

[AS REPORTED FROM THE LABOUR BILLS COMMITTEE.]

House of Representatives, 24th March, 1944

Hon. Mr. Webb

ANNUAL HOLIDAYS

ANALYSIS

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A BILL INTITULED

AN ACT to make Provision for Annual Holidays with Title.
Pay for Workers.

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

1. (1) This Act may be cited as the Annual Holidays Act, 1944. Short Title and commencement.

No. 5—2

(2) This Act shall come into force on the first day of August, nineteen hundred and forty-four.

Interpretation.

2. (1) In this Act, unless the context otherwise requires,—

See Reprint
of Statutes,
Vol. III,
pp. 939, 1021

“ Agreement ” means an industrial agreement made under the Industrial Conciliation and Arbitration Act, 1925, or an agreement filed with a Clerk of Awards under section eight of the Labour Disputes Investigation Act, 1913, or a voluntary agreement: 5 10

“ Award ” means an award of the Court of Arbitration made under the Industrial Conciliation and Arbitration Act, 1925:

“ Employer ” means any person employing any worker or workers: 15

“ Holiday card ” means a worker’s holiday card provided by the Minister under section *eleven* of this Act:

Ibid., p. 198

“ Inspector of Factories ” means an Inspector of Factories appointed under the Factories Act, 1921-22: 20

“ Minister ” means the Minister of Labour:

“ Ordinary pay ”, in relation to any worker, means remuneration for the worker’s normal weekly number of hours of work calculated at the ordinary time rate of pay; and, where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging: 25

“ Person ” includes a corporation sole, and also a body of persons, whether corporate or unincorporate: 30

“ Prescribed ” means prescribed by this Act or by regulations made under this Act:

1939, No. 10

“ Stamp ” means an adhesive stamp created under the Adhesive Stamps Act, 1939; but does not include a special stamp created under that Act: 35

“ Week ”, in relation to any worker, means the worker’s ordinary working week: 40

5 "Worker" means any person of any age of either sex employed by any employer to do any work for hire or reward; and includes an apprentice and any other person whose contract of employment requires him to learn or to be taught any occupation.

(2) For the purposes of the definition of the term "ordinary pay" in subsection *one* of this section,—

10 (a) Where no ordinary time rate of pay is fixed for any worker's work under the terms of the worker's employment the ordinary time rate of pay shall be deemed to be the ordinary time rate for the same class of work fixed by the award or agreement in force in the district nearest to the locality where the worker is employed or, where there is no such award or agreement in force in New Zealand, shall be deemed to be such rate as is agreed to by the employer and the worker or, in default of any such agreement, is determined by the Minister:

15 (b) Where no normal weekly number of hours of work is fixed for any worker under the terms of his employment the normal weekly number of hours of work shall be deemed to be the normal weekly number of hours for the same class of work fixed by the award or agreement in force in the district nearest to the locality where the worker is employed or, where there is no such award or agreement in force in New Zealand, shall be deemed to be such number as is agreed to by the employer and the worker or, in default of any such agreement, is determined by the Minister:

20 (c) The cash value of any board or lodging provided for any worker shall be deemed to be its cash value as fixed by or under any Act, award, or agreement relating to the worker's employment or, if it is not so fixed, shall be deemed to be its cash value as assessed for the purposes of Part IV of the Social Security Act, 1938, or, if it is not so assessed, shall be computed at the rate of fifteen shillings a week for board and five shillings a week for lodging.

Annual
holidays
with pay.

3. (1) Except as otherwise provided in this Act, every worker shall at the end of each year of his employment by any employer become entitled to an annual holiday of two weeks on ordinary pay.

(2) Where a worker employed by any employer becomes entitled to an annual holiday under this section, the employer shall allow the holiday to the worker within six months after he has become entitled to it. 5

(3) If the employment of the worker is terminated before any annual holiday to which he is entitled has been allowed to him, the employer shall be deemed to have allowed the holiday to the worker from the date of the termination of the employment and shall forthwith pay to the worker, in addition to all other amounts due to him, his ordinary pay for the period of that annual holiday. 10 15

(4) Where any special holiday for which the 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 the period of any annual holiday allowed or deemed to have been allowed to any worker under this section, the period of the annual holiday shall be deemed to be increased by one day in respect of that special holiday. 20 25

Proportionate
holiday pay in
respect of
employment for
less than one
year but not
less than three
months.

4. (1) This section applies with respect to every period of employment of a worker by any employer which is less than one year but not less than three months, computed from the date of the commencement of the employment or from the date on which the worker last became entitled to an annual holiday under section three of this Act (whichever date is the later). 30

(2) Except as otherwise provided in this Act, where the employment of any worker by any 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 one twenty-fifth of his ordinary pay for that period of employment. 35 40

5. (1) This section applies with respect to every period of employment of a worker by any employer which is less than three months ~~but not less than one week~~, computed from the date of the commencement of the employment or from the date on which the worker last became entitled to an annual holiday under section three of this Act (whichever date is the later).

Employer to provide postage or revenue stamps in respect of employment for less than three months.

(2) Except as otherwise provided in this Act, where the employment of any worker by any employer is terminated at the end of a period of employment to which this section applies, the employer shall forthwith cause to be affixed to the worker's holiday card uncanceled stamps of an amount equivalent to one twenty-fifth of the worker's ordinary pay for that period of employment:

Provided that where the period of employment is less than three weeks the amount of the stamps to be affixed as aforesaid shall be equivalent to one twenty-fifth of the worker's ordinary pay for the time worked by him during that period of employment.

(3) Where any stamps are affixed to a worker's holiday card under this section the employer shall at the same time cause to be entered on the card particulars of the period of employment to which the stamps relate, together with such other particulars and information as may be indicated in that behalf on the holiday card.

(4) Upon the surrender of a worker's holiday card at any money-order office, or at such other paying-office as may be indicated on the card or prescribed, at any time after the expiration of one year from the commencement of the earliest period of employment in respect of which uncanceled stamps are affixed to the card, the person surrendering the card shall be entitled to receive the total amount of the uncanceled stamps affixed to the card under this section *from which social security and national security taxation shall be deducted.*

(5) The foregoing provisions of this Act shall have effect notwithstanding anything to the contrary in the Post and Telegraph Act, 1928, or the Adhesive Stamps Act, 1939.

6. All moneys payable by an employer to any worker under this Act (including any moneys payable by means of stamps) shall be deemed to be salary or wages earned by the worker, and shall be subject accordingly to all

See Reprint of Statutes, Vol. VI, p. 854 1939, No. 10
Holiday pay to be deemed salary or wages, and to be subject to social security charge, &c.

deductions that the employer is required by any enactment to make from salaries or wages, whether in respect of social security charge or national security tax or otherwise.

Special provisions as to workers entitled to annual holidays otherwise than under this Act.

7. (1) The following provisions shall apply in every case where provision is made by or under any Act other than this Act or by any award, agreement, or contract of service for annual holidays or annual leave for any worker:—

(a) Where the worker is entitled under any such provision to any benefit that is more favourable to the worker than the benefits provided by section *three* or section *four* or section *five* of this Act, as the case may be, that section shall not apply to the worker:

(b) Where any such provision is not more favourable to the worker than section *three* or section *four* or section *five* of this Act, as the case may be, that section shall apply to the worker, and no benefit shall be allowed to the worker under that provision after the commencement of this Act, and any benefit allowed to the worker under that provision before the commencement of this Act but after the thirty-first day of December, nineteen hundred and forty-three, shall be deemed to have been allowed under section *three* or section *four* or section *five* of this Act, as the case may be, and the benefit to which the worker is entitled under that section shall be reduced accordingly.

(2) Workers employed under the terms of any order of the Waterfront Control Commission appointed under the Waterfront Control Commission Emergency Regulations 1940, and workers employed on the waterfront as tally clerks, shall be allowed such holidays on such terms and conditions (on the basis of two weeks' holiday on *ordinary* pay for each year of employment) as may from time to time be approved by the Minister. Except as provided by any such terms and conditions, sections *three*, *four*, and *five* of this Act shall not apply to any such workers.

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8. (1) Where any worker has during his employment by any employer, whether on or after the date of the commencement of this Act or within one year before that date, become entitled to any period or
 5 periods of annual holidays or annual leave under or by virtue of any other Act or under any award or agreement or under his contract of service, that employment shall be deemed for the purposes of this Act to have
 10 commenced on the day on which he became so entitled to that period of holidays or leave or, as the case may be, to the last of those periods.
- (2) In every case to which the *last preceding* subsection does not apply the employment of any worker by any employer shall be deemed for the purposes of
 15 this Act to have commenced on the date of the actual commencement thereof (whether before or after the commencement of this Act) or on the first day of December, nineteen hundred and forty-three, whichever date is the later.
- 20 9. (1) No contract or agreement entered into before or after the commencement of this Act shall have any force or effect to deprive any worker of any right, power, privilege, or other benefit provided for by this Act.
- 25 (2) Every person who after the commencement of this Act enters into or becomes a party to any contract or agreement purporting to have any such force or effect commits an offence against this Act.
- 30 10. (1) Every employer shall at all times keep a record (called the holiday-book) showing, in the case of each worker employed by him,—
- (a) The name of the worker:
 (b) The date on which his employment actually commenced:
 35 (c) The date of the termination of his employment:
 (d) The date on which he has become entitled to each annual holiday, omitting all such dates earlier than one year before the commencement of this Act:
 40 (e) The dates on which each such holiday is taken:
 (f) The amount paid to him in respect of each such holiday:

Date of commencement of employment.

Workers debarred from contracting out of benefits provided by this Act.

Employers to keep holiday-books.

- (g) The amount paid to him in respect of holidays upon the termination of his employment or the amount for which stamps are affixed to his holiday card:
- (h) Such other particulars as are prescribed by regulations. 5
- (2) The holiday-book may be incorporated with any holiday-book or wages-book that the employer is required to keep under any enactment other than this Act. 10
- (3) The holiday-book in use for the time being, and any such book used within the preceding two years, shall at all times be open to the inspection of an Inspector of Factories.
- (4) An Inspector of Factories may at any time require the employer to verify the entries in the holiday-book by statutory declaration or in such manner and form as may be prescribed by regulations. 15
- 11.** For the purposes of section *five* of this Act, the Minister shall from time to time cause to be printed and provided for workers and their employers a sufficient number of cards, to be called workers' holiday cards, in the prescribed form or in such other form as may be approved by the Minister. 20
- 12.** (1) Any Inspector of Factories may from time to time require any person to furnish, in a form to be approved by or acceptable to the Inspector, such information or particulars as he deems necessary in order to ascertain whether the provisions of this Act are being or have been complied with. 25
- (2) Every Inspector exercising the powers conferred on him by this section shall, on demand, produce a certificate or other evidence of his appointment as an Inspector of Factories. 30
- 13.** (1) Every person commits an offence against this Act who— 35
- (a) Acts in contravention of or fails to comply in any respect with any provision of this Act or of any regulations made under this Act, or any requirement imposed thereunder: 40

Workers'
holiday cards.

Power of
Inspectors to
require
information.

Offences.

- (b) With intent to deceive, makes any false or misleading statement or any material omission in any holiday-book or on any holiday card, or in any communication with or application to the Minister or any Inspector of Factories or other person (whether in writing or otherwise) for the purposes of this Act:
- (c) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under this Act or under any regulations made under this Act.
- (2) Every person who commits an offence against this Act shall be liable to a penalty not exceeding *ten* pounds and (if the offence is a continuing one) to a further penalty not exceeding *two* pounds for every day during which the offence continues.
- (3) A penalty for an offence against this Act may be recovered in the same manner as a penalty for a breach of an award, and the provisions of the Industrial Conciliation and Arbitration Act, 1925, shall, so far as they are applicable and with the necessary modifications, apply accordingly.
14. Without limiting the powers or remedies of any other person, it is hereby declared that—
- (a) Civil proceedings for the recovery of any moneys payable by an employer to any worker under this Act may be taken by any Inspector of Factories in the name and on behalf of the person entitled to payment in any case where the Inspector is satisfied that default in payment has been made:
- (b) Where any such civil proceedings or any proceedings for the recovery of a penalty for an offence against this Act have been instituted by any Inspector of Factories they may be continued and conducted by the same or any other Inspector of Factories.
15. (1) The Governor-General may from time to time, by Order in Council, make all such regulations as in his opinion may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

See Reprint
of Statutes,
Vol. III,
p. 939

Proceedings
may be
taken by
Inspector of
Factories.

Regulations.

(2) All regulations made under the authority of this section shall be laid before Parliament within fourteen days after the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within fourteen days after the commencement of the next ensuing session. 5

Act to be administered by Labour Department. See Reprint of Statutes, Vol. VIII, p. 1175 1936, No. 4

16. (1) This Act shall be administered by the Department of Labour established under the Labour Department Act, 1908.

(2) Section two of the Labour Department Amendment Act, 1936, shall apply in all respects as if this Act were one of the Acts specified in the First Schedule to that Act. 10