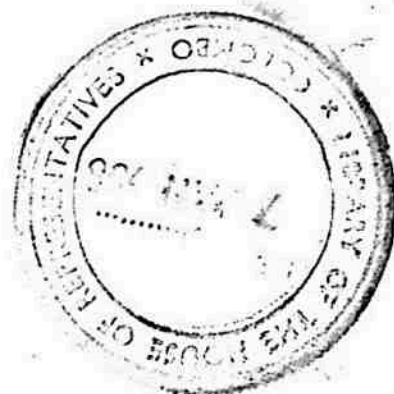


PARLIAMENT OF CEYLON

2nd Session 1957



Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, No. 60 of 1957

Date of Assent: December 21, 1957

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L. D.—O. 43/54.

AN ACT TO AMEND THE SHOP AND OFFICE EMPLOYEES
(REGULATION OF EMPLOYMENT AND REMUNERATION)
ACT, NO. 19 OF 1954.

[Date of Assent: December 21, 1957]

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 Shop and Office
Employees (Regulation of Employment and Remunera-
tion) (Amendment) Act, No. 60 of 1957.

Short title.

2. Section 3 of the Shop and Office Employees
(Regulation of Employment and Remuneration) Act,
No. 19 of 1954, hereinafter referred to as the
“principal Act”, is hereby amended, in sub-section
(3) of that section, by the insertion, immediately after
paragraph (c) of that sub-section, of the following
new paragraph:—

Amendment of
section 3 of
Act No. 19 of
1954.

“ (cc) prescribing the cases and the circumstances
in which any employee who has been on
leave or on holiday on any day in any week
shall be deemed, for the purpose of com-
puting overtime, to have worked for the
normal period for which he would have
worked if he had not been on such leave
or holiday;”.

3. Section 5 of the principal Act is hereby
amended in sub-section (3) of that section by the
substitution, for the expression “section 7 or”, of
the expression “section 7 or Part IA or”.

Amendment of
section 5 of
the principal
Act.

4. Section 6 of the principal Act is hereby amended
as follows:—

Amendment of
section 6 of
the principal
Act.

(1) in sub-section (5) of that section, by the
substitution, in paragraph (a) of that sub-
section, for the word “Act”, of the
words “Act or of any other written law”;

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- (2) by the insertion, immediately after sub-section (7) of that section, of the following new sub-section:—

“(7A) The Commissioner may, by notification published in the *Gazette* and in a Sinhala newspaper, a Tamil newspaper and an English newspaper circulating in Ceylon, fix, in respect of any class of shops or offices, a date to be the date of commencement of the year of employment for the purposes of this section.”; and

- (3) by the repeal of sub-section (8) of that section and the substitution therefor of the following new sub-section:—

“(8) In this section, the expression “year of employment”, with reference to any shop or office, shall,—

(a) where that shop or office belongs to any class of shops or offices in respect of which the Commissioner has fixed a date under sub-section (7A), mean the period of twelve months reckoned from that date, and

(b) in any other case, mean the period of twelve months reckoned from the first day of January of each year.”

Amendment of
section 7 of
the principal
Act.

5. Section 7 of the principal Act is hereby amended as follows:—

(a) in sub-section (1) of that section, by the substitution, for the word “eight”, of the word “nine”; and

(b) in sub-section (2) of that section—

(i) by the substitution, for the words “employed on any day”, of the words “employed for a normal period of employment on any day”; and

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(ii) by the substitution, for all the words from "on or before" to "determined", of the following:—

"on or before the thirty-first day of December next succeeding, or be paid remuneration for his employment on the day so declared to be a holiday".

6. Section 9 of the principal Act is hereby amended by the repeal of sub-section (3) of that section and the substitution therefor of the following new sub-section:—

Amendment of
section 9 of
the principal
Act.

"(3) Nothing in sub-section (1) or sub-section (2) or in the Schedule shall apply to any person employed in or about the business of a shop or office on any day on which the total period during which he is so employed does not exceed five continuous hours."

7. The following new Part is hereby inserted immediately after section 18, and shall have effect as Part IA, of the principal Act:—

Insertion of
new Part IA
in the
principal
Act.

' PART IA.

MATERNITY BENEFITS.

Application
of this Part.

18A. This Part shall apply to every female person employed in or about the business of a shop or office.

Leave in
consequence
of pregnancy
and confine-
ment.

18B. (1) A female employee to whom this Part applies shall, upon giving notice to her employer that she expects to be confined within fourteen days from the date specified in the notice, be entitled to leave for the period commencing on that date and ending on the day immediately preceding the date of her confinement, and her employer shall allow such leave.

(2) A female employee to whom this Part applies shall, if she is confined, be entitled to take and shall take leave for a period of twenty-eight days commencing on the date of her confinement, and her employer shall allow such leave.

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Remuneration
for period
of leave in
consequence
of pregnancy
or confine-
ment

18c. (1) Where a female employee to whom this Part applies takes leave in accordance with sub-section (1) of section 18B, she shall be paid full remuneration for the entire period of the leave if that period does not exceed fourteen days or for fourteen days of that period if that period exceeds fourteen days.

(2) A female employee to whom this Part applies shall be paid full remuneration for the entire period of the leave which she is required by sub-section (2) of section 18B to take.

Work which
is prohibited
during and
after
pregnancy.

18d. (1) Where a female employee to whom this Part applies gives notice to her employer that she expects to be confined within such period (not exceeding three months), from the date specified in the notice, as may be so specified, she shall not be employed, or be caused or permitted to be employed, during the period commencing on that date and ending on the date immediately preceding the date of her confinement, on any such work as may be injurious to her or her child.

(2) A female employee referred to in sub-section (1) who is confined shall not be employed, or be caused or permitted to be employed, during the period of three months commencing on the date of her confinement, on any work referred to in that sub-section.

Employment
not to be
terminated
because of
pregnancy or
confinement or
of illness in
consequence
thereof.

18e. (1) The employment of any female employee to whom this Part applies shall not be terminated by reason only of her pregnancy or confinement or of any illness consequent on her pregnancy or confinement.

(2) Where an employer is prosecuted for the offence of acting in contravention of the provisions of sub-section (1), the burden of proving that the employment of the female employee was terminated by reason of some fact other than her

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pregnancy or confinement or any illness consequent on her pregnancy or confinement shall be upon the employer.

No notice of dismissal to be given to female employee when she is on leave under this Part.

18F. When a female employee to whom this Part applies is absent on leave in accordance with the provisions of this Part, her employer shall not give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

Meaning of "confinement" and "confined".

18G. In this Part the expression "confinement" means labour resulting in the issue of a child whether alive or dead, or the issue of a viable foetus, and the expression "confined" shall be construed accordingly.

Leave under this Part to be in addition to any holiday or leave under any other Part.

18H. The leave to which a female employee is entitled under this Part shall be in addition to any holiday or leave to which she is entitled under any other Part.

8.

Section 19 of the principal Act is hereby amended, in sub-section (1) of that section, by the substitution, for paragraph (c) of that sub-section, of the following new paragraph:—

Amendment of section 19 of the principal Act.

"(c) If on any date the employer terminates the employment of any employee or any employee lawfully terminates his employment, the employer shall, before the expiry of the second working day after that date, pay the remuneration due to that employee."

9. Section 25 of the principal Act is hereby amended as follows:—

Amendment of section 25 of the principal Act.

(1) by the insertion, immediately after sub-section (8A) of that section, of the following new sub-sections:—

"(8B) Where, in the attendance of the members of a Remuneration Tribunal for the purpose of holding any meeting of that Tribunal, the number of members representing employers is greater or less than the number of members representing employees, the members representing

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employers or the members representing employees, whichever are in the majority, shall, before that meeting commences, choose from among themselves the member or members who shall refrain from voting at that meeting in order to ensure that the number of members representing employers who shall be entitled to vote at that meeting and the number of members representing employees who shall be so entitled shall be equal:

Provided, however, that where the representative members who are in the majority are unable to agree among themselves as to which of them shall so refrain from voting, the member or members who shall refrain from voting at that meeting shall be chosen by lot to be drawn in the presence and under the directions of the person presiding at that meeting.

(8c) A representative member of a Remuneration Tribunal who has been chosen in accordance with the provisions of sub-section (8B) to refrain from voting at any meeting of that Tribunal shall not be entitled to vote at that meeting but shall be entitled to be present and to participate in any discussion at that meeting:

Provided, however, that such representative member shall be entitled to vote if, as a result of an increase in the attendance of members at any time during such meeting, the number of members present who represent employers is equal to the number of members present who represent employees.”; and

(2) in sub-section (9) of that section, by the substitution, for the words “members of the Tribunal”, of the words “members of the Tribunal present and entitled to vote at the meeting of the Tribunal”.

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10. The following new section is hereby inserted immediately after section 42, and shall have effect as section 42A, of the principal Act:—

Insertion of
new section
42A in the
principal Act.

“ Closing
order to
prevail in
case of
conflict
with other
written law.

42A. Where the provisions of a closing order made under this Act conflict with the provisions of other written law, the provisions of that order shall prevail.”.

11. Section 46 of the principal Act is hereby amended, in sub-section (4) of that section, by the substitution, for the words “to exercise,” of the words “or any officer of a local authority to exercise,”.

Amendment of
section 46 of
the principal
Act.

12. Section 47 of the principal Act is hereby amended by the insertion, immediately after sub-section (1) of that section, of the following new sub-section:—

Amendment of
section 47 of
the principal
Act.

“(1A) Where a person has ceased to be the employer with reference to any shop or office, a direction under sub-section (1) may be given to him in respect of that shop or office in relation to any period during which he was such employer, if that period is within the two years immediately preceding the date on which the direction is given.”.

13. The following sections are hereby inserted immediately after section 50, and shall have effect as section 50A and section 50B, of the principal Act:—

Insertion of
new sections
50A and 50B
in the
principal Act.

“ Remuneration
to be a first
charge on
assets of the
business of a
shop or office.

50A. The liability of an employer to pay under this Act any sum as remuneration to any person employed in or about the business of any shop or office shall be a first charge on the assets of that business, notwithstanding anything in any other law.

Power of
Commissioner
or registered
trade union to
recover by
suit money
due to any
employee.

50B. Notwithstanding anything to the contrary in any other written law—

(a) a suit for the recovery of any sum due under this Act from any employer to any employee may be instituted in any Court of Requests in the name of the Commissioner or

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in the name of a trade union which is registered under the Trade Unions Ordinance and of which that employee is a member;

(b) any sums due under this Act from an employer to two or more employees may be sued for in a single suit instituted in the name of the Commissioner or in the name of a trade union which is registered under the Trade Unions Ordinance and of which those employees are members;

(c) a suit for the recovery of any sum due under this Act from any employer to any employee shall be maintainable if it is instituted within two years after that sum has become due;

(d) in any such suit instituted in the name of the Commissioner, he may be represented by any Deputy or Assistant Commissioner of Labour or any Inspector of Labour; and

(e) in any such suit instituted in the name of a trade union, such union may be represented by any of its officers."

Amendment of
section 52 of
the principal
Act.

14. Section 52 of the principal Act is hereby amended as follows:—

(a) in sub-section (1) of that section, by the substitution, for the expression "in accordance with the provisions of section 30," of the expression "in accordance with the provisions of this Act,"; and

(b) in sub-section (2) of that section, by the substitution, for the words "actually paid," of the words "actually paid, or if no portion of the remuneration due to the employee has been paid, to pay such sum as may be found by the court to represent such remuneration."

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15. Section 53 of the principal Act is hereby amended as follows:—

Amendment of
section 53 of
the principal
Act.

(a) in sub-section (1) of that section—

(i) by the substitution, for the expression “in accordance with the provisions of section 30,”, of the expression “in accordance with the provisions of this Act,”;

(ii) by the substitution, for the words “together with the summons or warrant,”, of the words “at any time before the date of commencement of the trial,”;

(iii) by the substitution, for the words “that section”, of the words “this Act”; and

(iv) by the substitution, for all the words from “order the employer” to “pay the balance.”, of the words “order the employer to pay such sum as may be found by the court to be due from him to such employee or employees.”;

(b) by the addition, immediately after sub-section (2) of that section, of the following new sub-section:—

“(3) Where an employee has not been paid the whole or a part of the remuneration required by this Act to be paid to him by his employer, the Commissioner may, if he thinks fit so to do, by written notice require the employer to pay such amount or the balance of such amount to the Commissioner within the time specified in the notice so that the Commissioner may remit it to such employee. Where the employer when served with such notice pays such amount or such balance directly to such employee instead of transmitting it to the Commissioner as required by such notice, he shall be deemed not to have paid such amount or such balance to such employee.”; and

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(c) by the substitution, for the marginal note to that section, of the following new marginal note:—

“ Recovery of remuneration due to employees under this Act. ”.

Amendment of
section 57 of
the principal
Act.

16. Section 57 of the principal Act is hereby amended, in sub-section (1) of that section, as follows:—

(1) by the substitution, for the words “ dismisses or otherwise punishes ”, of the words “ terminates the employment of, or otherwise punishes, ”;

(2) in paragraph (b) of that sub-section, by the substitution, for the words “ under this Act, ”, of the words “ under this Act, or ”; and

(3) by the insertion, immediately after paragraph (b) of that sub-section, of the following new paragraph:—

“ (c) is a member of the Panel from which Remuneration Tribunals are constituted, ”.

Amendment of
section 62 of
the principal
Act.

17. Section 62 of the principal Act is hereby amended by the repeal of sub-section (3) of that section.

Amendment of
section 68 of
the principal
Act.

18. Section 68 of the principal Act is hereby amended as follows:—

(1) in sub-section (1) of that section,—

(a) by the insertion, immediately after the definition of “ half-holiday ”, of the following definition:—

“ “ local authority ” means a Municipal Council constituted under the Municipal Councils Ordinance, No. 29 of 1947, an Urban Council constituted under the Urban Councils Ordinance, No. 61 of 1939, a Town Council

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constituted under the Town Councils Ordinance, No. 3 of 1946, or a Village Committee constituted under the Village Communities Ordinance; ; and

(b) in the definition of “ office ”,—

(i) by the substitution, in paragraph (a) of that definition, for the words “ industrial or commercial ”, of the words “ industrial, business or commercial ”; and

(ii) by the substitution, for paragraph (b) of that definition, of the following new paragraph:—

“(b) such other institutions or establishments as may be declared by regulation to be offices for the purposes of this Act, whether or not they are maintained for the purposes of any profession, trade or business or for the purposes of profit; ”; and

(2) in sub-section (2) of that section, by the substitution, in paragraph (b) of that sub-section, for the word “ caretaker. ”, of the words “ caretaker or watcher. ”.

19. Section 70 of the principal Act is hereby amended by the insertion, immediately after sub-section (2) of that section, of the following new sub-section:—

“(2A) The preceding provisions of this section shall have effect subject to the provisions of section 42A.”.

Amendment of
section 70 of
the principal
Act