

PARLIAMENT OF CEYLON

3rd Session 1958-59



Employees' Holidays Act, No. 6 of 1959

Date of Assent: February 9, 1959

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AN ACT TO PROVIDE FOR THE GRANT OF SOME OF THE PUBLIC HOLIDAYS TO CERTAIN CLASSES OF EMPLOYEES AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[Date of Assent: February 9, 1959.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Employees' Holidays Act, No. 6 of 1959, and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette*.

Short title
and date of
operation.

2. (1) The Minister may, by Order published in the *Gazette*, declare that such of the public holidays as may be specified in the Order shall be holidays for all employees or for any specified class or description of employees.

Determination
of such of the
public holidays
as are to be
holidays for
certain
employees.

(2) An Order under sub-section (1) is hereafter in this Act referred to as a Holidays Order.

(3) A Holidays Order shall not apply to any employee who—

(a) is, within the meaning of the Shop and Office Employees (Regulation of Employment and Remuneration) Act, No. 19 of 1954, a person employed in or about the business of any shop or office, or

(b) is a worker in any trade for which a Wages Board has been established under the Wages Boards Ordinance, No. 27 of 1941.

3. Where a Holidays Order is in force—

(a) every employee to whom such Order applies shall, subject to such conditions as may be prescribed under paragraph (b) of this section and to the provisions of section 4, be entitled to take and shall take a holiday on each day declared to be a holiday by such Order, and

Liability of
employer to
allow holidays
under a
Holidays
Order and pay
remuneration
in respect of
such holidays.

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(b) the employer of every such employee shall, subject to such conditions as may be prescribed and to the provisions of section 4, allow such employee a holiday on each such declared day and be liable to pay, in respect of such holiday, remuneration computed in the prescribed manner.

Provision in
respect of
employees
who work on
holidays.

4. (1) Any employee to whom a Holidays Order applies may, with the prior permission of the Commissioner, be employed on any day declared to be a holiday by such Order. Where such employee is employed on such day, his employer shall allow him a holiday, with remuneration computed in the prescribed manner, within such period as may be specified by the Commissioner, or shall pay him in respect of such day remuneration determined at a rate which shall be double the rate at which he would ordinarily have been remunerated in respect of such day if such day had not been declared to be a holiday.

(2) The permission referred to in sub-section (1) shall, in regard to any holiday, be granted by the Commissioner in respect of any employee, or any class or description of employees, or employees employed by any class or description of employers, if the Commissioner is satisfied—

(a) that such employee or each such employee cannot be allowed such holiday without substantial prejudice to the trade, business, occupation, establishment or institution in which he is employed, or

(b) that the trade, industry, business, occupation, establishment or institution in which such employee or each such employee is employed, or the nature of his work therein, is such that the grant of such holiday is likely to cause considerable inconvenience to the public, or

(c) that the trade, industry, business, occupation, establishment or institution in which such employee or each such employee is employed is essential to the life of the community and he is an essential worker therein.

(3) The permission referred to in sub-section (1) may be granted by the Commissioner either specially by means of permits or generally by means of a notification published in the *Gazette*.

5. Every employer of employees to whom a Holidays Order applies shall—

- (a) keep conspicuously exhibited in the place where such employees are employed a notice containing such particulars as may be prescribed, and
- (b) maintain in that place such records as may be prescribed.

Employer to exhibit notices and maintain records.

6. (1) Where any employer is, by virtue of any other written law, required to maintain any register or record relating to remuneration and hours of work of his employees, he shall, if so required by any regulation made under this Act, include in that register or record such particulars as may be prescribed in respect of any prescribed class or description of such employees.

Inclusion of prescribed particulars in register or record kept under any other written law.

(2) Where by any regulation made under this Act any prescribed particulars are required to be included in any such register or record as is referred to in sub-section (1), that register or record shall, for the purposes of this Act, be deemed to be a register or record maintained under this Act.

7. Subject to such conditions and restrictions as may be prescribed, the Commissioner of Labour, any Deputy Commissioner of Labour, any Assistant Commissioner of Labour or any prescribed officer shall have power—

Power of entry and inspection.

- (a) to enter and inspect at all reasonable hours of the day or night any place in which employees are employed, for the purpose of examining any register or record of wages, any register or record maintained or deemed to be maintained under this Act, or any notice required by this Act to be exhibited, or of ascertaining whether the provisions of this Act are being complied with; or
- (b) where any such record or register is not available for examination when he is inspecting such place, to require the production of such register or record on a specified later date for examination at such place or at his office; or
- (c) to take copies of the whole or any part of any such register, record or notice; or

(d) to interrogate any person whom he finds in such place and whom he has reasonable cause to believe is an employer or an employee engaged or employed in the trade, industry, business or occupation carried on in such place or is an employer or employee in the establishment or institution in such place.

Power of the
Commissioner
to call for
returns.

8. (1) The Commissioner of Labour may direct an employer to furnish to him before a specified date—

- (a) a return relating to all his employees or any specified class or description of such employees and containing such particulars as the Commissioner may require for the purposes of this Act; or
- (b) such information or explanation as the Commissioner may require in respect of any particulars stated in any return furnished by such employer; or
- (c) a true copy of the whole or any part of any register or record maintained or deemed to be maintained under this Act by such employer.

(2) A direction under sub-section (1) may be given by notice published in the *Gazette* and in two or more newspapers circulating in Ceylon.

(3) Any employer furnishing any return or information under sub-section (1) may transmit at the same time a written request that such return or information should be treated as confidential and, where such a request is made, the return or information to which the request relates shall not be disclosed without the consent previously obtained of the employer who made the request.

(4) No information (whether contained in a return or not) furnished under sub-section (1) shall be so arranged, in any report made or publication issued by or with the authority of the Commissioner of Labour, as to facilitate the identification of the information as being information relating to any individual employer or person.

(5) Nothing in the preceding provisions of this section shall be deemed to require or permit any person to disclose any information or to produce any document in any case where the disclosure or production by him of the information or document is prohibited by or under the provisions of any other written law.

9. (1) Every person who—

Offences.

- (a) being an employer, fails to allow an employee any holiday required by this Act to be allowed to that employee or fails to pay remuneration as required by this Act to any employee in respect of such holiday; or
- (b) fails to furnish such means required by any officer specified in section 7 as is necessary for any entry or inspection or the exercise of his powers under such section; or
- (c) hinders or molests any such officer in the exercise of his powers under such section; or
- (d) refuses or fails without reasonable cause to produce any register or record or give any information which any such officer requires him to give under the powers conferred by such section; or
- (e) prevents or attempts to prevent any other person from answering any question put by any such officer to such other person during an interrogation of such other person under such section; or
- (f) makes or causes to be made any register, record or notice which is false in any material particular, or produces or causes or knowingly allows to be produced any such register or record to any officer acting under the powers conferred by such section, knowing such record or register to be false; or
- (g) furnishes any information to any officer acting under the powers conferred by such section, knowing such information to be false; or
- (h) fails to comply with any direction given by the Commissioner of Labour under section 8, or who, when called upon to furnish any return, information or copy under that section, knowingly furnishes or causes to be furnished any return, information or copy containing any statement which is false in any material particular; or
- (i) commits a breach of any provision of this Act or of any regulation made thereunder,

shall be guilty of an offence and shall be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(2) On the conviction of an employer under sub-section (1) of the offence of failing to allow an employee any holiday required by this Act to be allowed to that employee or of failing to pay remuneration as required by this Act to such employee in respect of such holiday, the court may, in addition to any other sentence, order the employer to pay such sum as may be found by the court to be due from him to such employee in respect of such holiday; any sum ordered to be paid under this sub-section may be recovered in the same manner as a fine.

(3) The power of the court to make any order under sub-section (2) for the payment of any sum to any employee shall not be in derogation of any right of that employee to recover such sum by any other proceedings.

**Recovery of
arrears of
remuneration
in certain
cases.**

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10. (1) Where an employer has been convicted for failing to pay remuneration as required by this Act to any employee in respect of any holiday, then, if a notice in the prescribed form of the intention so to do has been served on the employer at any time before the date of commencement of the trial, evidence may be given of any failure on the part of the employer to pay remuneration as required by this Act to that employee or to any other employee or employees in respect of any other holiday or holidays during the two years next preceding the date on which complaint under section 148 of the Criminal Procedure Code was made to court of the offence of which the employer has been so convicted, and, on proof of the failure, the court may order the employer to pay such sum as may be found by the court to be due from him to such employee or employees in respect of such holiday or holidays. Any sum ordered to be paid under this sub-section may be recovered in the same manner as a fine.

(2) The power of the court to make an order under sub-section (1) shall not be in derogation of any right of the employee or employees to recover remuneration due to him or them by any other proceedings.

**Burden of
proof.**

11. Where—

- (a) any employer is prosecuted for the failure to pay any remuneration to any employee in respect of any holiday, or
- (b) in any case in which any employer is convicted for failing to pay any remuneration to any employee in respect of any holiday, evidence is given, under section 10, of any

other failure of that employer to pay any remuneration to that employee or to any other employees in respect of any other holiday or holidays,

the burden of proving that such remuneration was paid shall lie on such employer.

12. Any contract or agreement, whether made before or after the date on which this Act comes into operation, whereby any right conferred on any employee by or under this Act is in any way affected or modified to his detriment or whereby any liability imposed on any employer by or under this Act is in any way removed or reduced, shall be null and void in so far as it purports to affect or modify any such right or to remove or reduce any such liability.

Contracting out
of rights
and privileges
under this
Act.

13. No prosecution for any offence under this Act shall be instituted in any court except—

- (a) with the written sanction of the Commissioner of Labour, and
- (b) within two years of the commission of the offence.

Prosecutions.

14. All offences under this Act shall be triable summarily by a Magistrate.

Offences
under the Act
to be triable
summarily.

15. (1) The Commissioner of Labour shall be the officer in charge of the general administration of this Act.

Administration
of the Act.

(2) Subject to any general or special directions of the Commissioner of Labour, any Deputy or Assistant Commissioner of Labour may exercise, perform or discharge any power, duty, or function of the Commissioner of Labour under this Act or under any regulation made thereunder.

16. Regulations may be made exempting from the application of this Act, subject to such conditions as may be prescribed, any class of employees or the employees in any class of trade, industry, business, occupation, establishment or institution.

Exemptions
from the
application
of this Act.

17. (1) The Minister may make regulations for the purpose of giving effect to the principles and provisions of this Act, and in particular for matters for which regulations are required by this Act to be made and for matters required by this Act to be prescribed.

Regulations.

(2) No regulation made by the Minister shall have effect until it is approved by the Senate and the House of Representatives and notification of such approval is published in the *Gazette*.

Interpretation.

18. In this Act, unless the context otherwise requires,—

“ employee ” means a person employed by any employer under a contract, whether oral, written, express or implied, to perform any work in any trade, industry, business or occupation or in any prescribed establishment or institution, whether or not such establishment or institution carries on any trade, industry, business or occupation, but does not include a domestic servant or an employer's personal chauffeur;

“ employer ” means any person who on his own behalf employs, or on whose behalf any other person employs, any employee, and includes any person who on behalf of any other person employs any employee;

“ prescribed ” means prescribed by regulation made under this Act; and

“ public holidays ” means days appointed to be public holidays by or under the Holidays Ordinance.