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Wages Act, 1964

Act 16 of 1964

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Wages Act, 1964

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eSwatini

Wages Act, 1964

Act 16 of 1964

Commenced on 19 June 1964

[This is the version of this document at 1 December 1998.]

An Act to provide for the establishment of a Wages advisory Board and wages councils and otherwise for the regulation of the minimum wages and conditions of employment of employees and for other matters incidental thereto and connected therewith.

Part I – Preliminary

1. Short title

This Act may be cited as the Wages Act, 1964.

2. Interpretation

In this Act, unless the context otherwise requires—

“**authorized officer**” means a person who is an authorized officer under [section 20](#);

[Replaced A.10/1981]

“**board**” means the Wages Advisory Board established under [section 4](#);

“**collective agreement**” means an agreement in writing covering terms and conditions of employment and procedures for the settlement of disputes and grievances, concluded by a joint industrial council, or by a works council; or by a works council; or by an employer, or group of employers or an employers association or the one hand and an industry union or staff association on the other hand;

[Added A.10/1981]

“**council**” means wages council established under [section 6](#);

“**contract of employment**” means a contract of service, apprenticeship or traineeship whether it is express or implied and, if it is express, whether it is oral or in writing;

[Added A.10/1981]

“**employee**” means any person to whom wages are paid or are payable under a contract of employment;

[Replaced A.10/1981]

“**employer**” means any person or undertaking, contractor, corporation, public authority or body of persons who or which has entered into a contract of employment with an employee and includes—

- (a) any agent, representative, foreman or manager of such person, undertaking, corporation, public authority or body of persons who is placed in authority over that employee; and
- (b) in the case of any such person—
 - (i) who has died, his executor;
 - (ii) who has become of unsound mind, his *Curator Bonis*;
 - (iii) who has become insolvent, the trustee of his insolvent estate;

(iv) who is a company in liquidation, the liquidator of the company.

[Replaced A.10/1981]

“**joint industrial council**” means a body established as such under the Industrial Relations Act, 1980;

[Added A.10/1981]

“**Labour Commissioner**” means the person appointed in the public service to be the Labour Commissioner and includes any person authorized in writing to act on his behalf;

[Replaced A.10/1981]

“**Minister**” means the Minister of Enterprise and Employment;

“**statutory minimum wage**” means wage fixed by a wages regulation order;

“**wages council establishment order**” means an order made under [section 6](#) establishing a council;

“**wages order**” means an order made under [section 5\(5\)](#):

“**wages regulation order**” means an order made under [section 11](#);

[Replaced A.10/1981]

“**wages regulation proposals**” means an proposals made under [section 11\(1\)](#).

“**works council**” has the same meaning as in the Industrial Relations Act, 1980;

[Added A.10/1981]

3. Application

This Act shall apply to employment with, by or under the Government, other than to employment in the Royal Swaziland Police Force, the Umbutfo Swaziland Defence Force and the Swaziland Correctional Service or such other employment as the Minister may, by notice in the *Gazette*, determine.

[Replaced A.10/1981]

Part II – Establishment of Wages Advisory Board

4. Establishment of Wages Advisory Board (First Schedule)

- (1) The Minister may by order establish a Wages Advisory Board, which shall, upon being required so to do by the Minister in terms of [section 5](#), inquire into the wages and conditions of employment of any employees in Swaziland or in any part of Swaziland.
- (2) The First Schedule shall apply to the constitution, officers and proceedings of the board.

5. Functions of board

- (1) The Minister, if he is of the opinion that it is expedient to fix the minimum wage of any employees in Swaziland or in any part of Swaziland or to prescribe conditions of employment of any such employees, may require the board to inquire into the matter.

[Amended A.10/1981]

- (2) On being required to make an inquiry pursuant to subsection (1), the board shall thereupon inquire into the matter and submit to the Minister recommendations as to the minimum wage which should be paid and the conditions of employment which should apply to all or any of the employees coming within its terms of reference.

[Amended A.10/1981]

- (3) Before submitting to the Minister any recommendations under subsection (2), the board shall publish in the *Gazette*, and in at least one newspaper published in Swaziland, a notice of the intention to submit recommendations, stating a place where copies of the recommendations may be obtained and the period, not being less than thirty days, within which written representations with respect to the recommendations may be sent to the board.
- (4) The board shall consider any such written representations made to it within the set period and may make such further inquiries as it considers necessary and may then submit to the Minister the recommendations, either with or without amendment having regard to those representations.
- (5) The Minister, after consideration has been given to the recommendations of the board submitted in accordance with the provisions of this section, after informing the board of his decision, by a wages order published in the *Gazette*, prescribe the minimum wage to be paid and the conditions of employment to be applied to any employees:

Provided that a wages order shall not be made in respect of any industry in which is wholly covered by a collective agreement made by a joint industrial council.

[Amended K.O-I-C. 33/1974; Replaced A.10/1981]

- (6) The board may, when submitting recommendations to the Minister in accordance with this section, or of its own volition at any time, recommend—
 - (a) the establishment of a council;
 - (b) the abolition of a council;
 - (c) that the terms of reference of a wages council establishment order establishing a council should be varied.

[Replaced A.10/1981]

- (7) *[Repealed A.10/1981]*

Part III – Establishment of wages councils

6. Establishment of wages councils (Second Schedule)

- (1) Subject to [section 7\(2\)](#) and [section 8](#), the Minister may, by a wages council establishment order, establish a wages council to perform, in relation to the employees specified in the order and their employers, the functions specified in this Act in any case in which he is satisfied that no adequate machinery, other than the board, exists for the effective regulation of the wages or conditions of employment of those employees, or that existing machinery is likely to cease to exist or be adequate for that purpose, and that it is expedient that such a council be established.
- (2) The Second Schedule shall apply to the constitution, officers and proceedings of a council.

7. Jurisdiction of councils

- (1) The functions of a council may be exercised in relation to—
 - (a) all or any employees in any trade, industry or occupation either generally or in any area of Swaziland;
 - (b) any class or category of those employees.
- (2) When making a wages council establishment order, the Minister may limit the functions of a council in such manner as he may specify in the order.

8. Making of wages council establishment order

- (1) Before making a wages council establishment order, the Minister shall take into account, but shall not be bound by any representations made to him in terms of [section 10](#) and any recommendations made to him by the board in terms of [section 5\(6\)](#).
- (2) Before making a wages council establishment order, the Minister may seek the advice of employers and employees in the industry concerned, or appoint a Board of Inquiry to make recommendations as to whether a council should be established.
- (3) Before making a wages council establishment order, the Minister shall publish, in the *Gazette* and in a newspaper published in Swaziland, a notice of his intention to make the order, specifying a place where copies of a draft thereof may be inspected and a time, which shall be not less than thirty days from the first date of such publication, within which any objection to the draft order shall be sent to the Minister.
- (4) Every objection made in accordance with subsection (3) shall be in writing and shall state the specific ground of objection, and the omissions, additions or modifications to the draft wages council establishment order asked for.
- (5) The Minister shall consider any such objections made by or on behalf of any person appearing to him to be affected if the objection has been sent to the Minister within the time specified in the notice but shall not be bound to consider any other objection.
- (6) The Minister, having considered any objection which he is required to consider in accordance with subsection (5), may make a wages council establishment order in the terms of the draft order or subject to such modifications thereof as are, in his opinion, necessary.
- (7) If the Minister makes a wages council establishment order, he shall publish it in the same manner as is provided in subsection (3) for the publication of notice of his intention to make a wages council establishment order, and the wages council establishment order shall come into operation on the date on which it is published in the gazette or on such later date as is specified in the wages council establishment order.

9. Variation and revocation of wages council establishment order

- (1) The Minister may at any time, by order, abolish a council or vary the terms of a wages council establishment order, and [section 8](#) shall, *mutatis mutandis*, apply in all such cases.
- (2) Before making an order abolishing a council or varying the terms of a wages council establishment order, the Minister shall seek and take into account, but shall not be bound by, the views of employers and employees in the industry concerned or the recommendations of the board thereon.

10. Representations by employers and employees

Employers and employees in any industry may make representations to the Minister for the establishment of a wages council for that industry, or the abolition of a council where one has been established.

Part IV – Wages regulation orders

11. Power to fix wages and conditions of employment

- (1) Subject to subsections (2) and (3), a council may submit to the Minister wages regulation proposals as to the minimum wage which should be paid and the conditions of employment which should be applied to all or any of the employees in relation to whom the council operates.
- (2) Before submitting any wages regulation proposals to the Minister, a council shall make such investigations as it thinks fit and shall publish in the *Gazette* and in a newspaper published in

Swaziland a notice of the intention to submit proposals stating the place where copies of the proposals may be obtained and the period, not being less than thirty days, within which written representations with respect to the proposals may be sent to the council.

- (3) The council shall consider any such written representations made to it within the set period and may make such further inquiries as it considers necessary and may then submit the proposals to the Minister, either with or without amendment having regard to those representations.
- (4) If wages regulation proposals have been submitted to the Minister, he may either—
 - (a) make a wages regulation order, giving effect, as from such date as is specified in the order, to the proposals, subject to such modifications which do not, in his opinion, effect important changes in the character of the proposals as published by the wages council under subsection (2); or
 - (b) refer the proposals back once to the wages council, together with such amendments as he thinks fit, whereupon the wages council shall consider the amended proposals, and thereafter within thirty days of such reference, shall re-submit the amended proposals, with such observations as it thinks fit.

[Amended K.O-I-C. 33/1974; Replaced A.10/1981]

- (5) Where the Minister receives any wages regulation proposals which have been resubmitted to him under paragraph (b) of subsection (4), he shall, after giving such consideration to the observations made by the council as he deems necessary, make a wages regulation order, giving effect to the proposals as from such date as is specified in the order.

[Amended K.O-I-C. 33/1974; K.O-I-C. 17/1978; Replaced A.10/1981]

- (6) The date to be specified in accordance with subsection (5) shall be a date subsequent to the date of the wages regulation order, and where the date so specified does not correspond with the beginning of the period for which wages are paid the order shall, in respect of any employee affected, become operative from the beginning of the next such period following the date specified in the order.
- (7) Any wages regulation proposals and any wages regulation order may make different provisions for different cases and may also contain provision for the amendment or revocation of previous wages regulation orders.

12. Saving as to rights conferred by other laws

No order made under section (5) or (11) shall have effect so as to prejudice any rights touching conditions of employment, holidays or remunerations conferred upon any worker by or under the provisions of any other law.

13. Agreement and arbitration awards

If the Minister is satisfied that a collective agreement relating to wages or conditions of employment has been made which covers substantially the greater proportion of the employers and the employees in an industry, he may make an order regulating wages or conditions in accordance with that agreement and cause such order to be published in the *Gazette* and in a newspaper published in Swaziland, and from the date specified in the order, the order shall take effect in relation to all the employers and the employees in that industry as though it had been a wages regulation order made as a result of wages council proposals made by a wages council.

[Replaced A.10/1981]

14. Benefits provided by the employer

- (1) Subject to this section, any reference in this Act to wages shall be construed as a reference to the amount obtained or to be obtained in cash by the employee from his employer, clear of all deductions, except those lawfully made for the purpose of a contribution to the Swaziland

National Provident Fund, or any other provident fund or pension scheme approved by the Labour Commissioner.

[Amended A.10/1981]

- (2) Notwithstanding subsection (1), wages regulation proposals and wages regulation orders may contain provisions authorizing specified benefits or advantages, being benefits or advantages provided by the employer or by some other person under arrangement with the employer in pursuance of the terms and conditions of any legal or contractual obligation imposed upon the employer, and not being benefits or advantages the provision of which is illegal by virtue of any other law, to be reckoned as payment of wages by the employer in lieu of payment in cash and defining the value at which any such benefits or advantages are to be reckoned.

15. Effect and enforcement of wages regulation orders

- (1) If a contract between an employee to whom a wages regulation order applies and his employer provides for the payment of a lesser wage than the statutory minimum wage or does not provide for the conditions of employment prescribed in the wages regulation order, the contract shall have effect as if there were substituted, for such lesser wage, the statutory minimum wage and as if there were inserted in the contract such prescribed conditions of employment, as the case may be.
- (2) An employer who fails to pay to an employee, to whom a wages regulation order applies, at least the statutory minimum wage or fails to provide such employee with the conditions of employment prescribed in the order, shall be guilty of an offence and liable on conviction, to a fine not exceeding one hundred emalangeni for each such offence, and if the employer or any other person charged as the person to whose act or default the offence was due has been found guilty of an offence under this section consisting of a failure to pay at least the statutory minimum wage, the court shall order the employer to pay such sum as is found by the court to represent the difference between the amount which ought to have been paid to the employee by wages if the provisions of the wages regulation order had been complied with and the amount actually so paid.
- (3) If proceedings are brought under this section in respect of an offence consisting of failure to pay at least the statutory minimum wage then, after notice so to do has been served with the summons, warrant or complaint—
 - (a) evidence may, on the employer or any other person charged to whose act or default the offence was due having been found guilty of the offence, be given of any like contravention on the part of the employer or such other person in respect of any period during the twelve months immediately preceding the date of the offence; and,
 - (b) on proof of the failure, the court shall order the employer to pay such sum as is found by the court to represent the difference between the amount which is ought to have been paid by the employer, during such period, to any employee by way of wages if the provisions of this Act had been complied with and the amount actually so paid.
- (4) The power given by this section for the recovery of sums due from an employer to an employee shall be in addition to, and not in derogation of, any right to recover such sums by civil proceedings:

Provided that no person shall be liable to pay twice in respect of the same cause of action.

16. Permits to infirm and incapacitated persons

If the Labour Commissioner is satisfied that any person, employed or desiring to be employed in such circumstances that a wages regulation order applies or will apply to him, is affected by any infirmity or physical injury or disablement, the Labour Commissioner may, if he thinks fit, issue to that person, subject to such terms, if any, as he may determine, a permit exempting the employer of the person from the provisions of this Act relating to the payment of the statutory minimum wage or observance of conditions of employment and, while the permit is in force, the employer is not liable to any penalty for paying wages to the person employed at a rate less than the statutory minimum wage or failing to observe those

conditions so long as any terms determined by the Labour Commissioner on the grant of the permit are complied with.

17. Prohibition of premiums

- (1) If an employee to whom a wages regulation order applies is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium:

Provided that nothing in this subsection shall apply to any such payment duly made in pursuance of any valid instrument of apprenticeship.

- (2) An employer who contravenes this section shall be guilty of an offence and liable on conviction in respect of each offence, to a fine of fifty emalangeni, and the court may, in addition to imposing a fine, order him to repay to the employee, or other person by whom the payment was made, the sum improperly received by way of premium.

18. Records and notices

- (1) The employer of any employees to whom a wages regulation order applies shall keep in English such records as may be prescribed or, if not prescribed, as are necessary to show whether or not the provisions of this Act are being complied with in respect of those employees and the records shall be retained by the employer for two years.
- (2) When a wages regulation order is published in the *Gazette*, the Labour Commissioner shall forthwith prepare notices in the siSwati and English languages setting out full details of the order and such matters as may be prescribed.

[Amended A.3/1969]

- (3) Such employer shall, not later than one month after publication of the wages regulation order in the *Gazette*, obtain from the Labour Commissioner such number of the notices referred to in subsection (2) as will enable him adequately to comply with subsection (4).

[Added A.3/1969]

- (4) On receiving the notices from the Labour Commissioner, the employer shall so display them that his employees, when at work, can at all times readily inform themselves of the contents.

[Added A.3/1969]

- (5) An employer who fails to comply with any of the requirements of this section shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred emalangeni.

19. Criminal liability of superior employer and special defence open to employer

- (1) If the employer of any employee is himself in the employment of some other person and such employee is employed on the premises and in connection with the business of that other person, such other person shall, for the purposes of this Act, be deemed to be the employer of such employee jointly with the immediate employer.
- (2) If an employer is charged with an offence under this Act he is entitled, on giving to the prosecution not less than three day's notice in writing of his intention, to have any other person, to whose act or default he alleges that the offence in question was due, brought before the court at the time appointed for the hearing of the charge; and if, after the commission of the offence has been proved, the employer proves that the offence was due to the act or the default of such other person, such other person may be convicted of the offence, and, if the employer further proves that he has used all due diligence to secure that this Act, and any relevant regulation or order made thereunder are complied with, he shall be acquitted of the offence.

- (3) If a defendant seeks to avail himself of the provisions of subsection (2)—
 - (a) the prosecution, as well as the person to whom the defendant alleges to have committed the offence, shall have the right to cross-examine him if he gives evidence and any witnesses called by him in support of his defence, and to call rebutting evidence, and
 - (b) the court may make such order as it thinks fit for the payment of costs, by any party to the proceedings, to any other party thereto.
- (4) If it appears to an authorized officer that an offence has been committed in respect of which proceedings might be taken under this Act against an employer, and the authorized officer is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the employer could establish a defence under subsection (2), the authorized officer may cause proceedings to be taken against the other person without first causing proceedings to be taken against the employer.
- (5) In proceedings so taken, the defendant may be charged with and, on proof that the offence was due to his act or default, be convicted of the offence with which the employer might have been charged.

20. Authorized officers

- (1) The Labour Commissioner and all persons appointed as inspectors under the Employment Act, 1980, are hereby declared to be authorized officers for the purposes of this Act.
- (2) Every authorized officer shall be furnished, by the Labour Commissioner, with a certificate of his appointment or authority and when carrying out any duty under this Act shall produce the certificate when requested by person affected.

[Replaced A.10/1981]

21. Powers of authorized officers

- (1) If the statutory minimum wage or other conditions of employment have been determined in accordance with this Act and become effective in respect of any employees, every authorized officer may—
 - (a) require the production of wages sheets or other records of wages kept by an employer, and any other such records as are required by this Act to be kept by employers, and inspect and examine those sheets, or records, and copy any material thereof;
 - (b) at all reasonable times, enter any premises at which an employer to whom a wages regulation order applies carries on his business and any premises which the authorized officer has reasonable cause to believe to be used by or by arrangement with the employer to provide living accommodation for employees; and
 - (c) examine, either alone or in the presence of any other person as he thinks fit, any person whom he has reasonable cause to believe to be or to have been an employee to whom a wages regulation order applies or applied or the employer of any such person or an employee or agent of the employer employed in the business of the employer and require every such person to be so examined and to sign a declaration of the truth of the matters in respect of which he is so examined:

Provided that no person shall be required under this paragraph to give any evidence tending to incriminate himself.

- (2) An authorized officer may institute proceedings for any offence and may conduct any prosecution under this Act.
- (3) An authorized officer may, if it appears to him that a sum is due from an employer to an employee by reason of a failure to pay at least the statutory minimum wage, institute and conduct proceedings on behalf of, and in the name of, such employee for the recovery of that sum.

- (4) An authorized officer shall not, otherwise than in the execution of his functions under this Act, disclose any information, obtained in the exercise of the powers conferred by this section, without the consent of the employer concerned:

Provided that nothing in this subsection shall apply to a disclosure of any information made for the purpose of any criminal proceedings which may be taken by virtue of this Act or otherwise.

- (5) An authorized officer who contravenes subsection (4) shall be guilty of an offence and liable, on conviction, to a fine not exceeding two hundred emalangeni or imprisonment not exceeding six months or both.

22. Penalty for obstructing authorized officers, etc.

Any person who obstructs an authorized officer in the exercise of any power conferred by this Act, or refuses to comply with any requirement of such officer made in the exercise of such a power, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni.

23. Penalty for false entries or records, producing false records or giving false information

Any person shall be guilty of an offence and liable, on conviction, to a fine not exceeding two hundred emalangeni or imprisonment not exceeding six months, or both, who—

- (a) makes or causes to be made or knowingly allows to be made an entry, in a record required by this Act to be kept by employers, which entry he knows to be false in a material particular, or,
- (b) for any purpose connected with this Act, produces or furnishes, or causes or knowingly allows to be produced or furnished, and wages sheet, record, list or information which he knows to be false in a material particular.

Part V – General

24. Regulations

The Minister may make regulations prescribing anything which, by this Act, may be prescribed and, generally, for the better carrying into effect of the provisions of this Act.

25. Expenses

Any expenses incurred in carrying this Act into operation shall be defrayed out of the general revenues of Swaziland.

First Schedule (Section 4(2))

Constitution, officers and proceedings of Wages Advisory Board

1. The Wages Advisory Board shall consist of persons appointed by the Minister being—
 - (a) not more than three persons chosen by the Minister as being independent persons;
 - (b) such number, as the Minister thinks fit, of persons who, in his opinion, represent employers;
 - (c) such number, as the Minister thinks fit, of persons who, in his opinion, represent employees.
2. Of the persons appointed under paragraph 1(a), one shall be appointed by the Minister to act as chairman, and another may be appointed by the Minister to act as deputy-chairman in the absence of the chairman.
3. Before appointing persons under paragraph 1(b) or (c), the Minister shall consult any organizations appearing to him to represent employers or, as the case may be, employees concerned, and the persons appointed under those subparagraphs shall be equal in number.

4. (1) The Minister may appoint such number of persons, as he thinks fit, as assessors to be available to the board, being persons who, in his opinion, have an expert knowledge of any of the matters with which the inquiry of the board is concerned.
(2) An assessor shall not vote or otherwise be a party to any report or recommendation of the board.
5. The Minister may appoint to the board a secretary and such other officers as he considers necessary.
6. The proceedings of the board shall not be invalidated by reason of any vacancy therein or by defect in the appointment of a member.
7. Subject to anything which may be prescribed as to the meetings and procedure of the board, including the quorum and method of voting, and subject to the other provisions of this Act, the board may regulate its own procedure in such manner as it thinks fit.
8. The term for which a member of the board is to hold office shall be as determined by the Minister at the time of the appointment, and the conditions subject to which the member is to hold office shall be as prescribed.
9. There shall be paid to the members of the board appointed under paragraph 1(a) such remuneration, and to any member and assessor, such travelling and other allowances (including compensation for loss of working time) as may be approved by the Minister.
10. (1) No member of the board, or other person present at or concerned in any proceedings of the board, shall in any way disclose any information, or the contents of any document, which has been furnished to the board, except with the written consent of the person who furnished the information, or the document, and of the board.
(2) Any person who contravenes this paragraph shall be guilty of an offence and liable on conviction to a fine of fifty emalangeni or imprisonment of three months or both.

Second Schedule (Section 6(2))

Constitution, officers and proceedings of wages councils

1. A wages council shall consist of persons appointed by the Minister, being—
 - (a) not more than three persons chosen by the Minister as being independent persons;
 - (b) such number, as the Minister thinks fit, of persons who, in his opinion, represent employers in relation to whom the wages council is to operate;
 - (c) such number, as the Minister thinks fit, of persons who, in his opinion, represent employees in relation to whom the wages council is to operate.
2. Of the persons appointed under paragraph 1(a), one shall be appointed by the Minister to act as chairman, and another may be appointed by the Minister to act as deputy-chairman in the absence of the chairman.
3. Before appointing persons under paragraph 1(b) or (c), the Minister shall consult any organizations appearing to him to represent employers or, as the case may be, employees concerned, and the persons appointed under those subparagraphs shall be equal in number.
4. The Minister may appoint to a wages council a secretary and such other officers as he considers necessary.
5. The proceedings of a wages council shall not be invalidated by reason of any vacancy therein or by any defect in the appointment of a member.
6. A wages council may, if it thinks fit, delegate any of its functions under this Act (except the power to submit wages regulation proposals) to a committee consisting of such number of persons, being members of the wages council, as the wages council thinks fit:

Provided that the members of the committee representing employers and the members of the committee representing employees shall be equal in number.

7. Subject to anything which may be prescribed as to the meetings and procedure of a wages council and of a committee thereof, including the quorum and method of voting, and subject to the other provisions of this Act, a wages council, and any committee thereof, may regulate the procedure in such manner as it thinks fit.
8. The term for which a member of a wages council is to hold office shall be as determined by the Minister at the time of the appointment, and the conditions subject to which the member is to hold office shall be as prescribed.
9. There shall be paid to the members of a wages council appointed under paragraph 1(a) such remuneration, and to any member of any such council, such travelling and other allowances (including compensation for loss of working time), as may be approved by the Minister.
10.
 - (1) No member of a wages council, or other person present at or concerned in any proceedings of a wages council, shall in any way disclose any information, or the contents of any document, which has been furnished to that wages council, except with the written consent of the person who furnished the information, or the document, and of the wages council.
 - (2) Any person who contravenes this paragraph shall be guilty of an offence and liable on conviction to a fine of fifty emalangenis or imprisonment of three months or both.