

ANNUAL HOLIDAYS ORDINANCE 1974

457

No. 68 of 1974

An Ordinance relating to Annual Holidays of Employees

[Assented to 24 October 1974]

BE it ordained by the Legislative Council for the Northern Territory of Australia as follows:

1. This Ordinance may be cited as the *Annual Holidays Ordinance 1974*. Short title

2.(1) In this Ordinance, unless the contrary intention Interpretation appears—

“agreement” includes an industrial agreement made in pursuance of the *Conciliation and Arbitration Act 1904-1973*;

“award” means an award made under the *Conciliation and Arbitration Act 1904-1973*;

“award holiday” means a day that is, by virtue of an award or agreement, a holiday for persons employed in an industry;

“prescribed officer” means a person who holds office as a prescribed officer for the purposes of this Ordinance;

“shift-worker” means—

(a) a person—

(i) who is a shift-worker within the meaning of an award;

(ii) who is a shift-worker within the meaning of an industrial agreement made in pursuance of the *Conciliation and Arbitration Act 1904-1973*; or

(iii) (not being a person to whom an industrial agreement referred to in sub-paragraph (ii) applies or to whom an award applies) who is

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rostered or required to commence work after 8 o'clock in the evening and before half-past 6 o'clock in the morning or, having commenced work before 8 o'clock in the evening, is required, for the purpose of completing his ordinary hours of work, to continue work until after that time; and

- (b) who, in the normal course of his employment, is rostered for work or is required to work on any of the days of each week, including a day that is a public holiday or award holiday.

(2) For the purposes of this Ordinance, a person shall be taken to be an employee of a person if—

- (a) he performs work the remuneration for which is paid by that person and consists, either in whole or in part, of salary or wages; or
 (b) he is bound apprentice to that person or to an employee of that person.

Application

3. This Ordinance applies in relation to a year of employment that ends on or after the date of commencement of this Ordinance.

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4.(1) Subject to this Ordinance, an employee is entitled to an annual holiday at the end of every year of his employment by a person.

(2) For the purpose of computing a year of employment—

- (a) a period during which an employee was absent from his employment, being a period in respect of which the employee received compensation under the *Workmen's Compensation Ordinance* or a period of leave of absence granted with pay, shall be taken into account as if the employee had not been absent from his employment; and
 (b) a period during which an employee was absent from his employment without the leave of his employer or on leave of absence granted without pay (not being a period referred to in paragraph (a)) shall not be taken into account.

(3) Without prejudice to any rights a person may have under an award or agreement, a person is not entitled under this Ordinance to an annual holiday at the end of a year of employment during which the average number of hours worked by that person in a week did not exceed 24.

5.(1) Subject to sub-sections (2) and (3), the duration of the holiday to which an employee is entitled under section 4(1) is 4 weeks. Period of holiday

(2) Where, during the whole of a year of employment, an employee has been a shift-worker, the duration of the holiday to which that employee is entitled under section 4(1) is 5 weeks.

(3) Where an employee has been a shift-worker for part only of a year of employment, being a part of a year that is not less than a period, or periods in the aggregate, of 2 months, the duration of the holiday to which the employee is entitled under section 4(1) is a period, not exceeding in all 5 weeks, equal to the sum of—

- (a) 4 weeks; and
- (b) one working day in respect of each such period of 2 months.

(4) In this section, “week”, in relation to an employee, means the employee’s ordinary working week.

6.(1) An employee who takes a holiday to which he is entitled under section 4(1) is entitled to receive from his employer payment of an amount equal to the ordinary remuneration the employee would have received in respect of the period of the holiday if he had not taken the holiday. Holiday pay

(2) Where, by virtue of an award or agreement—

- (a) an employee is entitled to an annual holiday of shorter duration than the annual holiday to which he is entitled under this Ordinance; and
- (b) under that award or agreement, there is payable to the employee an amount (not being salary or wages) in respect of the taking by him of that annual holiday,

there is payable to that employee, in addition to the amount payable under sub-section (1), an amount that bears to the amount referred to in paragraph (b) the same proportions as the duration of the annual holiday to which the employee is entitled under this Ordinance bears to the duration of the annual holiday to which the employee is entitled under the award or agreement.

(3) For the purpose of this section, “ordinary remuneration”, in relation to an employee, means the sum of—

- (a) the salary or wages payable to the employee;
- (b) any allowances payable to the employee in respect of skill, qualifications, board and lodging;
- (c) any amounts payable to the employee under a bonus or incentive scheme, being amounts that

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are usually paid to the employee with his salary or wages; and

- (d) where the employee is provided with board and lodging by his employer, an amount equal to the value of that board and lodging.

(4) In sub-section (3), the expression "salary or wages" does not include—

- (a) payments in respect of overtime;
 (b) payments at penalty rates of pay; or
 (c) allowances which, by virtue of an award or agreement, are not to be taken into account in determining a rate of remuneration in respect of overtime.

(5) In respect of a year during which an employee has been remunerated partly by salary or wages and partly by commission, sub-section (3) applies as if—

- (a) the employee were remunerated wholly by salary or wages throughout that year; and
 (b) the amount payable for salary or wages to the employee in respect of a week in that year were the amount calculated by dividing the total amount payable to the employee during that year in respect of salary or wages and commission by 52.

(6) Where, during the whole or a part of a year, an employee has been employed on terms providing for remuneration at a specified rate per hour, the employee shall, for the purposes of this section, be deemed to have worked during each week of that year the number of hours calculated by dividing the total number of hours worked by the employee during the year by 52.

Holidays to be taken within three years

7.(1) Subject to agreement between the employer and employee, an annual holiday to which an employee is entitled under section 4(1) shall be taken in one period.

(2) An annual holiday to which an employee is entitled under section 4(1) shall be taken before the expiration of the period of 3 years commencing immediately after the date on which the employee becomes entitled to the holiday.

(3) An employer shall, not less than 4 weeks before the date on which an employee becomes entitled to an annual holiday, give to that employee a notice in writing setting out particulars of—

- (a) the date on which the employee will become entitled to that annual holiday; and

(b) the date on which the period of 3 years specified in sub-section (2) will expire.

8. An amount to which an employee is entitled by virtue of section 6 is payable to the employee on the last day on which the employee is required to work before the commencement of the annual holiday to which the payment relates.

Payment of holiday pay

9. Where a public holiday or award holiday falls during the period of an annual holiday taken in accordance with this Ordinance by an employee entitled to observe the public holiday or award holiday, the period of that annual holiday for that employee shall be increased by one day in respect of each such public holiday or award holiday.

Public holidays not to count as leave

10. Where—

- (a) an employee gives to his employer notice in writing that he is desirous of taking an annual holiday at the expiration of a period specified in the notice, being a period of not less than 6 weeks after the date on which the notice is given; and
- (b) the employee is, or will be, not later than the expiration of the period specified in the notice, entitled to an annual holiday,

Notice of intention to take holiday

the employee is entitled to take an annual holiday at the expiration of the period specified in the notice.

11.(1) Where the employment of a person is terminated at a time at which that person is entitled under this Ordinance to an annual holiday, that person is entitled to receive from the employer an amount equal to the amount that would have been payable to him under this Ordinance if he had been taking that annual holiday from the date on which his employment is terminated.

No payment in lieu of holidays

(2) Where the employment of a person is terminated at a time at which the person has been employed by his employer—

- (a) for a period less than 12 months but not less than one month; or
- (b) for a period not less than one month during a year of employment,

the person is entitled to receive from the employer an amount equal to one-twelfth or, in the case of a shift-worker, 5 forty-sevenths, of the ordinary remuneration paid or payable to the person during the period of his employment or during the current year of employment, as the case may be.

(3) In this section, "ordinary remuneration" has the same meaning as in section 6.

(4) An amount payable to a person by virtue of sub-section (1) or (2) is payable to that person on the last day on which the person is required to work.

Close-down

12.(1) Subject to this section, an employer may give to an employee notice in writing that the employer requires that employee, in common with one or more other employees, to take his annual holiday from a date, and during the period, specified in the notice.

(2) A notice given for the purpose of sub-section (1) is not effective for the purpose of that sub-section if it specifies a period exceeding 4 weeks or, in the case of a notice given to an employee who would be entitled, on the date specified in the notice, to an annual holiday of 5 weeks, a period of 5 weeks.

(3) A notice given to an employee for the purpose of sub-section (1) and specifying a date more than 6 months after the date of commencement of this Ordinance is not effective for the purpose of this section unless the notice is given not less than 3 months before the date specified in the notice.

(4) Where, on the date specified in a notice given for the purpose of sub-section (1), the employee to whom the notice was given is entitled under this Ordinance to an annual holiday, that employee shall take that annual holiday from the date specified in the notice.

(5) Where, on the date specified in a notice given for the purpose of sub-section (1), the employee to whom the notice was given is not entitled under this Ordinance to an annual holiday or is entitled to part of an annual holiday—

(a) the employee shall absent himself from his employment during the period specified in the notice;

(b) the employee is entitled to receive from his employer an amount equal to the ordinary remuneration the employee would have received in respect of that part of the period referred to in paragraph (a) that is equal to the sum of—

(i) the part of an annual holiday (if any) to which the employee is entitled;

(ii) a period equal to one-twelfth or, in the case of a shift-worker, 5 forty-sevenths of the period of the employment of the employee during the current year of employment; and

(iii) any public or award holidays that are observed during the period referred to in paragraph (a); and

- (c) the employee is entitled to receive from his employer an amount that bears to the amount that would have been payable to the employee under section 6(2) if the employee had been entitled to an annual holiday the same proportion as the period equal to the sum of the periods referred to in paragraphs (b)(i) and (b)(ii) bears to the period of the annual holiday to which the employee would have been entitled if, immediately before the date specified in the notice, he had completed a year of employment.

(6) An amount to which an employee is entitled under sub-section (5) is payable to the employee on the last day on which the employee is required to work before the date specified in the notice given to the employee for the purpose of sub-section (1).

(7) Where—

- (a) an employer gives notice for the purpose of sub-section (1) to an employee;
- (b) a payment is made to the employee in accordance with sub-section (5); and
- (c) the employee resumes his employment after the expiration of the period specified in the notice,

this Ordinance shall thereafter apply to, and in relation to, that employee as if his employment by the employer referred to in paragraph (a) had commenced on the date specified in the notice given to the employee for the purpose of sub-section (1).

(8) In this section, “ordinary remuneration” has the same meaning as in section 6.

13.(1) An employer shall, in respect of each person employed by him, keep a record showing particulars of— Leave records

- (a) the date on which the person commenced to be employed by him;
- (b) each annual holiday taken by the person;
- (c) each other occasion on which the person has been absent from his employment; and
- (d) where the person has ceased to be employed by the employer—the date on which he ceased to be so employed.

(2) An employer shall retain a record referred to in sub-section (1) until the expiration of a period of 2 years after the date on which the person to whom the record relates ceased to be employed by him.

(3) Subject to sub-section (4), an employer shall, at the request of a prescribed officer, make available for inspection by that officer a record kept or retained for the purposes of this section.

(4) An employer is not required by sub-section (3) to make a record available for inspection otherwise than at a place of business of the employer during the hours during which the employer's business is normally conducted at that place.

Prescribed
officers

14. For the purposes of this Ordinance, the Administrator may, by instrument in writing, appoint a person to be a prescribed officer.

No contracting
out

15.(1) Subject to sub-section (2), this Ordinance has effect notwithstanding any award or agreement to the contrary.

(2) Nothing in this Ordinance affects the operation of an award or agreement to the extent that the award or agreement confers upon an employee rights that are more advantageous to the employee than the rights conferred upon the employee by this Ordinance

Due time for
payment of
money by
employer under
this Ordinance

16. Where, by virtue of this Ordinance, money is payable by an employer to a person, the employer shall pay the money to that person on the day on which the money is payable.

Penalty for
offences

17. A person who contravenes, or fails to comply with, a provision of this Ordinance is guilty of an offence punishable by a fine of 200 dollars.

Regulations

18. The Administrator in Council may make regulations, not inconsistent with this Ordinance, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance.