

No. 46 of 1973

AN ORDINANCE

Relating to Annual Holidays of Employees.

I, THE GOVERNOR-GENERAL of Australia, acting with the advice of the Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1972*.

Dated this twenty-seventh day of November, 1973.

PAUL HASLUCK
Governor-General.

By His Excellency's Command,

GORDON M. BRYANT
Minister of State for the Capital Territory.

ANNUAL HOLIDAYS ORDINANCE 1973

1. This Ordinance may be cited as the *Annual Holidays Ordinance* Short title.
1973.*

2. (1) In this Ordinance, unless the contrary intention appears— Inter-pretation.
- “agreement” includes an industrial agreement made in pursuance of the *Conciliation and Arbitration Act 1904-1972*;
 - “authorized officer” means a person who is an officer within the meaning of the *Public Service Act 1922-1973* and who has been authorized by the Minister, by instrument in writing, to exercise functions under this Ordinance;
 - “award” means an award made under the *Conciliation and Arbitration Act 1904-1972*;
 - “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 the person who holds office as the prescribed officer for the purposes of section 7;
 - “shift-worker” means a person who—
 - (a) is rostered or required to commence work after eight o'clock in the evening and before half-past six o'clock in the morning; or

* Notified in the *Australian Government Gazette* on 29 November 1973.

- (b) having commenced work before eight o'clock in the evening, is required, for the purpose of completing his ordinary hours of work, to continue work until after that time.

(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 payment by the piece; 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.

Annual holiday,

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 1951-1973*, 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 twenty-four.

Period of holiday,

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

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

(3) In this section, "week", in relation to an employee, means the employee's ordinary working week.

Holiday pay,

6. (1) An employee who takes a holiday to which he is entitled under sub-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.

(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.

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

- (a) payments in respect of overtime;
- (b) payments at penalty rates of pay; or
- (c) allowances payable in respect of the conditions under which an employee is required to work.

(4) In respect of a year during which an employee has been remunerated partly by salary or wages and partly by commission, sub-section (2) 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 fifty-two.

(5) 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 fifty-two.

7. (1) An annual holiday to which an employee is entitled under sub-section 4 (1) shall be taken in one period or, if the employee and his employer so agree, in two periods.

Holiday to be taken within six months.

(2) Subject to this section, an annual holiday to which an employee is entitled under sub-section 4 (1) shall be taken before the expiration of the period of six months after the date on which the employee becomes entitled to the holiday or within such further period as the prescribed officer, either before or after the expiration of the period of six months, by instrument in writing, allows.

(3) The prescribed officer shall not allow a further period for the purpose of sub-section (2) unless he is satisfied that the employee concerned has not had a reasonable opportunity of taking his holiday.

(4) The Minister may, by instrument in writing, appoint a person who is an officer within the meaning of the *Public Service Act* 1922-1973 to be the prescribed officer for the purposes of this section.

(5) An employer shall, not less than four weeks before the date on which an employee becomes entitled under this Ordinance 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 six months specified in sub-section (2) will expire.

Payment of holiday pay.

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.

Public holidays not to count as leave.

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

Employer may require employee to take holiday.

10. (1) Where—

- (a) an employee is, or will be, at the end of the current year of employment, entitled under sub-section 4 (1) to an annual holiday; and
- (b) the employer of that employee gives to the employee notice in writing that he requires the employee to take that annual holiday from a date specified in the notice, being a date not earlier than six weeks after the date on which the notice is given to the employee,

the employee is not entitled to take the annual holiday except in accordance with the requirement of the notice.

(2) 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 six 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 entitled to take an annual holiday at the expiration of the period specified in the notice.

No payment in lieu of holidays.

11. (1) Subject to this section, an employer shall not make a payment to an employee in connexion with his entitlement under this Ordinance to an annual holiday unless—

- (a) the employer has given notice to the employee in pursuance of section 10 (1); or

- (b) the employee has given notice to the employer in pursuance of sub-section 10 (2).

(2) 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.

(3) 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 twelve 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, five 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.

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

(5) An amount payable to a person by virtue of sub-section (2) or sub-section (3) is payable to that person on the last day on which the person is required to work before the date on which his employment is terminated.

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. Close-down.

(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 four 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 five weeks, a period of five weeks.

(3) A notice given to an employee for the purpose of sub-section (1) and specifying a date more than six 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 three 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; and
- (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, five 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).

(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.

Leave
records.

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

- (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 two 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 an authorized 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.

14. (1) Subject to sub-section (2), this Ordinance has effect notwithstanding any award or agreement to the contrary. No contracting out.

(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.

15. (1) 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. Offences.

Penalty: Two hundred dollars.

(2) A person who contravenes, or fails to comply with, a provision of this Ordinance other than sub-section (1) is guilty of an offence punishable by a fine of Two hundred dollars.

16. The Minister 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. Regulations.