

STATE OF SAINT CHRISTOPHER, NEVIS AND ANGUILLA

THE HOLIDAYS WITH PAY ACT, 1968

No. 19 of 1968.

AN ACT to repeal and replace the Holidays with Pay Ordinance, 1965 (No. 14 of 1965)-

Commencement: 1st September, 1965

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Christopher, Nevis and Anguilla, and by the authority of the same as follows:-

Short title.

1. This Act may be cited as the Holidays with Pay Act, 1968 –

Interpretation

2. In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them –

“agricultural worker” includes any person employed on an hourly, daily, weekly or piece-work basis, in field work, planting, weeding, cutting, loading or transporting came or other crops, whether manually or mechanically, and any person employed on such basis who is engaged in or connected with the manufacture of sugar;

“average earnings” in relation to worker means the average earnings of the worker during the period of employment in respect of which he becomes entitled to holiday with pay, and shall be computed by dividing the total remuneration for that period of employment by the number of days during which a worker is actually employed during that period;

“employer” means any person, company, firm, corporation, local authority or other body of persons who or which has entered into a contract of employment, whether expressed or implied, with any worker, and includes an agent, foreman, manager or representative of such employer and the master or masters of an apprentice, and, where the employer is the Crown, the officer of the Crown under whom a worker is working shall be deemed to be the employer of such worker for the purposes of this Act: Provided that no such officer of the Crown so deemed to

be an employer shall be personally liable for anything done or omitted by him in good faith as an officer of the Crown”

“Minister” means the minister of government for the time being responsible for the subject or department of Labour;

“paid holiday” means holiday with pay for the period thereof;

“total remuneration” in respect of any period of employment means all wages which the worker is paid or is entitled to be paid by his employer in respect of the labour or services which he has performed for his employer during that period of employment, and includes overtime pay and the cash value of any board or lodging provided by his employer. For the purposes of this definition, the cash value of any board or lodging shall be such amount as may from time to time be prescribed by Regulations made by the Minister under this Act;

“worker” means any person who has entered into or works under a contract of employment with an employer, whether it be for manual labour, clerical work or otherwise be expressed or implied, orally or in writing, and whether it be a contract of service or apprenticeship, or a contract personally to execute any work or labour, and, where the context so admits or requires, includes

“agricultural workers”: Provided however that the expression “worker” shall not include clerical or other monthly paid employees of the Crown, independent contractors, out-workers, members of an employer’s family who work exclusively for an employer and live in his house, or persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer’s trade or business, but shall include persons employed for the purposes of any game or recreation who are engaged or paid through a club;

“year of employment” in relation to a worker other than an “agricultural worker”, means any period of twelve months during which the worker has actually performed labour or rendered services for the same employer for an aggregate of at least two hundred and thirty-eight days in the case of workers employed on a weekly, fortnightly, monthly or yearly basis, and as aggregate of at least one hundred and fifty-four days in the case of workers employed on an hourly, daily or piece-work basis; and in the case of “agricultural worker”, the said expression means any period of twelve months during which the “agricultural worker” has performed labour or rendered services for the same employer for an aggregate of at least one hundred and twenty – six days . For the purposes of this definition,

“day” means any day or part of a day during which a worker performs labour or renders services for an employer.

Annual holiday terms and conditions.

3. (1) Every worker being in employment at the date of commencement of this Act or subsequently being employed shall, at the end of his first year of employment (computed as though his employment commenced on the date of commencement of this Act), at the end of each succeeding year of his employment, be entitled to an annual paid holiday of not less than fourteen days, exclusive of Sundays and public holidays.

3. (2) Every worker not being in employment at the date of commencement of this Act but thereafter being in employment shall, at the end of each year of his employment, be entitled to an annual paid holiday of not less than fourteen days, exclusive of Sundays and public holidays.

3. (3) Notwithstanding the foregoing provisions of this section any employer may at any time with the approval in writing of the Labour Commissioner fix a common date of commencement for the year of employment of all workers employed by him either on the date of commencement of this Act or at any time thereafter, and the Labour Commissioner shall make a record of such date in a register to be kept by him for that purpose.

3. (4) The employer shall make paid holiday arrangements to the satisfaction of the Labour Commissioner in respect of any period elapsing between the end of the last year of employment and the commencement of the first year of employment fixed under the foregoing provisions of this section.

3. (5) The annual paid holiday shall be given and taken in one period or, where the employer and worker so agree, in two periods and not otherwise, every such agreement shall be in writing signed by both employer and worker.

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

3. (7) The annual paid holiday shall be given by the employer and taken by the worker before the expiration of three months after the date upon which the right to such paid holiday has accrued; provided that the giving and taking of the whole or any separate period of such paid holiday may, with the consent in writing of the Labour Commissioner, be further postponed for a period to be specified by him in any case where he is of the opinion that circumstances render such postponement necessary or desirable; provided further that the worker shall not be prejudiced in his right to be paid his holiday pay, on such postponement, not later than the day immediately preceding the date on which such annual paid holiday would have commenced but for the postponement permitted under the provisions of this section.

3. (8) Subject to the provisions of this Act the employer shall decide upon the date on which the annual paid holiday shall commence in accordance with

subsection (7) of this section and shall give to the worker not less than seven days notice of such date, provided that such notice may be waived by mutual consent in writing.

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

3. (10) Sundays and public holidays shall not be included in fixing any period of annual paid holiday to be taken by a worker under this section but such period of annual paid holiday shall be increased by one day for each Sunday or public holiday occurring therein.

Payment in respect of holiday.

4. (1) Every worker who takes an annual paid holiday under the provisions of section 3 of this Act shall, in respect of such holiday, be paid holiday pay by his employer calculated by multiplying his average earnings in respect of the period of employment to which such holiday relates by the number of days holiday to which the worker is entitled.

4. (2) Every worker who takes his annual paid holiday in one period shall be paid the holidays pay referred to in subsection (1) of this section not later than the day immediately preceding the commencement of such holiday.

4. (3) Every worker who takes his annual paid holiday in two periods shall, not later than the day immediately preceding the commencement of each of the two periods of holiday, be paid that portion of his holiday pay which is in the same proportion to his holiday pay for fourteen days as the number of days holiday about to be taken by him is in proportion to fourteen days.

4. (4) For the avoidance of doubt, and for the assistance of employers and workers in calculating the number of days paid holiday per annum to which workers of each category shall become entitled, the following formula is hereby prescribed:-

(a) agricultural workers as defined in section 2 of this Act shall become entitled to fourteen days paid holiday after working for an aggregate of at least one hundred and twenty six days during a period of twelve months; such workers shall accordingly receive an annual paid holiday at the rate of one day's holiday for every nine days during which such workers have been actually employed, up to a maximum of fourteen days paid holiday;

(b) workers (other than agricultural workers) employed on a hourly, daily or piece work basis, shall become entitled to fourteen days paid

holiday after working for an aggregate of at least one hundred and fifty-four days during a period of twelve months; such workers shall accordingly receive an annual paid holiday at the rate of one day's holiday for every eleven days during which such workers have been actually employed, up to a maximum of fourteen days paid holiday;

(c) workers (other than agricultural workers) employed on a weekly, fortnightly, monthly or yearly basis, shall become entitled to fourteen days paid holiday after working for an aggregate of at least two hundred and thirty-eight days during a period of twelve months; such works shall accordingly receive an annual paid holiday at the rate of one day's holiday for every seventeen days during which such workers have been actually employed, up to a maximum of fourteen days paid holiday.

On termination of employment, employer deemed to have granted paid holiday.

5. (1) Where the employment of a worker who has become entitled to an annual paid holiday under the provisions of section 3 of this Act is terminated for any cause whatsoever and the worker has not taken any part or all of such holiday, the employer shall be deemed to have given such holiday to the worker from the date of termination of the employment, and shall forthwith pay to the worker, in, addition to all other amounts due him, his holiday pay or the balance thereof to which he is entitled under the provisions of section 4 of this Act in respect of the period of his employment with such employer up to the date upon which the worker last became entitled to an annual paid holiday, and, in addition, shall pay to the worker his holiday pay for the period of his employment between the date on which he became entitled to his last annual paid holiday and the date of the termination of his employment.

5. (2) Where the annual paid holiday of a worker or any part thereof has been taken in advance by the worker under the provisions of subsection (6) of section 3 of this Act, and –

(a) the employment of the worker s terminated for any cause whatsoever before he has completed his year of employment in respect of which such annual paid holiday or part thereof was taken; and

(b) the sum paid by the employer to the worker in respect of such annual paid holiday or part thereof exceeds the sum which the employer would have required to pay to that worker as holiday pay under the provisions of subsection (1) of this section,

the employer shall not be liable to make any further payment to the worker under that subsection in respect to holiday pay in connection with his last period of employment, but shall, notwithstanding the provisions of any other enactment to the contrary, be entitled to deduct the amount of such excess from any remuneration payable to the worker upon the termination of his employment.

Proportionate holiday pay where employment terminated before worker is entitled to annual paid holiday.

6. (1) Where the employment of any worker is terminated for any cause whatsoever before the worker has performed labour or rendered services for the number of days necessary, according to his category, to entitle him to a full annual paid holiday under the provisions of section 3 of this Act, such worker shall, if he has performed labour or rendered for an aggregate of not less than twenty-six days during the period of employment at the end of which his employment is terminated, be nevertheless entitled to proportionate holiday pay in respect of his labour or services during that period of employment.

6. (2) Such proportionate holiday pay shall forthwith be paid by the employer to the worker in addition to all other amounts due to the worker by the employer.

6. (3) Such proportionate holiday pay when due shall be calculated as follows:

(a) agricultural workers as defined in section 2 of this Act shall receive one day's holiday pay for every nine days during which such workers have been actually employed;

(b) workers (other than agricultural workers) employed on an hourly, daily or piece-work basis, shall receive one day's holiday for every eleven days during which such workers have been actually employed; and

(c) workers ((other than agricultural workers) employed on an weekly, fortnightly, monthly or annual basis, shall receive one day's holiday for every seventeen days during which such workers have been actually employed.

6. (4) For the purposes of this and the immediately preceding section, the employment of a worker by an employer shall be deemed to have been terminated if conditions are such that there is not sufficient employment available to that worker with that employer to enable the worker to complete a minimum period of actual employment with that employer which would qualify that worker, according to his category, to receive fourteen days paid holiday in respect of his period of employment.

Annual paid holiday may be accumulated.

7. (1) Notwithstanding the foregoing provisions of this Act, where the employer and worker so agree in writing, the annual paid holiday may be accumulated up to a maximum of twenty-eight days.

7. (2) Every worker agreeing to the taking of an accumulated paid holiday under the provisions of subsection (1) of this section shall nevertheless be paid his holiday pay in respect of each separate period of employment to which such holiday pay relates, as soon as possible after each paid holiday becomes due:

Provided however that the Labour Commissioner may, at the request of the worker, and if he considers it to be in the interest and for the convenience of the worker so to do, permit the worker's holiday pay to be accumulated along with his holiday, and to be paid to the worker immediately before the worker takes his accumulated holiday, Such permission, if granted, shall be in writing –

7. (3) The giving and taking of an accumulated paid holiday under this section shall only be with the consent in writing of the Labour Commissioner.

7. (4) Where an employer fails or neglects to allow a worker to take the annual paid holiday to which he is entitled under the provisions of this Act, such worker shall be allowed to accumulate paid holiday during the next succeeding year of employment, only and the employer shall pay to the worker his holiday pay for such holiday in accordance with subsection (2) of this section.

Records to be kept.

8. (1) Every employer shall keep records of the remuneration, periods of employment and paid holidays of every worker employed by him in such form as may be prescribed by the Labour Commissioner, and such records shall be preserved by the employer for at least three years: provided that on the application of the employer, the Labour Commissioner may authorize the use of such alternative method of keeping the records as he may approve.

8. (2) The Labour Commissioner, or any officer of the Labour Department duly authorized by him in writing, may at all reasonable times enter any premises or place where he has reasonable cause to believe that a worker is employed and inspect any records required to be kept under the provisions of subsection (1) of this section.

No power to contract out.

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

Offences and penalties.

10. Any employer who –

(a) refuses to allow any worker to take a paid holiday to which he is entitled under the provisions of this Act;

(b) fails to pay any worker the holiday pay or proportionate holiday pay to which he is entitled under the provisions Act;

(c) fails to keep records in accordance with the provisions of section 8 of this Act;

(d) knowingly enters, or causes to be entered in any records required to be kept as aforesaid, any false particular; or

(e) wilfully delays, obstructs or hinders the Labour Commissioner, or any person duly authorized by him, in the exercise of any power under subsection (2) of section 8 of this Act,

shall be guilty of an offence against this Act, and shall be liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding six months.

Burden of proof.

11. Where proceedings are brought against any employer or failure to keep proper records or to grant any annual paid holiday or to pay the annual holiday pay or the proportionate holiday pay to which any worker is entitled, the burden shall lie on such employer to prove that that he has kept such proper records or has granted such annual paid holiday or paid such annual holiday pay or such proportionate holiday pay, as the case may be.

Prosecution for offences.

12. The Labour Commissioner, or any person duly authorized by him in writing, may prosecute or conduct before a court of summary jurisdiction any complaint, information or other proceeding arising under this Act.

Procedure.

13. (1) On the conviction of an employer under the provisions of section 10 of this Act in respect of an offence consisting of a failure to make any payments under the provisions of this of this Act, the court may adjudge the employer convicted to pay, in addition to any fine, such sum as appears to the court to be due to the worker in respect of annual holiday pay or proportionate holiday pay as the case may be.

13. (2) The power to order the payment holiday pay or proportionate holiday pay under the provisions of subsection (1) of this section shall not be in derogation of the right of the worker to recover what is due as annual holiday pay or proportionate holiday pay, as the case may be, by any other proceedings, and such annual holiday pay or proportionate holiday pay shall be deemed to be a debt due to the worker by the employer.

Limitation of prosecution.

14. 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.

Power to make regulations

15. (1) The Minister may make regulations generally for the proper carrying out of the provisions of this Act.

15. (2) Regulations made under this Act may prescribe for any contravention thereof or failure to comply therewith a fine not exceeding one hundred dollars on summary conviction.

Repeat and Saving .[No. 14of 1965. No 7 of 1966]

16. The Holidays with Pay Ordinance, 1965 and the Holidays with Pay (Amendment) Ordinance, 1966, are hereby repealed without prejudice to any thing done or suffered under them or either of them, or any right, privilege, obligation or liability acquired, accrued or incurred under them or either of them.

Commencement.

17. This Act shall be deemed to have come into force on the 1st day of September, 1965

Provided that no criminal prosecution shall be instituted for any offence committed before the passing of this Act.