

Tamil Nadu Industrial Establishments (National, festival and special holidays) Act, 1958

TAMILNADU

India

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Act 33 of 1958

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Tamil Nadu Industrial Establishments (National, festival and special holidays) Act, 1958(Tamil Nadu Act 33 of 1958)Statement of Objects and Reasons - Tamil Nadu Industrial Establishments (National and Festival Holidays) Amendment Act, 1961 (Tamil Nadu Act 43 of 1961). - Sub-section (1) of section 5 of the Madras Industrial Establishments (National and Festival Holidays) Act, 1958 (Madras Act XXXIII of 1958), states inter alia that every employee shall be paid wages for each of the holidays allowed to him under section 3. Under sub-section (3) of section 5 of the said Act an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holiday allowed under section 3, but no such employee shall be entitled to be paid any wages for any of the holidays allowed under sections 3 other than the 26th January and the 15th August, if he has not completed a period of thirty days' continuous service immediately preceding such holiday.2. It has been represented that even workers who have put in long years of service are deprived of the benefit of the wages for the festival holidays granted under section 3 of the said Act as the employers insist that they must have been in continuous service for thirty days immediately preceding such holiday in order to enable them to claim wages for that holiday.3. The Government have examined the question in detail and they consider that it is not necessary for the employees to put in thirty days' continuous service immediately preceding the holiday every time before they are entitled to be paid wages for the holiday. They have decided that the employees should be entitled to be paid wages for all the festival holidays allowed under the Act, once they have completed a total period of thirty days, within a continuous period of ninety days immediately preceding such holiday.4. It has been decided to amend the Madras Catering Establishments Act, 1958 (Madras Act XIII of 1958), providing for the notice to the employee in cases where the employee is required by the employer to work on any of the National and festival holidays allowed under that Act. Sub-section (2) of section 5 of Madras Act XXXIII of 1958 corresponds to sub-section (4) of section 11 of Madras Act XIII of 1958. It has accordingly been decided to amend Madras Act XXXIII of 1958 also on the lines of the amendment proposed to be made to Madras Act XIII of 1958.5. It is also considered that section 12

of Madras Act XXXIII of 1958 should be amended to give effect to the recommendation of the Committee on Subordinate Legislation regarding the placing of rules on the table of both Houses of the Legislature.⁶ The Bill seeks to give effect to the above decision. Published in Part IV-Section 3, pages 400-401 of the Fort St. George Gazette, dated the 19th September 1961. Statement of Objects and Reasons - Madras Industrial Establishments (National and Festival Holidays) Amendment Act, 1964 (Madras Act 17 of 1964). - Sub-clause (ii) of clause (b) of sub-section (2) of section 5 of the Madras Industrial Establishments (National and Festival Holidays) Act, 1958 (Madras Act XXXIII of 1958), provides that where an employee works on any holiday allowed under section 3, he shall at his option be entitled to wages for such day and to avail himself of a substituted holiday with wages on any other day. A similar provision is also contained in clause (ii) of subsection (8) of the said section 5. There is no provision in the Act stipulating the time-limit within which a substituted holiday should be allowed to an employee who is required to work on 3, holiday. It has been brought to the notice of the Government that the benefit of the substituted holiday is being indefinitely postponed by the employer till the end of the year and that the Inspector can initiate proceedings against the employer only, if in the meantime the latter had not allowed to the employee the substituted holiday. It is considered that the employee should have the benefit of the substituted, holiday within a reasonable time as under the Factories Act, 1948 (Central Act LXIII of 1948) and that section 5 of Madras Act XXXIII of 1958 should be amended suitably.² The Bill seeks to achieve the above object. Published in Part IV-Section 3 page 282 of the Fort St. George Gazette Extraordinary, dated the 20th July 1964. Statement of Objects and Reasons - Tamil Nadu Industrial Establishments (National and Festival Holidays) Amendment Act, 1970 (Tamil Nadu Act 7 of 1970). - According to section 3 of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 (Tamil Nadu Act XXXIII of 1958), every employee shall be allowed in each calendar year 3 National holidays, namely, on the 26th January, 15th August and 2nd October and five festival holidays, which may be specified by the Inspector in consultation with the employer and the employees in respect of any industrial establishment. The proviso to that section provides that if the majority of the employees so desire, the 1st May of any year shall be one of the five festival holidays mentioned above. According to section 5 of the said Act, every employee shall be paid wages for each of the holidays mentioned above, notwithstanding any contract to the contrary.² The Government have since decided that "May Day" be declared as a compulsory holiday by increasing the number of National holidays from 3 to 4, retaining the number of festival holidays as 5.³ The Bill seeks to give effect to the above decision. Published in Part IV-Section 3 page 28 of the Tamil Nadu Government Gazette Extraordinary dated the 21st March 1970. Statement of Objects and Reasons - Tamil Nadu Industrial Establishments (National and Festival Holidays) Amendment Act, 1971 (Tamil Nadu Act 17 of 1971). - According to section 3 of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 (Tamil Nadu Act XXXII of 1958), every employee shall be allowed in each calendar year four National holidays on the 26th January, the 1st May, the 15th August and the 2nd October and five festival holidays, which may be specified by the Inspector in consultation with the employer and the employees in respect of any industrial establishment. According to section 11 of the said Act, nothing contained in that Act shall affect any rights or privileges which any employee is entitled to, on the date on which the said Act came into force under any other law, contract, custom or usage if such rights or privileges, are more favourable to him than those to which he would be entitled to under the said Act. The proviso to the said section 11 provides that if in any industrial establishment, the number of holidays for festivals which

any employee is entitled to, on the date to which the said Act came into force, exceeds five the employer may, subject to the provisions of section 3, curtail a holiday of one whole day for one such festival as the Inspector may in consultation with the employer and the employees, specify in respect of the industrial establishment. This proviso was inserted when the 2nd October was declared as a National holiday, so as to allow the employers to curtail one festival holiday. But it is reported that employers are availing of the proviso to curtail another holiday in lieu of the 1st May. This is contrary to the intention of declaring the 1st May as a National holiday. The Government have, therefore, decided that the proviso to section 11 of the said Act may be omitted.² The Bill seeks to give effect to the above decision. Published in Part IV-Section 3 page 468 of the Tamil Nadu Government Gazette Extraordinary dated the 3rd July 1971. Statement of Objects and Reasons - Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 2000 (Tamil Nadu Act 49 of 2000). - Under the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 (Tamil Nadu Act 33 of 1958) and the Tamil Nadu Industrial Establishments (National and Festival Holidays) Rules, 1959, large number of cases are pending in the Courts quite for a long time. This involves enormous delay in the dispensation of justice. This also hampers further inspection and follow-up action to enforce the provisions of the law, since the enforcement machinery has to constantly watch Court proceedings. At present, there is no provision in the said Act providing for composition of offences. By permitting to compound the offences, expeditious justice can be rendered. This will also pave way for the effective enforcement of the provisions of the Act. Further, by introducing this system, there are changes for the employers to realise their commissions and omissions and correct themselves in future. Hence, it is felt that introduction of compounding of offences will be more effective and useful.² Therefore, the Government have decided to amend the said Tamil Nadu Act 33 of 1958 so as to provide for composition of offences punishable under section 8 of the said Act or any rule made under section 12 of the said Act.³ The Bill seeks to give effect to the above decision. Published in Part IV-Section 1, page 109 of the Tamil Nadu Government Gazette Extraordinary, dated the 7th November 2000. Statement of Objects and Reasons - Tamil Nadu Industrial Establishments (National and Festival Holidays) Amendment Act, 2007 (Tamil Nadu Act 11 of 2007). - The Government have proposed to amend the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 (Tamil Nadu Act XXX-III of 1958) to provide for the payment of wages to the employee for the holidays allowed to him under section 3 of the said Act within the wage period, to empower the Inspector to seize or take copies of registers, records or notices in connection with the offence committed by the employer, to enhance the penalty for contravention of the provisions of sections 3, 5 and 12 of the said Act and to protect the Government or any officer of the Government from legal proceedings for anything which is in good faith done under the said Act or the Rules or Orders made thereunder.² The Bill seeks to achieve the above objects. Published in Part IV-Section 1, page 144 of the Tamil Nadu Government Gazette Extraordinary, dated the 10th May 2007. Received the assent of the Governor on the 4th December 1958 and published in the Fort. St. George Gazette Extraordinary, dated the 10th December 1958. An Act to provide for the grant of [National, festival and special holidays] [Substituted 'National and festival holidays' by Tamil Nadu Act No. 26 of 2017, dated 4.8.2017.] to persons employed in industrial establishments in the [State of Tamil Nadu] [Substituted for 'State of Madras' by Tamil Nadu Adaptation of Laws Order, 1969 as amended by Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.]. Whereas it is expedient to provide for the grant of [National, festival and special holidays] [Substituted 'National and festival holidays' by Tamil Nadu

Act No. 26 of 2017, dated 4.8.2017.] to persons employed in industrial establishments in the [State of Tamil Nadu] [Substituted for 'State of Madras' by Tamil Nadu Adaptation of Laws Order, 1969 as amended by Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.]; Be it enacted in the Ninth Year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1) This Act may be called the [Tamil Nadu] [Substituted for the word 'Madras' by Tamil Nadu Adaptation of Laws Order, 1969 as amended by Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Industrial Establishment ([National, festival and special holidays] [Substituted 'National and festival holidays' by Tamil Nadu Act No. 26 of 2017, dated 4.8.2017.]) Act, 1958. (2) It extends to the whole of the [State of Tamil Nadu] [Substituted for 'State of Madras' by Tamil Nadu Adaptation of Laws Order, 1969 as amended by Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.]. (3) It shall be come into force on such date as the Government may, by notification, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a) "day" means a period of twenty-four hours beginning at midnight; (b) "employee" means-(i) any person (including an apprentice) employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied; (ii) any other person employed in any industrial establishment whom the Government may, by notification, declare to be an employee for the purposes of this Act; (c) "employer", when used in relation to an industrial establishment, means a person who has the ultimate control over the affairs of the industrial establishment, and where the affairs of any industrial establishment are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name), such other person; (d) "Government" means the State Government; (e) "industrial establishment" means,-(i) any establishment as defined in clause (6) of section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947); (ii) any factory as defined in clause (m) of section 2 of the Factories Act, 1948 (Central Act LXIII of 1948), or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; (iii) any plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act LXIX of 1951); (iv) "Inspector" means an Inspector appointed under sub-section (1) of section 6; (g) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of the work done by him in such employment, and includes-(i) such allowances (including dearness allowance) as the employee is for the time being entitled to; (ii) the value of any house accommodation; or of a supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles; but does not include-(a) any bonus; (b) any contribution paid or payable by the employer to any pension fund or provident fund, or for the benefit of the employee under any law for the time being in force; (c) any gratuity payable on the termination of his service; (d) any sum paid to the employee to defray special expenses entailed on him by the nature of his employment; (e) any travelling concession.

3. Grant of [National, festival and special holidays] [Substituted 'National and festival holidays' by Tamil Nadu Act No. 26 of 2017, dated 4.8.2017].

(1) Every employee shall be allowed in each calendar year a holiday of one whole day on the [26th January, the 1st May, the 15th August and the 2nd October] [Substituted by Tamil Nadu Industrial Establishments (National and Festival Holidays) Amendment Act, 1970 (Tamil Nadu Act 7 of 1970).] and five other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment. (2) [Notwithstanding anything contained in sub-section (1), the Government may, having due regard to any emergency or special circumstances prevailing in the State or any part thereof, by notification, declare any other day as a special holiday, to the employees of the industrial establishments, as it may deem fit.] [Added by Tamil Nadu Act No. 26 of 2017, dated 4.8.2017.][xxx] [Proviso was omitted by Tamil Nadu Industrial Establishments (National and Festival Holidays) Amendment Act, 1970 (Tamil Nadu Act 7 of 1970).]

4. Employer to send statement to Inspector.

- Every employer shall send to the Inspector having jurisdiction over the area in which the industrial establishment is situated, and display in the premises of the industrial establishment, a statement showing the holidays allowed in each calendar year under section 3, in such form, within such time and in such manner as may be prescribed.

5. Wages.

(1) Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him under section 3. (2) Where an employee works on any holiday allowed under section 3, he shall, at his option, be entitled to-(a) twice the wages; or (b) wages for such day and to avail himself of a substituted holiday with wages [on one of the three days immediately before or after the day on which he so works.] [Substituted by Madras Industrial Establishments (National and Festival Holidays) Amendment Act, 1964 (Tamil Nadu Act 17 of 1964).] (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holiday allowed under section 3-(i) only at a rate equivalent to the daily average of his wages to be calculated in the prescribed manner; (ii) where he works on any such holiday, only at twice the rate mentioned in clause (i), or in lieu thereof, at the rate mentioned in that clause and to avail himself of a substituted holiday with wages at the rate [on one of the three days immediately before or after the day on which he so works:] [Substituted by Tamil Nadu Industrial Establishments (National and Festival Holidays) Amendment Act, 1970 (Tamil Nadu Act 7 of 1970).] Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed under section 3, other than [the 26th January, the 1st May, the 15th August and the 2nd October] [Substituted by Madras Industrial Establishments (National and Festival Holidays) Amendment Act, 1964 (Tamil Nadu Act 17 of 1964).] if he has not completed a period of thirty days' continuous service immediately preceding such holiday. Explanation. - For the purpose of this proviso, a weekly or any other holiday or

authorized leave availed of by an employee shall be included in computing the period of thirty days mentioned therein.

6. Inspectors.

(1)The Government may, by notification, appoint such persons or such class of persons as they think fit to be Inspectors of this Act for such local limits as the Government may specify.(2)Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

7. Powers of Inspectors.

- Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed,-(a)enter, at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any place which is, or which he has reason to believe is, an industrial establishment;(b)make such examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise, the evidence of such person as he may deem necessary for carrying out the purposes of this Act;(c)exercise such other powers as may be necessary for carrying out the purposes of this Act:Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

8. Penalties.

- Any employer who contravenes any of the provisions of section 3 or section 5 shall be punishable with fine which, for the first offence, may extend to twenty-five rupees and for a second and subsequent offences may extend to two hundred and fifty rupees.

8A. [Compounding of offences. [Inserted by Tamil Nadu Industrial Establishments (National and festival Holidays) Act, 2000 (Tamil Nadu Act 49 of 2000).]

(1)Any offence punishable under section 8 or any rule made under section 12 may, either before or after the institution of the prosecution, be compounded by the Commissioner of Labour or such other officers as may be authorised in this behalf by the Commissioner of Labour, on payment, for credit to the Government of such sum as the Commissioner of Labour or such other officer may specify:Provided that such sum shall not, in any case, exceed the maximum amount of fine which may be imposed under this Act for the offence so compounded.(2)Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender, in respect of the offence so compounded and the offender, if in custody, shall be discharged forthwith.(3)No offence punishable under this Act shall be compounded except as provided by this section.]

9. Penalty for obstructing Inspector.

- Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him or under this Act, or fails to produce on demand in writing by an Inspector any register, record or notice in his custody which may be required to be kept in pursuance of this Act or of any rule made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

10. Exemptions.

(1) Nothing contained in this Act shall apply to—(a) any employee in a position of management; (b) any employee whose work involves travelling; (c) any industrial establishment under the control of the Central or any State Government, local authority, Reserve Bank of India, a railway administration operating any railway as defined in clause (20) of Article 366 of the Constitution or a cantonment authority; or (2) The Government may, by notification, exempt either permanently or for any specified period any establishment or class of establishments, or person or class of persons from all or any of the provisions of this Act, subject to such conditions as the Government may deem fit.

11. Rights and privileges under other laws not affected.

- Nothing contained in this Act shall affect any rights or privileges which any employee is entitled to, on the date on which this Act comes into force under any other law, contract, custom or usage, if such right or privileges are more favourable to him than those to which he would be entitled under this Act. [xxx] [Proviso to section 11 was omitted by Tamil Nadu Industrial Establishments (National and Festival Holidays) Amendment Act, 1971 (Tamil Nadu Act 17 of 1971) w.e.f. 25-4-1970.]

12. Power to make rules.

(1) The Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act. (2) In making a rule under this Act, the Government may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees. (3) All rules made under this Act shall, as soon as possible after they are made, be placed on the table of [the Legislative Assembly] [Substituted by Tamil Nadu Adaptation of Laws Order, 1987.] and shall be subject to such modifications by way of amendment or repeal as the [Legislative Assembly] [Substituted by Tamil Nadu Adaptation of Laws Order, 1987.] may make within fourteen days on which it actually sits either in the same session or in more than one session.