

THE HOLIDAYS WITH PAY ACT

ARRANGEMENT OF SECTIONS

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THE HOLIDAYS WITH PAY ACT

Cap. 149.
Law
42 of 1954.
Acts
5 of 1963,
23 of 1969,
14 of 2009.

[27th March, 1947.]

1. This Act may be cited as the Holidays with Pay Act. Short title.
- 2.—(1) In this Act unless the context otherwise requires— Interpreta-
tion.
- “casual worker” means any worker who is employed— 14/2009
S. 2.
42/1954
S. 3(a).
- (a) from day to day; or
- (b) for the performance of a particular task which normally cannot be performed in less than one working day;
- “holiday remuneration” means the amount of remuneration payable to a worker during any holidays with pay to which he may be entitled under any order; 42/1954
S. 9.
- “Labour Officer” means a Labour Officer as defined in the Labour Officers (Powers) Act;
- “occupation” means— 23/1969
S. 2.
- (a) any trade, industry, undertaking or business; or
- (b) any other activity, whether of a commercial nature or not;
- “order” means an order made under section 3; 42/1954
S. 3 (b).
- “worker’s earnings” means the regular amounts paid by an employer to a worker in respect of the worker’s services, but does not include any amount paid in respect of overtime work or by way of bonus unless any payments by way of bonus form part of such regular amounts.

Power to provide for holidays with pay, sick leave, gratuities and sick benefit in any occupation.
42/1954
S. 4.

3. Subject to the provisions of this Act, the Minister may by order direct that workers, including casual workers, in any occupation shall be entitled to be allowed such holidays with pay, such sick leave with pay, such gratuities and such sick benefit as may be determined in such order.

Provisions relating to workers other than casual workers.
42/1954
S. 4.

4.—(1) Any order relating to workers other than casual workers may make provision for the conditions on which, and the time at or the periods within which, any holiday with pay to which the worker is entitled shall be allowed and for the conditions on which and the period for which the worker shall be entitled to sick leave with pay, and shall make provision for the duration of, and the minimum holiday remuneration payable during, any such holiday, and shall make provision for the duration of, and the minimum remuneration payable during, any period of sick leave.

(2) The provision in any order in respect of—

- (a) the duration of the holiday with pay and the duration of the sick leave with pay, shall be related to the duration of the period for which the worker has been employed or is engaged to be employed;
- (b) the minimum holiday remuneration and the minimum remuneration payable during sick leave, shall be related to the worker's earnings during such period prior to the date of the commencement of the holiday with pay or sick leave with pay, as the case may be, as may be specified in the order.

(3) An order may specify and define the occupation to which it applies, and may be applicable either

generally to all such occupations or specially to such occupations as may be within a specified area.

(4) The holidays and the sick leave to which a worker is entitled to be allowed under any order shall, unless such order otherwise provides, be in addition to any holidays or half-holidays to which the worker may be entitled under any other law.

5.—(1) An order may provide that casual workers or any category of casual workers specified in such order in the occupation to which such order relates, shall be entitled to be paid such gratuities as may be determined in such order.

Provisions
relating to
casual
workers.
42/1954
S. 4.

(2) Any provision under subsection (1) in any order may specify the conditions on which and the time at or the period in respect of which any gratuity to which any casual worker is entitled shall be paid and shall specify the minimum gratuity payable under such order to any casual worker in the occupation to which the order applies.

(3) Any provision under this section in any order in respect of the amount of the gratuity payable to any casual worker shall be related—

- (a) to the earnings paid to the worker in the capacity of a casual worker by the employer by whom the gratuity is payable during such period prior to the date of the payment of the gratuity as may be specified in the order; and
- (b) to the number of days on which such worker has been employed in the capacity of a casual worker by such employer during such period.

(4) Any gratuity payable to any worker by virtue of any provision under this section in any order shall, unless

such order otherwise provides, be in addition to any gratuity payable to the worker under any other law and shall be in addition to any sick benefit payable to the worker under the succeeding provisions of this section.

(5) Any order which contains provision under the foregoing provisions of this section for the payment to casual workers in any occupation of gratuities may also contain provision for the payment to such casual workers of sick benefit.

(6) Any provision under subsection (5) in any order may specify the conditions on which and the time at or the period in respect of which any sick benefit to which any casual worker is entitled shall be paid and shall specify the minimum sick benefit payable under such order to any casual worker in the occupation to which the order applies.

(7) Any provision under this section in any order in respect of the amount of sick benefit payable to any casual worker shall be related—

- (a) to the earnings paid to the worker in the capacity of a casual worker by the employer by whom the sick benefit is payable during such period prior to the date of payment of the sick benefit as may be specified in the order; and
- (b) to the number of days on which such worker has been employed in the capacity of a casual worker by such employer during such period.

(8) Any sick benefit payable to any worker by virtue of any provision under this section in any order shall, unless such order otherwise provides, be in addition to any sick benefit payable to the worker under any law and shall be in addition to any gratuity payable to the worker under this Act.

6.—(1) Subject to the provisions of this Act the Minister may, where he considers it advisable, appoint Advisory Boards to make recommendations in relation to the grant of holidays with pay, sick leave with pay, gratuities and sick benefit to workers in such occupations as he may specify in respect of each Advisory Board.

Appoint-
ment of
Advisory
Boards
5/1963
S 2

(2) Where any Advisory Board has been appointed under the Minimum Wage Act, such Board shall have power to include in its report recommendations relating to holidays with pay and to sick leave with pay for workers other than casual workers and to gratuities and sick benefit for casual workers in the occupation in relation to which the Board was appointed.

42/1954
S 5(b)

7. Any provision in an agreement between any employer and a worker whereby the worker purports to contract himself out of the provisions of any order made under this Act, or whereby the worker undertakes to receive any less benefit than he is entitled to under any such order, shall have no effect.

No power
to contract
out of Act

8. Where under any order a worker in any occupation is entitled to be allowed any holiday with pay or sick leave with pay or any gratuity or sick benefit then his employer shall keep such records as may be prescribed.

Records to
be kept
42/1954
Ss 6, 9

9. Any employer who—

Offences

(a) fails to allow, under and in accordance with the terms of any order, to a worker any holiday with pay or sick leave with pay or gratuity or sick benefit which such worker is entitled to be allowed under such order;
or

42/1954
Ss 7 & 9

(b) enters into any contract any of the provisions of which is of no effect under section 7; or

- (c) fails to keep any records in accordance with the provisions of section 8, or knowingly enters, or causes to be entered, in such records any false or incorrect fact; or
- (d) contravenes the provisions of any regulations made under this Act,

shall be guilty of an offence against this Act and liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding three months.

14/2009
S. 3.

Offence by
agent.

10.—(1) Where an offence for which an employer is by virtue of this Act, or of any regulations made thereunder, liable to a fine has in fact been committed by some agent of the employer or other person, that agent or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer, and either together with, before, or after, the conviction of the employer and shall be liable on conviction to the same punishment as that to which the employer is liable.

(2) Where the employer who is charged with an offence against this Act or against any regulations made thereunder proves to the satisfaction of the court that he has used due diligence to enforce the execution of this Act and such regulations, and that the offence was in fact committed by his agent or some other person without his knowledge, consent, or connivance, he shall, in the event of the conviction of that agent or other person for the offence, be exempt from any penalty in respect of the offence.

(3) Where the immediate employer of any worker who is entitled to be allowed holidays with pay or sick leave with pay or any gratuity or sick benefit under any order is himself in the employment of some other person

and that worker is employed on the premises of that other person, that other person shall, for the purpose of the provisions of this Act relating to the penalty for the failure to allow such holidays with pay, or sick leave with pay or any gratuity or sick benefit, be deemed to be an employer of the worker jointly with the immediate employer.

42/1954
Ss. 8 & 9.

10A. Notwithstanding any provision in any enactment limiting the jurisdiction of the Resident Magistrates' Courts in relation to claims arising from contract, a Resident Magistrate's Court shall have jurisdiction, in any action arising from a contract of employment to which this Act applies, where the amount claimed does not exceed five hundred thousand dollars.

Jurisdiction
of Resident
Magistrates'
Courts.
14/2009
S. 4.

10B. The Minister may, by order subject to affirmative resolution, vary the monetary jurisdictional levels of the Resident Magistrates' Courts in relation to claims arising from a contract of employment to which this Act applies.

Power of
Minister to
vary
jurisdictional
levels of
Resident
Magistrates'
Courts.
14/2009
S. 4.

11. The Minister may make regulations generally for giving effect to the purposes of this Act and for the better carrying out of any of the provisions of this Act.

Regulations.

12. The Minister may by order, subject to affirmative resolution, vary any fine prescribed by this Act.

Power of
Minister to
vary fines.
14/2009
S.5.