



ANALYSIS

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1974, No. 149

An Act to amend the Annual Holidays Act 1944

[8 November 1974]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Annual Holidays Amendment Act 1974, and shall be read together with and deemed part of the Annual Holidays Act 1944 (hereinafter referred to as the principal Act).

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting in subsection (1), in their appropriate alphabetical order, the following definitions:

“‘Average weekly earnings’, in relation to any worker, means $1/52$ of his gross earnings:

“Provided that where during the period of employment the worker is unable to work because of sickness or injury, the divisor of 52 referred to in this definition shall be reduced by the number of complete weeks during which the worker was so unable to work, and in that case the term ‘gross earnings’, in relation to that worker, shall not include any sick pay received by him in respect of any such week of inability to work:

“‘Collective agreement’ means a collective agreement within the meaning of the Industrial Relations Act 1973:

“‘Gross earnings’, in relation to any worker, in respect of any specified period, means the total amount of remuneration payable to him by his employer by way of salary, wages, allowances, or commission (whether in cash or otherwise) in respect of his employment by the employer during that period; and includes any holiday pay payable to him by the employer in respect of any holiday taken by the worker during that period; and, where the worker is provided with board or lodging by the employer, also includes the cash value of that board or lodging; but does not include any sum (including a bonus, gratuity, or other lump sum special payment) that the employer is not bound by the terms of the employment to pay to the worker:

“Provided that the term ‘gross earnings’, in relation to any person who is a worker pursuant to section 2 of the Annual Holidays Amendment Act 1945, means an amount equal to 80 percent of the aggregate of the commission and any retainer and any other amount whatsoever paid or payable to him (whether in cash or otherwise) by his employer:”.

(2) The said section 2 is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) For the purposes of the definitions of the terms ‘gross earnings’ and ‘ordinary pay’ in subsection (1) of this section,—

“(a) The cash value of board or lodging provided for a worker—

(i) Shall be its cash value as fixed by or under any Act, award, or agreement relating to the worker’s employment; or

(ii) If it is not so fixed, shall be its cash value as assessed for the purposes of Part VI of the Land and Income Tax Act 1954; or

(iii) If it is not so assessed, shall be calculated at the rate of \$6 a week for board and \$2 a week for lodging, or at such other rate as the Governor-General may from time to time by Order in Council determine:

“(b) The value of board or lodging or the amount of any payment in respect of board or lodging shall not be included in any case where the board or lodging is provided, or the payment is made, not as part of the worker’s ordinary pay, but because the work done by the worker is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence, or because of any other special circumstances:

“(c) To the extent that the Commissioner of Inland Revenue determines under subsection (1) of section 90 of the Land and Income Tax Act 1954 that any allowance constitutes a reimbursement of expenditure exclusively incurred by a worker in the production of his assessable income, that allowance shall not form part of the worker’s remuneration.”

(3) The said section 2 is hereby further amended—

(a) By repealing the proviso to the definition of the term “ordinary pay” in subsection (1) (as added by section 2 of the Statutes Amendment Act 1944):

(b) By repealing paragraph (c) of subsection (2).

(4) The said section 2 is hereby further amended by adding to the definition of the term “award”, in subsection (1) (as amended by section 234 (1) of the Industrial Relations Act 1973), the words “, or an award within the meaning of the Aircrew Industrial Tribunal Act 1971”.

3. New sections substituted—The principal Act is hereby further amended by repealing section 3, and substituting the following sections:

“3. Entitlement to annual holidays with pay—(1) Except as otherwise provided in this Act, every worker shall at the end of each year of his employment by any one employer become entitled to an annual holiday of 3 weeks on holiday pay calculated in accordance with this Act.

“(2) Where before the commencement of this section a worker has become entitled to an annual holiday on holiday pay but has not taken the whole of that holiday,—

“(a) He shall be entitled to an annual holiday of 3 weeks, reduced by so much (if any) of his annual holiday as he has taken before the commencement of this section; and

“(b) He shall be entitled to holiday pay, calculated in accordance with section 3A of this Act, in respect of so much of that annual holiday as is taken after the commencement of this section.

“(3) Where a worker becomes entitled to an annual holiday under subsection (1) of this section, then, subject to subsection (7) of this section, the employer shall allow to the worker at least 2 uninterrupted weeks of that holiday commencing within 6 months after but excluding the date on which he becomes so entitled, and shall allow to him any balance of that holiday commencing within 12 months after but excluding that date.

“(4) Except where any award or collective agreement applicable to the worker or the worker’s contract of service otherwise provides, the time at which any holiday to which the worker has become entitled under subsection (1) of this section shall be fixed by his employer after consultation with the worker, and in fixing that time work requirements and the opportunities for rest and recreation available to the worker shall be taken into account. Subject to subsection (3) of this section, where the worker and his employer so agree that holiday may be taken by the worker in more than one period.

“(5) Where a worker and his employer so agree, any annual holiday to which the worker may become entitled under subsection (1) of this section may be taken by the worker wholly or partly in advance.

“(6) Where the employment of a worker is terminated before he has taken the whole of any annual holiday to which he has become entitled under subsection (1) of this section,

his employer shall be deemed to have allowed to the worker, from the date of the termination of the employment, the balance of the holiday not already taken, and shall pay forthwith to the worker, in addition to all other amounts due to him, holiday pay for that balance.

“(7) No period during which a worker is unable to work, because of sickness or injury, shall be counted as part of any annual holiday to which he is or may become entitled under subsection (1) of this section.

“(8) Where any special holiday for which a worker is entitled to payment under any Act, award, or agreement, or under his contract of service (or, as the case may be, for which he would have been so entitled to payment if his employment had not been terminated) occurs during any period of an annual holiday allowed or deemed to be allowed in accordance with this section, the period of the annual holiday shall be deemed to be increased by one day in respect of that special holiday.

“3A. Calculation of holiday pay where worker has become entitled to annual holiday—(1) Where a worker does not take any part of his annual holiday until he has become entitled to it under subsection (1) of section 3 of this Act, his holiday pay in respect of the whole of the holiday shall be calculated in accordance with this section.

“(2) In respect of each week of his annual holiday, the holiday pay of a worker shall be at the rate of his average weekly earnings during the year in respect of which he has become entitled to the holiday.

“(3) Where it is agreed under subsection (4) of section 3 of this Act that a worker shall take his annual holiday in more than one period, his holiday pay shall be divided so that the amount to be paid to him in respect of each period is in the same proportion to the whole of the holiday pay as the period is to 3 weeks.

“(4) Notwithstanding subsections (2) and (3) of this section, the holiday pay of a worker in respect of any period of his annual holiday shall in any event be at a rate not less than the rate of his ordinary pay at the date when he begins to take that period of his holiday.

“(5) For the purpose of assessing a worker's holiday pay pursuant to this section, the employer may fix a cut-off date other than the anniversary of the commencement of the worker's employment.

“3B. Calculation of holiday pay where annual holiday taken in advance—(1) Where, pursuant to an agreement made under subsection (5) of section 3 of this Act, a worker takes any annual holiday wholly or partly in advance, his holiday pay in respect of the whole of the holiday shall be calculated in accordance with this section.

“(2) In respect of each period of his annual holiday that a worker takes in advance, his holiday pay shall be an amount equal to the same proportion of 6 percent of his gross earnings during the specified time as the period taken in advance is to 3 weeks.

“(3) Where a worker has not completed at least 3 weeks of employment from the beginning of the year in respect of which he will be entitled to an annual holiday, subsection (2) of this section shall not apply, but instead his holiday pay in respect of each period of his holiday that he takes in advance shall be an amount equal to 6 percent of the total ordinary pay earned by him during the specified time, less all amounts already paid to him under this subsection in respect of all other parts of that holiday taken during the specified time.

“(4) In subsections (2) and (3) of this section, ‘the specified time’ means the time from the beginning of the year in respect of which the worker will become entitled to the annual holiday up to the date when he begins to take the period of the holiday referred to.

“(5) Where a worker who has taken his annual holiday wholly or partly in advance becomes entitled to that holiday under subsection (1) of section 3 of this Act, his employer shall assess the total amount that would have been payable to the worker under section 3A of this Act in respect of that holiday if the worker had not taken any part of that holiday in advance, and shall pay to the worker the amount so assessed reduced by the amount of holiday pay paid in respect of so much of his annual holiday as has been taken in advance. That amount shall be paid, in the case of a worker who has taken the whole of his annual holiday in advance, at the end of his year of entitlement, and, in the case of any other worker, at the time specified in section 3D of this Act.

“(6) Notwithstanding any other provision in this section, the holiday pay of a worker (other than a worker to whom subsection (3) of this section applies) in respect of any period of his annual holiday shall in any event be at a rate not less than the rate of his ordinary pay at the date when he begins to take that period of his holiday.

“3c. Calculation of holiday pay where work ceases periodically—(1) Where it is customary for any employer to allow the whole or any part of any annual holiday to his workers or to any class of his workers during a period in each year when his premises are closed or the work of those workers is for any reason discontinued, and at the date of commencement of that period any such worker has not under subsection (1) of section 3 of this Act become entitled to an annual holiday, the holiday pay of that worker in respect of that period shall, subject to any agreement made under subsection (5) of section 3 of this Act, be calculated in accordance with this section.

“(2) In respect of the period of closure or discontinuance of work referred to in subsection (1) of this section, the holiday pay of the worker shall be an amount equal to 6 per cent of his gross earnings during the time from the date of commencement of his employment up to the date when the premises are closed or the work is discontinued.

“(3) Notwithstanding subsection (2) of this section, the employer may deduct from the amount of holiday pay assessed under that subsection all amounts already paid to the worker in accordance with section 3B of this Act in respect of any annual holiday to which he has not become entitled under subsection (1) of section 3 of this Act at the date when the premises are closed or the work is discontinued.

“(4) Subject to subsection (6) of this section, but notwithstanding any other provision in this Act, a worker who receives holiday pay calculated in accordance with this section shall not otherwise be entitled to any annual holiday in respect of the period of his employment up to the date of the closure or discontinuance of work, or to any remuneration in respect of the period of the closure or discontinuance of work.

“(5) For the purposes of this Act, where a worker receives holiday pay calculated in accordance with this section, the next year of his employment shall be deemed to commence on the date when the premises are closed or the work is discontinued.

“(6) Nothing in this section shall be deemed to deprive any worker of any right or benefit to which he is entitled under any other Act or under any award or agreement or under his contract of service.

“(7) Where during the employment of any worker to whom this section applies he is unable to work because of sickness or injury, then, for the purposes of this section the term ‘gross

earnings', in relation to that worker, includes in respect of each complete week of absence through that sickness or injury an amount equal to the amount of ordinary pay that he would have received had he not been absent, reduced by the amount of sick pay received by him in respect of that week or any part of that week.

“(8) For the purpose of assessing a worker's holiday pay pursuant to this section, the employer may fix a cut-off date other than the anniversary of the commencement of the worker's employment.

“3D. Notice of annual holiday, and payment of holiday pay—(1) In the absence of any agreement by a worker to the contrary, his employer shall give to him not less than 7 days' notice of the date on which the worker is to begin any annual holiday or any part of it, and shall before that date pay to the worker the amount of the holiday pay to which he is entitled under this Act for the period of the annual holiday or for the part of it, as the case may be.

“(2) Holiday pay under this Act shall be payable to a worker in addition to all other amounts due to him by his employer.

“(3) In this section, 'annual holiday' includes any period referred to in subsection (1) of section 3c of this Act when the premises are closed or the work is discontinued.”

4. Proportionate holiday pay in respect of employment for less than one year—Section 4 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) Except as otherwise provided in this Act, where the employment of a worker by an employer is terminated at the end of a period of employment to which this section applies, the employer shall forthwith pay to the worker, in addition to all other amounts due to him, an amount equal to 6 percent of his gross earnings during that period.

“(3) Where during the employment of any worker to whom subsection (2) of this section applies he is unable to work because of sickness or injury, then, for the purposes of that subsection the term 'gross earnings', in relation to that worker, includes in respect of each complete week of absence through that sickness or injury an amount equal to the amount of ordinary pay that he would have received had he not been absent, reduced by the amount of any sick pay received by him in respect of that week or any part of that week.

“(4) Where the employment of a worker is terminated at the end of a period of employment to which this section applies, being a period that is less than 3 weeks, subsection (2) of this section shall not apply but instead, except as otherwise provided in this Act, the employer shall forthwith pay to the worker, in addition to all other amounts due to him, an amount equal to 6 percent of the total ordinary pay for the time worked by him during that period.

“(5) The employer may deduct from any amount payable to a worker under subsection (2) or subsection (4) of this section, all amounts already paid to the worker in accordance with section 3B of this Act in respect of any annual holiday to which the worker has not become entitled under subsection (1) of section 3 of this Act at the date of termination of his employment.”

5. Workers entitled to holidays otherwise than under the principal Act—Section 7 of the principal Act is hereby amended—

- (a) By omitting from paragraph (a) of subsection (1) the words “section three”, and substituting the expression “any of sections 3 to 3D”:
- (b) By omitting from paragraph (b) of subsection (1) (as amended by section 4 (5) (c) of the Annual Holidays Amendment Act 1950) the words “section three or section four of this Act, as the case may be,” in both places where they occur, and substituting in each case the expression “such section”:
- (c) By omitting from subsection (2) (as substituted by section 2 (1) of the Annual Holidays Amendment Act 1962) the words “(on the basis of two weeks’ holiday on ordinary pay for each year of employment)”:
- (d) By omitting from subsection (2) (as so substituted) the expression “sections 3 and 4”, and substituting the expression “sections 3 to 3D and section 4”.

6. Repeal of provisions as to commencement of employment—Section 8 of the principal Act is hereby repealed.

7. Offences—Section 13 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is hereby further amended—

- (a) By omitting from subsection (2) the words “twenty dollars”, and substituting the expression “\$100”:
- (b) By omitting from that subsection the words “four dollars”, and substituting the expression “\$20”.

8. Act to prevail over existing awards and collective agreements—This Act shall have effect, notwithstanding anything in section 230 of the Industrial Relations Act 1973 or in any award or agreement in force at the passing of this Act.

9. Consequential repeals and amendments—(1) The following enactments are hereby consequentially repealed:

- (a) Section 2 of the Statutes Amendment Act 1944:
 - (b) Section 3 of the Annual Holidays Amendment Act 1945:
 - (c) Sections 2 and 3 and subsection (4) of section 4 of the Annual Holidays Amendment Act 1950.
- (2) Section 6 of the principal Act is hereby amended—
- (a) By omitting the words “(including any moneys payable by means of stamps)”:
 - (b) By repealing the proviso.

This Act is administered in the Department of Labour.
