

THE HOLIDAYS WITH PAY ACT

ORDER
(under section 3)

THE HOLIDAYS WITH PAY ORDER, 1973

*(Made by the Minister on the 22nd day of May, 1973)**[1st June, 1973.]*L.N. 189/73
Amd:
L.N. 163/74
54B/91

1. This Order may be cited as the Holidays with Pay Order, 1973. Citation.

2.—(1) In this Order unless the context otherwise requires— Interpretation.

“normal wages” means in relation to any worker, the remuneration regularly paid to him by his employer as wages or commission, and includes any amounts regularly so paid by way of bonus as part of such remuneration but does not include—

(a) any overtime wages; or

(b) any premium or special allowance paid—

(i) in consideration of the times at which, or the conditions subject to which, or the circumstances in which, he works in the course of the performance of his duties; or

(ii) in consideration of any inconvenience suffered or likely to be suffered by him in the course of the performance of his duties;

“normal working week” means the number of days in a week on which the worker in relation to whom that expression is used is normally required to work for the employer by whom a holiday with pay or sick leave with pay is granted under this Order;

“public general holiday” has the meaning assigned to that expression by the Holidays (Public General) Act;

“qualifying year” means, in relation to the employment of any worker to the person who for the time being is his employer, a period of twelve months commencing, in the case of the first qualifying year—

- (a) on the 1st day of January, 1973, if such employment was in existence on that date; or
- (b) on the first day of such employment if that day is later than the 1st day of January, 1973,

and in the case of the second and subsequent qualifying years, on the date immediately following the preceding qualifying year;

“worker” means any person who has entered into or works under a contract with an employer, whether the contract be by way of manual labour, clerical work or otherwise, be express or implied, oral or in writing and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour, but does not include—

- (a) any person employed by the Government; or
- (b) any person employed in the service of the Kingston and St. Andrew Corporation Council or of any Parish Council; or
- (c) a director of any company who is employed by that company.

(2) For the purposes of this Order a worker shall be deemed—

- (a) to have worked, on any day of holiday with pay granted to him under this Order, for the employer by whom such holiday was granted;
- (b) to have worked for his employer on any day of sick leave with pay granted under this Order if that employer would, but for the fact that he was granted sick leave, normally have required him so to work;
- (c) to have worked for his employer on any day on which that employer would, but for the fact that such day was Good Friday or Christmas Day or a public general holiday, normally have required him so to work;
- (d) to have worked for a full day whenever he is required to work for a part of any day.

Holiday
with pay.

3.—(1) Any worker, other than a casual worker, who works for any employer on not less than 110 days in any qualifying year shall be granted a holiday with pay by that employer in respect of that qualifying year.

(2) The duration of such holiday with pay shall be determined in accordance with the Schedule. Schedule.

4.—(1) The holiday with pay which any worker has earned in any qualifying year under paragraph 3— When and how holiday with pay is to be granted.

- (a) shall be granted by his employer during the next succeeding qualifying year; or
- (b) may, by agreement between him and his employer, be granted during that qualifying year; or
- (c) may be carried forward and added to any holiday with pay which he may earn in the first two succeeding qualifying years if there is provision for accumulation of holiday with pay for not more than three consecutive years in an agreement subsisting between him, or a trade union representing him, and his employer or an organization representing his employer.

(2) Subject to the provisions of sub-paragraph (3) the days of a holiday with pay which is granted under this Order shall be consecutive working days, being days on which the worker to whom such holiday with pay is granted would normally be called upon to work for the employer by whom such holiday with pay is granted.

(3) The holiday with pay which any worker has earned in any qualifying year under this Order may be granted in two periods of consecutive working days.

(4) Sunday, Good Friday, Christmas Day and a public general holiday shall not be reckoned in any holiday with pay granted under this Order and the days of such holiday shall be treated as consecutive notwithstanding that Sunday, Good Friday, Christmas Day or a public general holiday intervenes.

(5) A holiday with pay shall not be granted to any worker during a period of notice given by his employer to terminate his employment.

5.—(1) The minimum holiday remuneration payable to a worker employed at time rates shall— Minimum holiday remuneration.

- (a) in respect of each week of his holiday with pay, be the normal wages earned by him in respect of the last normal working week, prior to the commencement of such holiday, during which he worked for the employer by whom such holiday is granted; or

- (b) in respect of each day of his holiday with pay, be the normal wages earned by him in respect of the last normal working week referred to in sub-paragraph (a) divided by the number of working days constituting such normal working week.

(2) The minimum holiday remuneration payable to a worker employed at piece or task rates or on a commission basis shall, in respect of each day of his holiday with pay, be 1/65 of the total normal wages earned by him in respect of the last 13 weeks (which need not be consecutive but in each of which he worked for the employer by whom such holiday is granted) prior to the commencement of such holiday.

(3) Any worker to whom a holiday with pay is granted under this Order shall be paid by his employer, before the commencement of such holiday, the holiday remuneration payable to such worker in respect of the whole period of the holiday so granted.

Gratuity
to casual
worker.

6.—(1) Any worker who is employed as a casual worker shall, at or before the end of each qualifying year, be paid a gratuity by any employer by whom he is so employed if during that qualifying year—

- (a) he has worked for not less than 110 days for his employer; or
- (b) where the number of days of work cannot be ascertained, he has earned, as normal wages from his employer, a sum equivalent to 110 times the established daily rate for the category of work performed by him in an area where there was such established daily rate; or
- (c) where the number of days of work cannot be ascertained and there is no such established daily rate, his name has appeared on the paybills of his employer for not less than twenty weeks.

(2) The minimum gratuity payable to a casual worker under this paragraph shall be 3 per cent of the total wages earned by him during the year in respect of which, and in the service of the employer by whom, such gratuity is payable.

Holiday
remuner-
ation and
gratuity
on termin-
ation of
employ-
ment.

7.—(1) Upon termination of the employment of any worker his employer shall—

- (a) where that worker earned any holiday with pay which was not granted before such termination, pay him a sum equal to the holiday remuneration which would have been payable to him if all such holiday were then being granted; or

- (b) pay him any gratuity which he earned and did not receive before such termination.

(2) Where the employment of any worker is terminated not more than two weeks before the transfer of the undertaking in which he was employed at the time of such termination, any sum which is payable to him under sub-paragraph (1) shall, unless it is paid to him before such transfer, be paid by the person to whom the undertaking is transferred.

8.—(1) Any worker, other than a casual worker, who becomes ill during the first twelve months of his employment shall, if he has worked for his employer on not less than 110 days be entitled to be granted, during those twelve months, sick leave with pay of a duration of 1 day for every 22 days on which he so worked. Sick leave with pay.

(2) Any worker, other than a casual worker, who becomes ill after the first twelve months of his employment shall be entitled to be granted, in each period of twelve months after the first, sick leave with pay of a duration of 2 normal working weeks.

(3) Notwithstanding the provisions of sub-paragraphs (1) and (2) a worker shall not be entitled to be granted sick leave with pay under this Order for any period of illness—

(a) in respect of which he is entitled to be paid sick benefit or employment injury benefit under the National Insurance Act or compensation under the Workmen's Compensation Act; or

(b) in respect of which—

(i) he fails to satisfy any condition relating to the granting of sick leave with pay contained in an agreement of the kind described in sub-paragraph (6);

(ii) where there is no condition of the kind referred to in sub-paragraph (i), he fails to notify his employer of his illness during the first working day after its occurrence and, if the period exceeds three days, to furnish his employer with a certificate from a registered medical practitioner stating that he is ill and specifying the period during which he will, by reason of such illness, be unable to perform his duties.

(4) The minimum remuneration payable during any period of sick leave with pay granted to a worker under this paragraph shall be

the amount which would have been payable to him as holiday remuneration under paragraph 5 if such period of sick leave with pay had been a period of holiday with pay.

(5) For the purposes of this paragraph any fraction of a day which is obtained by dividing a number of days of work by 22 shall be reckoned as 1 day.

(6) The agreement referred to in sub-paragraph (3) is an agreement—

- (a) between the worker to whom that sub-paragraph refers, or a trade union representing him, and his employer or an organization representing his employer; and
- (b) containing provisions for sick leave with pay or sick benefit which are, in a general way, more favourable to the worker than those contained in this Order.

Sick benefit to casual workers.

9.—(1) Subject to the provisions of sub-paragraph (3) any worker who is employed as a casual worker shall, if during the first qualifying year he becomes ill—

- (a) after he has worked for not less than 110 days for his employer; or
- (b) where the number of days of work cannot be ascertained, after he has earned, as normal wages from his employer, a sum equivalent to 110 times the established daily rate for the category of work performed by him in an area where there was such established daily rate; or
- (c) where the number of days of work cannot be ascertained and there is no such established daily rate, after his name has appeared on the paybills of his employer for not less than twenty weeks,

be entitled to be paid by his employer sick benefit for the period of such illness or for the first 10 days thereof if the total period of his illness during that qualifying year exceeds 10 days.

(2) Subject to the provisions of sub-paragraph (3) any worker who is employed as a casual worker shall, if he becomes ill during the second or any subsequent qualifying year, be entitled to be paid by his employer sick benefit for the period of such illness or for the first 10 days thereof if the total period of his illness during that qualifying year exceeds 10 days.

(3) The provisions of sub-paragraph (3) of paragraph 8 shall apply in relation to the payment of sick benefit to a casual worker as they apply in relation to the grant of sick leave with pay to any other worker.

(4) The minimum sick benefit payable to a casual worker in respect of each day of any illness shall be 1/10 of 3 per cent of his earnings, in the employment of the employer by whom such sick benefit is payable, during the period—

- (a) from the commencement of the qualifying year in which such illness occurs to the date immediately preceding such illness, in the case of the first illness for which he is entitled to receive sick benefit during that qualifying year; or
- (b) from the resumption of employment after the last illness to the date immediately preceding such illness, in the case of the second or any subsequent illness for which he is entitled to receive sick benefit during that qualifying year.

10. Where any worker who was employed in any undertaking immediately before the transfer thereof from one employer to another continues to be employed in that undertaking immediately after such transfer, the period of employment of such worker in that undertaking shall, for the purposes of this Order, be treated as being unbroken by such transfer and the employer to whom that undertaking is transferred shall be liable for the granting of any holiday with pay or sick leave with pay, or the payment of any gratuity or sick benefit, earned by such worker under this Order and not granted or paid before such transfer.

Transfer
of under-
taking.

11.—(1) Every employer shall keep a record showing, as respects each worker employed to him—

Record to
be kept.

- (a) the name;
- (b) the first day of employment;
- (c) the normal wages;
- (d) the duration (with dates) of any holiday with pay and sick leave with pay granted;
- (e) the remuneration paid during the periods of such holiday with pay and sick leave with pay;
- (f) the amount of gratuity and sick benefit paid (if any).

(2) The particulars at sub-paragraph 1 (d) shall include any holiday with pay and sick leave with pay earned under the Holidays with Pay Order, 1970, now revoked, and not granted before the 1st day of June, 1973.

L.N. 162/70

Saving.

12. Nothing in this Order shall be construed as preventing any worker from being—

- (a) granted holidays with pay or sick leave with pay of longer duration than that of the holidays with pay or sick leave with pay, as the case may be, to which he is entitled under this Order; or
- (b) paid in respect of any holiday with pay or sick leave with pay which he is granted under this Order, remuneration which is more than the minimum remuneration payable under this Order in respect of such holiday or sick leave; or
- (c) paid any gratuity or sick benefit which is more than the minimum gratuity or sick benefit to which he is entitled under this Order.

SCHEDULE

(Paragraph 3 (2))

No. of days on which worker worked during qualifying year(s)	Duration of holiday with pay
More than 220 days, in each qualifying year, for worker with 10 years service or more	3 normal working weeks.
More than 220 days	2 normal working weeks.
220 days or less, but not less than 110 days	1/22 of the number of days of work, so however, that any fraction of a day of holiday shall be reckoned as 1 day.