

HOLIDAYS (EMPLOYEES) ACT, 1973

(selection)

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1973 26

-AN ACT TO MAKE IMPROVED PROVISION FOR HOLIDAYS FOR EMPLOYEES AND TO AMEND THE PUBLIC HOLIDAYS ACTS, 1871 TO 1924.

[21st November, 1973]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1973 26 1

Interpretation.

1.—(1) In this Act—

"annual leave" has the meaning specified in section 3 (1);

"employ" means employ under a contract of service (whether the contract is expressed or implied or is oral or in writing) or a contract of apprenticeship, and cognate words shall be construed accordingly;

"leave year" means a year beginning on any 1st day of April;

"the Minister" means the Minister for Labour;

"normal weekly rate", in relation to remuneration, means—

(a) in a case of payment wholly by a time rate or by a fixed rate or salary, and in any other case of payment not varying in relation to the work done— the sum (including any regular bonus or allowance which does not vary in relation to work done, but excluding pay for overtime) payable in respect of normal weekly working hours in the working week next before annual leave or cesser of employment,

(b) in any other case— a sum equivalent to the average weekly earnings (excluding pay for overtime) for normal working hours calculated by reference to the earnings in respect of the time worked during the thirteen weeks ending on the day before annual leave or cesser of employment or, if no time was worked during those weeks, during the thirteen weeks ending on the day on which time was last worked before annual leave or cesser of employment;

"public holiday" is to be construed in accordance with the

Schedule;

"regulations" is to be construed in accordance with section 14 (1);

"wet time" means hours of intermittent unemployment in respect of which supplementary benefit is payable under section 28 of the Insurance (Intermittent Unemployment) Act, 1942.

(2) Where an employee continues in an undertaking after its transfer—

(a) he shall, for the purposes of this Act, be regarded as having been employed by the new employer from either (whichever is the later) the beginning of his employment in the undertaking or the beginning of—

(i) the previous leave year in case the transfer occurs during the first half of the second or any subsequent leave year, or

(ii) the leave year in which the transfer occurs in any other case,

(b) if he has been allowed annual leave before the transfer, it shall, for the purposes of this Act, be regarded as having been allowed by the new employer.

(3) A person in the service of a local authority shall be deemed for the purposes of this Act to be employed by the local authority.

1973 26 2

Application.

2.—(1) This Act shall, save as provided by regulations, not apply to—

(a) an outworker,

(b) an agricultural worker,

(c) a seafarer,

(d) a lighthouse or lightship employee,

(e) a fisherman,

(f) persons employed by or under the State other than a person so employed on industrial work within the meaning of the Conditions of Employment Act, 1936, or on subordinate duties in an unestablished capacity in the civil service,

(g) an employee who is a relative of the employer maintained by the employer and dwelling in the employer's house or on his farm.

(2) Regulations for the purposes of subsection (1) may contain ancillary and supplemental provisions (including provisions modifying this Act).

(3) Regulations may exclude specified employees from the application of section 3 or section 4.

(4) In this section—

"outworker" means an employee to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented or repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

"agricultural worker" means an agricultural worker to whom the Agricultural Workers (Holidays) Acts, 1950 to 1969, apply;

"seafarer" means a master or a member of the crew of any seagoing vessel (not being a barge or a hopper), whether publicly or privately owned, engaged in the transport of cargo or passengers;

"relative" means a wife, husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grand-son, grand-daughter; step-son, step-daughter, brother, sister, half-brother or half-sister.

1973 26 3

Entitlement to annual leave.

3.—(1) An employee shall be entitled to paid leave (in this Act referred to as annual leave) in respect of a leave year in which he has at least one qualifying month of service.

(2) Annual leave shall be equivalent to three working weeks where there are twelve qualifying months of service and, subject to the next subsection, to proportionately less where there are eleven or fewer such months.

(3) Annual leave shall also be equivalent to three working weeks where the employee works for the employer at least 1,400 hours (or 1,300 hours if under 18 years of age) during the leave year unless it is a leave year during which he changes his employment.

(4) A day which, apart from this subsection, would be a day of annual leave shall, if it is a day of illness in respect of which a certificate of a registered medical practitioner is furnished, be taken as not being a day of annual leave.

(5) (a) Where there are eight or more qualifying months of service, annual leave shall, subject to any registered employment agreement, employment regulation order or agreement with the employee's trade union, include an unbroken period equivalent to two working weeks.

(b) When ascertaining, for the purposes of this subsection, whether a period is equivalent to two working weeks, the fact that a day is a public holiday or a day of illness shall be disregarded.

(c) In this subsection "registered employment agreement" has the same meaning as in Part III of the Industrial Relations Act, 1946, and "employment

regulation order" has the same meaning as in Part IV of that Act.

(6) Where board, lodging or board and lodging is part of remuneration, the employee may, subject to being given double pay, elect not to take annual leave.

(7) (a) In this section "qualifying month of service" means any month (January to December) during which the employee has worked for the employer at least 120 hours (or 110 hours if under 18 years of age).

(b) For the purposes of subsection (3) and of the previous paragraph—

(i) a day of annual leave shall be taken as if the employee worked thereon the hours he would have worked if not on leave, and

(ii) wet time shall be taken to be hours worked up to a maximum, in the case of subsection (3), of 480 hours in the leave year or, in the case of the previous paragraph, 40 hours in the month.

1973 26 4

Entitlement in respect of public holidays.

4.—(1) (a) An employee shall, in respect of a public holiday, be entitled to—

(i) a paid day off on that day, or

(ii) a paid day off within a month, or

(iii) an extra day's annual leave, or

(iv) an extra day's pay,

as the employer may decide.

(b) Notwithstanding that a public holiday falls on a day on which an employee, if it were not a holiday, would normally work for less than a full day, "paid" and "pay" in this subsection refer, as respects that day, to a full day's pay.

(2) (a) In the case of day to day and part-time employments, the employee must, for entitlement under this section, have worked for the employer for at least 120 hours (or 110 hours if under 18 years of age) during the five weeks ending on the day before the public holiday.

(b) For the purposes of this subsection—

(i) time off allowed under this Act shall be taken to be time worked,

(ii) wet time shall be taken to be hours worked up to a maximum of 50 hours.

1973 26 5

Compensation on cesser of employment. 5.—(1) Where—

(a) an employee ceases to be employed, and

(b) annual leave is due to him in respect of the current leave year or, in case the cesser occurs during the first

half of that year, in respect of that year, the previous leave year or both,

the employer shall pay compensation to him in respect of the annual leave consisting of one quarter of the normal weekly rate of remuneration for each qualifying month of service.

(2) Where employment on a day to day basis ceases and the employee, annual leave not being due to him, has, during the 30 days ending on the day before cesser of employment, worked for the employer for not less than 120 hours (or 110 hours if under 18 years of age), the employer shall pay compensation to him consisting of an extra day and a quarter's pay.

(3) Where employment ceases during the five weeks ending on the day before a public holiday and the employee, has during the part of that period before the cesser, worked for the employer for at least 120 hours (or 110 hours if under 18 years of age), the employer shall pay compensation to him in respect of the public holiday consisting of an extra day's pay.

(4) Compensation under this section shall, if the cesser is by the employee's death, be paid to his representatives.

(5) Where compensation is payable under subsection (3), the employee shall, for the purposes of the provisions of the Social Welfare Act, 1952, relating to unemployment benefit, be regarded as not having been, on the public holiday, in the employment of the employer.

1973 26 6

Times and pay for annual leave.

6.—(1) Times at which annual leave is given shall be determined by the employer having regard to work requirements and subject—

- (a) to his taking into account the opportunities for rest and relaxation available to the employee,
- (b) to his having consulted (prior to one month ending at the time) the employee or his trade union, and
- (c) to leave being given within the leave year in respect of which it is given or the six months thereafter.

(2) An employer failing to comply with subsection (1) (b) shall be guilty of an offence.

(3) The pay for annual leave shall—

- (a) be given in advance
- (b) be at the normal weekly rate of remuneration, and
- (c) in a case in which board, lodging or board and lodging is part of the remuneration, include, subject to regulations, compensation for any board or lodging not received.

1973 26 7

Failure to give annual leave.

7.—If an employer, in the case of an employee whom he continues to employ upon the expiration of the period during which annual leave should have been given, has not given the leave—

- (a) the employer shall be guilty of an offence,
- (b) the employer shall (whether proceedings have or have not been taken for the offence) give to the employee, in addition to any pay due, a sum equivalent to the pay that would have been paid to him for the leave if it had been given so as to end on the expiration of the period during which it should have been given.

1973 26 8

Failure to pay sum due.

8.—(1) If an employer, in a case in which a sum is due by him under this Act to an employee, fails to pay the sum—

- (a) the employer shall be guilty of an offence,
- (b) the employee may (whether or not proceedings have been taken for the offence) recover the sum as a simple contract debt in any court of competent jurisdiction.

(2) The court by which an employer is convicted of an offence under this Act may order him, if the offence relates to an employee to whom he is liable for a sum under this Act, to pay the sum to the employee.

(3) Proceedings pursuant to subsection (1) (b) may be instituted and maintained on behalf of the employee by his trade union.

1973 26 9

Offences.

9.—(1) A person who is guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding twenty-five pounds or, in the case of a second or subsequent offence under the same section, fifty pounds.

(2) An offence under this Act may be prosecuted by the Minister.

(3) A prosecution under this Act may be instituted within twelve months after the offence.

(4) Where an offence under this Act was committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary or other officer of the body corporate, he also shall be deemed to have been guilty of the offence.

(5) In a prosecution under this Act, proof of the occurrence or anticipation of fire, flood, storm, violence, a breakdown of plant or machinery, or any other emergency, shall be a defence.

1973 26 10

Records.

10.—(1) An employer shall keep, and retain for at least three years, such records as are necessary to show whether he is complying with this Act.

(2) An employer contravening this section shall be guilty of an offence.

1973 26 11

Inspectors.

11.—(1) In this section "inspector" means a person appointed by the Minister to be an inspector for the purposes of this Act.

(2) An inspector may—

(a) enter at all reasonable times any premises or place where he has reasonable grounds for supposing that any employee is employed,

(b) make therein any examination or enquiry necessary for ascertaining whether this Act is complied with,

(c) require an employer or his representative to produce any records which the employer is required by this Act to keep and inspect and take copies of entries in the records,

(d) examine with regard to any matters under this Act any person whom he has reasonable cause to believe to be or to have been an employer or employee and require him to answer such questions (other than questions tending to incriminate him) as the inspector may put relative to those matters and to sign a declaration of the truth of the answers.

(3) The powers conferred on an inspector by subsection (2) (a) shall not be exercisable in respect of a private dwelling house unless the Minister (or an officer of the Minister appointed by the Minister for the purpose) certifies that he has reasonable grounds for believing that an offence under this section in relation to an employee employed in the house has been committed by the employer, and the inspector in applying for admission to the house produces the certificate.

(4) If any person—

(a) obstructs or impedes an inspector in the exercise of any power conferred by this section,

(b) refuses to produce any record which an inspector lawfully requires him to produce,

(c) produces, or causes to be produced or knowingly allows to be produced, to an inspector any record which is false in any material respect knowing it to be false,

(d) prevents, or attempts to prevent, any person from appearing before or being questioned by an inspector, or

(e) wilfully fails or refuses to comply with any lawful requirement of an inspector under subsection (2) (d),

such person shall be guilty of an offence.

(5) An inspector shall be furnished with a certificate of his appointment and, on applying for admission to any premises or place, shall, if so required, produce the certificate to the occupier and to any person being examined by him.

1973 26 12

Work during annual leave—reward irrecoverable.

12.—Reward for work done by an employee during annual leave shall be irrecoverable.

1973 26 13

Modifications.

13.—(1) Regulations may modify any provision of this Act so as to comply with any international obligations which the State has or has decided to assume.

(2) Where the Minister is of opinion that compliance with any provision of this Act would be impracticable in respect of any class of employee or undertaking, regulations may modify the provision in respect of that class.

1973 26 14

Regulations.

14.—(1) The Minister may make regulations for the purposes of this Act, and references in other provisions of this Act to regulations are to regulations made under this subsection.

(2) Before making regulations for the purposes of section 13 (2), the Minister shall consult with such employers' organisations and such employees' organisations as he considers appropriate to be consulted.

(3) (a) Where regulations for the purposes of section 2 are proposed, a draft shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each House.

(b) Other regulations shall be laid before each House of the Oireachtas as soon as may be after they are made, and if a resolution annulling them is passed by either House within the next subsequent twenty-one days on which that House has sat after they are laid before it, they shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

1973 26 15

Expenses.

15.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

1973 26 16

Termination of Holidays (Employees) Act, 1961, and transitional provision.

16.—(1) Years beginning on or after the commencement of this Act shall not be employment years under the Holidays (Employees) Act, 1961, and that Act shall not apply in relation to public holidays under this Act.

(2) Where subsection (4) of section 9, (3) of section 10 or (5) or (6) of section 13 of the Holidays (Employees) Act, 1961, would apply in the case of a worker in employment on the commencement of this Act if cesser of the employment had occurred immediately before such commencement, that subsection shall, unless the worker and employer agree otherwise, apply as if the cesser had occurred.

1973 26 17

Amendment of Public Holidays Acts, 1871 to 1924.

17.—The Public Holidays Acts, 1871 to 1924, shall have effect subject to the substitution of a reference to the days which, by virtue of paragraphs 1 and 2 of the Schedule to this Act, are public holidays—

(a) for the reference in section 1 of the Bank Holidays Act, 1871, to the days mentioned in the Schedule to that Act, and

(b) for the reference in section 1 of the Holidays Extension Act, 1875, to the days mentioned in the Schedule to that Act.

1973 26 18

Short title, collective citation and commencement.

18.—(1) This Act may be cited as the Holidays (Employees) Act, 1973.

(2) The Public Holidays Acts, 1871 to 1924 and section 17 of this Act may be cited together as the Public Holidays Acts, 1871 to 1973.

(3) This Act shall come into operation on the 1st day of April, 1974.

Section 1.

Days which are public holidays

1. Each of the following days shall, subject to the subsequent paragraphs, be a public holiday for the purposes of this Act:

(a) Christmas Day if falling on a weekday or, if not, the next Tuesday,

(b) St. Stephen's Day if falling on a weekday or, if not, the next day,

(c) St. Patrick's Day if falling on a weekday or, if not, the next day.

(d) Easter Monday, the first Monday in June and the first Monday in August,

(e) a day appointed by regulations to be a public holiday for those purposes.

2. Regulations mav. with respect to anv dav referred to in

1973 26

paragraph 1, substitute any other day.

3. An employer may substitute for any public holiday (other than Christmas Day or St. Patrick's Day) either—

(a) the Church holiday falling in the same year immediately before the public holiday or

(b) the Church holiday falling in the same year immediately after the public holiday or, if the public holiday is a day which is a public holiday by virtue of paragraph 1 (b), the 6th day of January next following,

by giving to the employee notice of the substitution not less than fourteen days before the Church holiday (where that holiday is before the public holiday) or before the public holiday (where that holiday is before the Church holiday).

4. Each of the following days shall be a Church holiday for the purposes of paragraph 3:

(a) the 6th day of January, except when falling on a Sunday,

(b) Ascension Thursday,

(c) the Feast of Corpus Christi,

(d) the 15th day of August, except when falling on a Sunday,

(e) the 1st day of November, except when falling on a Sunday,

(f) the 8th day of December, except when falling on a Sunday,

(g) a day appointed by regulations to be a Church holiday for those purposes.

5. Regulations may, with respect to any day referred to in paragraph 4, substitute any other day.

6. A notice under this Schedule may be given by handing a copy to the employee or by posting a copy in a conspicuous position in the place of employment.

Omissis

Source: Irish Statute Book Database