

ANNUAL HOLIDAYS ORDINANCE 1978

No. 26 of 1978

An Ordinance to amend the *Annual Holidays Ordinance*

[Assented to 20 June 1978]

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

1. This Ordinance may be cited as the *Annual Holidays Ordinance* 1978. Short title

2. The *Annual Holidays Ordinance* is in this Ordinance referred to as the Principal Ordinance. Principal Ordinance

3. Section 2 of the Principal Ordinance is repealed and the following section substituted:

“2. In this Ordinance, unless the contrary intention appears— Definitions

‘agreement’ includes a contract of service of apprenticeship entered into by an employee with an employer;

‘award’ means—

(a) an award made under the *Conciliation and Arbitration Act, 1904*;

(b) a certified agreement which is, for the purposes of that Act, an award; or

(c) an industrial agreement made in pursuance of that Act;

‘employee’ means a person who has entered into and works under a contract of service or apprenticeship with an employer—

(a) whether by way of manual labour, clerical work or otherwise; and

(b) whether that contract is expressed or implied or oral or in writing;

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

‘shift-worker’ means a person—

(a) who is an employee (not being an employee to whom an award applies) and who is rostered or required for the purpose of completing his ordinary hours of work to work for some period of time after 8 o’clock in the evening and before half past 6 o’clock in the morning; 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.”.

Annual
holiday

4. Section 4 of the Principal Ordinance is amended by omitting sub-section (3) and substituting the following sub-sections:

“(3) A person is not entitled under this Ordinance to an annual holiday at the end of a year of employment if during the year—

- (a) the average number of hours worked per week by that person did not exceed 24; or
- (b) that person worked as a casual employee within the meaning of sub-section (4) and received or was entitled to receive a payment or payments in substitution for an annual holiday for that year.

“(4) For the purposes of sub-section (3) ‘casual employee’ means a person who has entered into an arrangement with an employer under which—

- (a) the employment is irregular and not on fixed days or at fixed times;
- (b) employment is available and the person works only when required by the employer; and
- (c) there is no continuing contract of employment with the employer requiring the person to work on a subsequent occasion at a specified time.

Period of
holiday

5. Section 5(3) of the Principal Ordinance is amended—

- (a) by omitting “2 months” (first occurring) and substituting “8 weeks”; and
- (b) by omitting paragraph (b) and substituting the following paragraph:

“(b) one forty-seventh of the period the employee has been a shift-worker.”.

6. Section 6 of the Principal Ordinance is repealed and the following section substituted:

Holiday pay

“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 117 and one-half per cent of the ordinary remuneration the employee would have received in respect of the period of the holiday if he had not taken the holiday.

“(2) 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 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 but not including the value of any board or lodging that is a permanent benefit to the employee continuing irrespective of his being on holiday,

but does not include the value of any board or lodging or the amount of any payment in respect of board or lodging where the board or lodging is provided or the payment is made, not as part of the employee's salary or wages, but because the work done by the employee is in such a locality as to require his sleeping elsewhere than at his normal place of residence.

“(3) In sub-section (2), the expression ‘salary or wages’ does not include—

- (a) payments in respect of overtime; or
- (b) payments at penalty rates of pay.

“(4) For the purposes of this section—

- (a) the salary or wage of an employee for whom there is not a fixed ordinary time rate of pay shall be the average weekly salary or wage earned by him during the period in respect of which his right to an annual holiday accrues, ascertained by dividing the amount actually earned in that period by the number of weeks that he actually worked; and
- (b) the salary or wage of an employee employed during the whole or part of a year on terms providing for remuneration at a specified rate per hour shall be ascertained by assuming that the employee worked during each week of the year the average of the weekly hours worked by him during the period in respect of which the right to the annual holiday accrued.”.

7. Section 7 of the Principal Ordinance is amended by omitting sub-section (3) and substituting the following sub-sections:

Holidays to
be taken
within 3
years

“(3) An employee may, once a year, request in writing of his employer particulars of—

- (a) the date on which the employee will become entitled to his annual holiday;
- (b) the date on which the period of 3 years referred to in sub-section (2) expires; and
- (c) the date referred to in paragraph (b) in respect of annual holiday entitlements from previous years of employment.

“(4) An employer shall, within 4 weeks of receiving a request under sub-section (3), supply the employee in writing with the information requested.

“(5) An employee shall not lose an annual holiday entitlement if, for any reason, the expiration of the period referred to in sub-section (2) is the result of a failure of his employer to comply with sub-section (4).”.

Public
holidays not
to count as
leave

8. Section 9 of the Principal Ordinance is amended by omitting “or award holiday” (wherever occurring).

9. Section 10 of the Principal Ordinance is repealed and the following section substituted:

Time of
taking of
holiday

“10.(1) Where the commencing date of the employee’s annual holiday cannot be agreed upon between the employer and the employee and—

- (a) the 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,

the employee is, subject to sub-sections (2) and (3) and section 12, entitled to take an annual holiday at the expiration of the period specified in the notice.

“(2) An employer may, within 7 days of receiving a notice referred to in sub-section (1), give notice in writing to the employee specifying the commencement date of the annual holiday as a date not more than 6 weeks later than the date for which the employee applied.

“(3) Where an employer has given notice in accordance with sub-section (2), an employee shall take his annual holiday on and from the date specified in the notice.”.

No payment
in lieu of
holidays

10. Section 11(2) of the Principal Ordinance is amended—

- (a) by omitting from paragraph (a) “12 months” and substituting “52 weeks”;
- (b) by omitting from paragraph (a) “one month” and substituting “4 weeks”; and
- (c) by omitting from paragraph (b) “month during a” and substituting “week during a second or subsequent”.

Close-down

11.(1) Section 12(3) of the Principal Ordinance is amended—

- (a) by omitting “and specifying a date more than 6 months after the date of commencement of this Ordinance”; and
- (b) by omitting “3 months” and substituting “6 weeks”.

(2) Section 12(5)(b)(iii) of the Principal Ordinance is amended by omitting “or award”.

12. Section 15 of the Principal Ordinance is repealed and the following section substituted:

“15.(1) Subject to sub-section (2), this Ordinance does not apply to an employee employed under an award.

Application
of this
Ordinance

“(2) Where, under this Ordinance, an entitlement to an annual holiday has accrued, or is or was accruing to an employee before the making of an award which applies to that employee, this Ordinance applies to that entitlement as though that award had not been made.

“(3) This Ordinance has effect notwithstanding any agreement to the contrary.”.

13. Section 17 of the Principal Ordinance is repealed and the following section substituted:

“17.(1) A person shall not contravene, neglect or fail to comply with, this Ordinance.

Penalty and
compensation
for offences

Penalty: 400 dollars.

“(2) In addition to imposing a fine under sub-section (1), the court convicting a person may order that the defendant pay to a person in respect of whom the offence was committed, and who is or has been in the employment of that defendant, any sum that is shown to the satisfaction of the court to be due from the defendant to that person in connexion with his employment.”.
