

CHAPTER 348

HOLIDAYS WITH PAY

1951-38

This Act came into operation on 11th January, 1952.

Amended by:

1961-6

1975-56

1980-6

1966-33

1977-54

Law Revision Orders

The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:

1985

Guide to symbols in historical notes:

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument

CHAPTER 348

HOLIDAYS WITH PAY 1951-38

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**BARBADOS****HOLIDAYS WITH PAY
1951-38**

An Act to make provision for holidays with pay for employees.

[Commencement: 11th January, 1952]

Short title

1. This Act may be cited as the *Holidays with Pay Act*.

Interpretation

2. For the purposes of this Act, the expression “average pay”, in respect of any period of employment means
 - (a) in relation to an employee referred to in subsections (1) and (2) of section 3, 1/26 of the employee’s total remuneration for that period of employment, or
 - (b) in relation to an employee referred to in subsection (3) of section 3, 3/52 of the employee’s total remuneration for that period of employment.

but where an employee, by virtue of any provision of this Act or his contract of service by custom or by collective agreement, is entitled to a longer period

of annual holiday with pay than 2 weeks or 3 weeks, as the case may be, average pay in respect of that employee means the fraction of the employee's total remuneration corresponding to the proportion that the period of holiday to which he is entitled calculated in weeks bears to 52 weeks: and in the case of an employee who is employed on a weekly, fortnightly or monthly basis, average pay in respect of the period of his holiday shall not be less than the actual remuneration he received for the said period immediately prior to the commencement of his holiday;

“employee” means any person who has entered into or works under a contract of service or apprenticeship with an employer whether the contract is expressed or implied, oral or in writing and whether the remuneration is calculated by time or work done: but the following persons shall be excepted

- (i) an outworker, that is to say a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the articles or materials;
- (ii) a member of the employer's family who works exclusively on the employer's behalf and who lives in the employer's house;

[1961-6]

“employer” means any person employing one or more employees and includes any agent, manager or representative of such person, who is responsible directly or indirectly, for the payment, in whole or in part, of remuneration to an employee;

[1961-6]

“total remuneration”, in respect of any period of employment. means all basic wages which the employee is paid or is entitled to be paid by his employer

in respect of the labour or services he has performed for his employer during that period of employment and includes

- (i) wages in respect of labour or services performed on Sundays and public holidays, where the labour or services is such as is normally performed by the employee on other days of the week;
- (ii) the cash value of any board or lodging provided by his employer, but does not include any overtime payments, commissions or bonuses. For the purposes of this definition, the cash value of any board or lodging shall be deemed to be the amount fixed as such by or under the terms of the employee's employment or, if it is not so fixed, shall be computed at the rate of two dollars per week for board and sixty cents per week for lodging or at such other rates as shall be determined from time to time by the Minister;

[1961-6]

“year of employment”, in relation to an employee, means any period of 12 months during which the employee has actually performed labour or rendered services for the same employer for an aggregate of at least 208 days, in the case of employees employed on a weekly, fortnightly, monthly or yearly basis, and at least 150 days, in the case of any other employees.

[1975-56]

[1977-54]

Annual holiday terms and conditions

3.(1) Every employee, being in employment at the date 1st January, 1952 shall be treated as if his year of employment commenced on that date.

(2) Where an employee commences employment with an employer on a date later than the 1st January 1952, his year of employment commences on the date of the anniversary of the commencement date of his employment with that employer.

(3) An employee who by virtue of subsection (1) or (2) completes a year of employment with an employer is entitled to

- (a) an annual holiday of not less than 3 weeks where he has been in the employment of that employer for less than 5 years; and
- (b) an annual holiday of not less than 4 weeks where he has been in the service of that employer for 5 years or more.

(4) The annual holiday shall be given and taken in one period or, if the employer and employee so agree, in two separate periods and not otherwise.

[1961-6]

(5) Where the employer and employee so agree, the annual holiday or either of such separate periods may be taken wholly or partly in advance before the employee has become entitled to such holiday.

(6) The annual holiday shall be given by the employer and shall be taken by the employee before the expiration of 6 months after the date upon which the right to such holiday, accrues: but the giving and taking of the whole or any separate period of such holiday may, with the consent in writing of the Chief Labour Officer, be further postponed for a period to be specified by him in any case where he is of opinion that circumstances render such postponement necessary or desirable.

(7) The employer shall determine the date on which the annual holiday shall commence and shall give to the employee not less than 14 days' notice of such date.

[1961-6]

(8) Where the annual holiday or any part thereof has been taken before the right to such annual holiday has accrued, the right to a further annual holiday shall not commence to accrue until after the expiration of the period of 12 months in respect of which the annual holiday or part thereof has been so taken.

(9) Where any public holiday occurs during any period of annual holiday taken by an employee under this section, the period of the holiday shall be increased by one day in respect of that public holiday.

(10) Any notice of the termination of employment given by an employer to an employee immediately prior to or during an annual holiday shall be void and of no effect.

[1961-6]

[1980-6]

[Effective 1st January 1980.]

Payment in respect of holiday

4.(1) Every employee who takes an annual holiday under section 3 shall be paid by his employer in respect of such annual holiday his average pay in respect of the period of his employment with such employer during the period of 12 months to which such annual holiday relates.

(2) Where the employee takes his annual holiday in one period, the average pay referred to in subsection (1) shall be paid to him not later than the day immediately preceding the commencement of such annual holiday.

[1961-6]

(3) Where the employee takes his annual holiday in 2 periods, a proportionate part of the average pay referred to in subsection (1) shall be paid to him in respect of each period not later than the day immediately preceding the commencement of each of the 2 periods.

[1961-6]

Where employment terminated, employer deemed to have granted holiday on payment of average pay

5.(1) Where the employment of an employee who has become entitled to an annual holiday is terminated and the employee has not taken any part of such holiday, the employer shall be deemed to have given such annual holiday to the employee from the date of the termination of the employment and shall forthwith pay to the employee, in addition to all other amounts due to him, his average pay in respect of the period of his employment with such employer during the period of 12 months to which such annual holiday relates.

(2) Where the employment of an employee who has become entitled to an annual holiday is terminated and the employee has taken any part of such holiday, the employer shall be deemed to have given the remaining part of such annual holiday to the employee from the date of the termination of the employment and shall forthwith pay to the employee, in addition to all other amounts due to him, a proportionate part of his average pay referred to in subsection (1).

[1966-33]

(3) Where the annual holiday or any part thereof has been taken in advance by an employee under subsection (4) of section 3, and—

- (a) the employment of the employee is terminated before he has completed the year of employment in respect of which such annual holiday or part thereof was taken; and
- (b) the sum paid by the employer to the employee in respect of such annual holiday or part thereof exceeds the sum which the employer is required to pay to that employee under subsection (1),

the employer shall not be liable to make any payment to the employee under that subsection and shall be entitled to deduct the amount of such excess from any remuneration payable to the employee upon the termination of his employment.

Provision for holiday pay where employment terminates after three months' continuous employment

6.(1) Where any employee has been employed by an employer for a period of not less than three months' continuous employment and such employment is terminated, the employer shall forthwith pay to the employee in addition to all other amounts due to him, his average pay for the period of his employment with such employer:

Provided that if the employee has at any time taken an annual holiday under this Act while in the employment of that employer, such employer shall be deemed to have complied with the provisions of this section if he pays forthwith to the employee, in addition to all other amounts due to him, his average

pay for the period of his employment between the date on which he became entitled to his last annual holiday and the date of the termination of his employment.

[1961-6]

(2) For the purposes of this section, the expression “three months’ continuous employment”, in relation to an employee other than an employee employed on a weekly, fortnightly, monthly or yearly basis, means employment for an aggregate of forty-eight days in three consecutive months of the year of employment.

Records to be kept

7.(1) Every employer shall keep records of the remuneration periods of employment and holidays of every employee employed by him in such form as may be prescribed by the Chief Labour Officer.

(2) The Chief Labour Officer, or any person duly authorised by him in writing, may at all reasonable times enter any premises or place where an employee is employed and inspect any records required to be kept under subsection (1).

[1961-6]

No power to contract out

8. Any agreement between an employer and an employee which purports to exclude the operation of any provisions of this Act shall be null and void.

Offences

9. Any employer who—
- (a) refuses to allow any employee to take a holiday to which he is entitled under this Act; or
 - (b) fails to pay to any employee the average pay to which he is entitled under this Act; or
 - (c) fails to keep records in accordance with section 7, or knowingly enters, or causes to be entered, in such records any false particular; or

- (d) wilfully delays or obstructs the Chief Labour Officer or any person duly authorised by him in the exercise of any power under subsection (2) of section 7,

shall be guilty of an offence against this Act and shall be liable on summary conviction to a fine of one hundred dollars or to imprisonment for three months or to both such fine and imprisonment.

Power to order payment on conviction

10. Where a prosecution for an offence under paragraph (a) or paragraph (b) of section 9 has been instituted, a magistrate may, in addition to the fine or sentence, if any, imposed by him, order an employer convicted of such an offence to pay to the employee any payments due to him under this Act.

[1961-6]

Prosecution to be instituted within one year of offence

11. No prosecution for any offence under this Act shall be instituted after the expiration of one year from the date of the commission of the offence.