositor _____

Name of payee _____

Number of application _____ of 19____

Name of applicant _____

Name of opposite party _____

Date of direction _____

Amount deposited-Rupees _____

Date of deposit _____

AUTHORITY
PAYMENT OF WAGES ACT, SIKKIM.

FORM VII
(See rule 23)

ABSTRACT OF THE PAYMENT OF WAGES ACT, 1936, AND THE RULES MADE THEREUNDER.

WHOM THE ACT AFFECTS

1. The Act applies to the payment of wages, to persons in this factory receiving less than Rs. 200/ a month.
2. No employed person can give up by contract or agreement his rights under the Act.

DEFINITION OF WAGES

3. "Wages" means all remuneration payable to employed person on the fulfillment of his contract of employment.
It includes bonus and any sum payable for want of a proper notice of discharge. It excludes :—
 - (a) the value of the houses accommodation, supply of light, water, medical attendance or other amenity or of any service excluded by the Central Government or the State Government;
 - (b) the employer's contribution to a pension or provident fund;
 - (c) travelling allowance or concession or other special entailed by the employment;
 - (d) any gratuity payable or discharge.

RESPONSIBILITY FOR AND METHOD OF PAYMENT

4. The manager of the factory is responsible for the payment under Act of wages to persons employed under him, and any contractor employing person is responsible for payment to the persons he employed.
5. Wage-periods shall be fixed for the payment of wages at intervals not exceeding one month.
6. Wages shall be paid on working day within seven days of the end of the wage period (or within ten days if 1000 or more persons are employed). The wages of a person discharged shall be paid not later than the second working day after his discharge.
7. Payments in kind are prohibited.

FINES AND DEDUCTIONS

8. No deductions shall be made from wages except those authorised under the Act (See paragraph 9-15 below).
9. (1) Fines can be imposed only for such acts and omissions as the employer may, with the previous approval of the Chief Inspector or inspector of Factories, specified by a notice displayed or near the main entrance of the factory and after giving the employed person an opportunity for explanation.
(2) Fines: -
 - (a) shall not exceed three paise in the rupee;
 - (b) shall not be recovered by installments of later than sixty days of the date of imposition;
 - (c) shall be recorded in a register and applied to such purpose beneficial to the employed persons as are approved by the Chief Inspector or Inspector of Factories.
 - (d) shall not be imposed on a child.

10. (a) Deductions for absence from duty can be made only on account of the absence of the employed person at times when he should be working, and such deductions must not exceed an amount which is in the same proportion to his wage for the wage-period, at the time he was absent in that period is to the total time he should have been at work.
- (b) If ten or more employed persons, acting in concert, absent themselves without reasonable cause and without due notice, the deduction for absence can include wages for eight days in lieu of notice, but:—
 - (1) no deduction for breaking a contract can be made from a person under 15 or a woman,
 - (2) there must be provision in writing which form part of the contract of employment requiring that a specific period of the notice to intension to cease work not exceeding fifteen days or the period of notice which the employer has to give to discharge a worker, must be given to the employer and that wages may be deducted in the lieu of such notice,
 - (3) the above provision must be displayed at or near the main entrance of the factory,
 - (4) no deduction of this nature can be made until a notice that this deduction be made has been posted at or near the main entrance of the factory,
 - (5) no deduction must exceed the wages of the employed person for by which the notice he gives of leaving employment, is less than the notice he should give under his contract.
11. Deductions can be made for damage to or loss of goods expressly entrusted to an employed person or for loss of money for which is required to account, where such damage or loss is due to his neglect or default.
Such deduction cannot exceed the amount of the damage or loss caused and can be made only after giving the employed person an opportunity for explanation.
12. Deductions can be made, equivalent to the value thereof, for house accommodation, amenities or service (other than tools and raw material) supplied by the employer, provided these are accepted by the employed person as a part of the terms of this employment and have in the case of amenities and services been authorised by order of Government.
13. (a) Deductions can be made, for the recovery of advances, or for adjustment of over payment of wages.
- (b) Advances made before the employment began can only be recovered from the first payment of wages for a complete wage period but no recovery can be made of advances given for travelling expense before employment began.
- (c) Advances of unearned wages can be made at the paymaster's discretion during employment but must not exceed the amount of two month's wages without the permission of an Inspector.
These advances can be recovered by installments, ordinarily spread over not more than twelve months and the installments must not exceed 3rd, or if the wages are not more than Rs.20, 4th of the wages for any wages- period.
14. Deductions can be made for subscription to and for repayment of advances from any recognised provident fund.
15. Deductions can be made for payments to co-operative societies approved by the Local Government or to the postal insurance, subject to any conditions imposed by the Local Government.

INSPECTION

16. All Inspector can enter on any premises, and can exercise power of inspection (including examination of documents and taking of evidence) as he may deem necessary for carrying out the purpose of the Act.

COMPLAINTS OF DEDUCTIONS OR DELAYS

17. (1) Where irregular deductions are made from wages, or delays in payment take place, an employed person can make an application in the prescribed form within six months to the Authority appointed by the Local Government for the purpose. An application delayed beyond this period may be rejected unless sufficient cause for the delay is shown.
- (2) Any legal practitioner, official of a registered trade union, Inspector under the Act, or other person acting with the permission of the Authority, can make the complaint on behalf of an employed person.
- (3) A single application may be presented by, or on behalf of, any number of person belonging to the same factory the payment of whose wages has been delayed.

ACTION BY THE AUTHORITY

18. The Authority may award Compensation to the employed person in addition to ordering the payment of delay wages or the refund of illegal deductions.
If a malicious or vexatious complaint is made, the Authority may impose a penalty not exceeding Rs, 50/- on the application and order that it be paid to the employer.

APPEAL AGAINST THE AUTHORITY

19. An appeal in the prescribed form against a direction made by the Authority may be preferred within thirty days to the District Court:-
 - (a) by the paymaster if the total amount directed to be paid exceeds Rs.300/-.
 - (b) by an employed person, if the total amount of wages withheld from him or his coworkers, exceeds Rs.50/-.
 - (c) by a person directed to pay a penalty for a malicious or vexatious application.

PUNISEMENTS FOR BREACHES OF THE ACT

20. Any one delaying payment of wages beyond the due date, or making any unauthorised deduction from wages is liable to a fine upto Rs.500/-, but only if prosecuted with the sanction of the Authority or the Appellate Court.
21. The paymaster who :-
 - (1) does not fix a wage-period, or
 - (2) makes payment in kind, or
 - (3) fails to display at or near the main entrance of the factory this abstract in English and in the language of the majority of the employment persons, or
 - (4) breaks certain rules made under the Act, is liable to fine not exceeding Rs. 200/. A complaint to this effect can be made only by the Inspector or with his sanction.