

ENACTED IN PARLIAMENT
 REPEALED: 1936 No. 10

New Zealand.



ANALYSIS.

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1936, No. 11.

Title. AN ACT to amend the Shops and Offices Act, 1921-22.
[8th June, 1936.]

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

Short Title
and
commencement.
See Reprint
of Statutes,
Vol. III,
p. 240

1. (1) This Act may be cited as the Shops and Offices Amendment Act, 1936, and shall be read together with and deemed part of the Shops and Offices Act, 1921-22 (hereinafter referred to as the principal Act).

(2) Except as provided in sections three and thirteen hereof, this Act shall come into force on the first day of July, nineteen hundred and thirty-six.

SHOPS.

Extending
definition of
term "shop-
assistant".

2. The definition of the term "shop-assistant" in subsection one of section two of the principal Act is hereby extended to include any person who by reason of his employment in the general management or control of a shop is deemed to be included in the term "occupier" as defined in the said subsection one, and whose wages do not exceed six pounds a week in the case of males, or four pounds a week in the case of females.

Limiting
hours of
employment of
shop-assistants.

3. (1) Subject to the provisions of the principal Act and of this Act, no shop-assistant shall be employed in connection with the business of a shop—

- (a) For more than forty-four hours (excluding meal-times) in any one week; or
- (b) For more than eight hours (excluding meal-times) in any one day, except on one day in each week, when the employment may be for eleven hours (excluding meal-times); or
- (c) For more than four and one-quarter hours continuously without an interval of at least one hour for a meal; or
- (d) At any time after noon on the statutory closing day as defined in section fourteen of the principal Act.

(2) Notwithstanding anything in paragraph (c) of the last preceding subsection, the period of four and one-quarter hours referred to therein may be extended

in respect of the shop-assistants employed in any shop to not more than five hours in cases where the occupier allows to such shop-assistants an interval of not less than ten minutes for rest in every working period of not more than three hours.

(3) This section is in substitution for section seven of the principal Act, and that section is hereby accordingly repealed. Consequential repeal.

(4) The principal Act is hereby consequentially amended as follows:—

(a) By omitting from paragraphs (c), (d), and (e) of subsection one of section three the words “one o’clock in the afternoon of”, and substituting in each case the words “noon on”:

(b) By omitting from the proviso to paragraph (a) of section twenty-one the words “one o’clock in the afternoon of”, and substituting the words “noon on”:

(c) By omitting from paragraph (b) of the said section twenty-one the words “at the hour of one o’clock in the afternoon”, and substituting the words “from noon”.

(5) This section shall come into force on the first day of September, nineteen hundred and thirty-six. Commencement of this section.

4. (1) No shop-assistant shall be employed in connection with the business of any butcher’s shop before the hour of six o’clock in the morning. Hours of commencement of employment for butchers’ assistants.

(2) Section four of the principal Act (as enacted by section four of the Shops and Offices Amendment Act, 1927) is hereby consequentially amended by omitting from subsection one the words “butchers or”, and also by inserting in the same subsection, after the word “bakers”, the words “or before the hour of six o’clock in the morning in the case of butchers”.

5. Section four of the principal Act (as enacted by section four of the Shops and Offices Amendment Act, 1927) is hereby further amended by adding to subsection one thereof the following proviso:— Hours of commencing work by persons engaged in delivering milk.

“Provided that any persons employed in or in connection with the delivery of milk may, in accordance with conditions approved by the Minister but not otherwise, be so employed before the hour of three o’clock in the morning.”

Exception as to tending motor-vehicles or horses.

6. (1) Notwithstanding anything to the contrary in the principal Act or in this Act, any shop-assistant may be employed in attending to motor-vehicles used in the business of the occupier, or in feeding and tending horses so used, beyond the hours of employment provided for in this Act, but not exceeding one hour a day.

(2) Where by reason of employment pursuant to the last preceding subsection any shop-assistant is employed for any time in excess of forty-four hours in any one week, he shall be paid therefor in accordance with the provisions of subsection three of the next succeeding section.

(3) This section is in substitution for section six of the principal Act, and that section is hereby accordingly repealed.

Consequential repeal.

Extension of hours.

7. (1) With the previous written consent of the Inspector, the times or working-hours prescribed by section three of the principal Act or by section three of this Act may, except as provided in subsection three of section three of the principal Act, be extended for the purposes of stocktaking or other special work, not being the actual sale of goods, but not for more than three hours in any one day or sixty hours in any one year, and not on any half-holiday.

(2) On any such occasion no shop-assistant shall be employed for more than four hours continuously without having an interval of at least half an hour for rest and refreshment.

(3) Every shop-assistant who is employed during extended hours shall, at the first regular pay-day thereafter, be paid therefor at not less than one-half as much again as the ordinary rate, but the overtime rate shall not in any case be less than one shilling and sixpence an hour.

(4) In addition to any payment for overtime, every shop-assistant shall be paid such allowance for meals as may be provided by any award or industrial agreement or, where no provision in that behalf is made by award or industrial agreement, shall on every day on which he is employed during extended hours be paid an allowance of one shilling and sixpence for a meal.

Consequential repeal.

(5) This section is in substitution for section eight of the principal Act, and that section is hereby accordingly repealed.

8. (1) Section eleven of the principal Act is hereby amended by repealing paragraphs (a) and (c), and substituting the following paragraphs:—

Wages of shop-assistants.

“(a) Every shop-assistant who is employed in any capacity in a shop shall be entitled to receive from the occupier payment for the work at such rate as is agreed on, being not less than fifteen shillings in any one week during the first six months of employment, with half-yearly increments on the agreed rate of not less than four shillings a week until the end of the third year, and thereafter not less than two pounds a week:

“(c) Payment shall be made in full at weekly intervals or such shorter intervals as are agreed on.”

(2) For the purpose of determining the rate of payment to which any person is entitled under the said section eleven, as amended by this section, in respect of any period of employment after the commencement of this Act there shall be taken into account all periods of that person’s employment in any shop whatsoever, whether before or after the commencement of this Act, and the rate of such payment shall be determined as if subsection one of this section had been in force during the whole period of such employment.

9. (1) No premium shall be received by the occupier of any shop from any person whomsoever in respect of the employment of any shop-assistant, or in respect of the teaching or training of any person in any trade or business carried on in the shop, unless the shop is approved as a school for learners in a trade or business by the Chief Inspector appointed under the Factories Act, 1921–22, and the payment is made pursuant to a written agreement that is approved for the purposes of this section by the Chief Inspector.

As to payment of premiums by or in respect of shop-assistants or learners.

See Reprint of Statutes, Vol. III, p. 200

(2) The Chief Inspector shall not approve any shop under this section as a school for learners in any trade or business unless he is satisfied that reasonable facilities are provided for learning the trade or business, and he may at any time withdraw his approval if he ceases to be so satisfied. The Chief Inspector shall not approve any agreement under this section unless he is satisfied that the terms of the agreement are reasonable.

(3) If the occupier commits any breach of the provisions of subsection one of this section, or of the provisions of any agreement approved by the Chief Inspector under this section, he shall be liable to a fine of ten pounds.

(4) In any case where any moneys have been received in breach of this section (whether by way of deduction from wages or otherwise), or where any moneys have become payable by the occupier pursuant to an agreement approved for the purposes of this section, then, in addition to any other remedy therefor, and irrespective of any fine to which the occupier may be liable, the amount so received or payable may be recovered from the occupier in civil proceedings instituted by the Inspector in the name and on behalf of the person from whom the moneys were received, or to whom they are payable, as the case may be.

Consequential repeals.

(5) This section is in substitution for paragraphs (f) and (g) of section eleven of the principal Act, and those paragraphs are hereby accordingly repealed.

As to signature of wages and time book by shop-assistants.

10. Section twelve of the principal Act is hereby amended by omitting from subsection two the words “and also as a *prima facie* certificate of the correctness of the particulars entered with respect to that assistant”.

Special Provisions as to Hotels and Restaurants.

Certain provisions of this Act not to apply to hotels and restaurants.

11. Sections three and seven of this Act shall not apply to hotels or restaurants or to the assistants employed therein.

Extending definition of term “restaurant”.

12. (1) The definition of the term “restaurant” in subsection one of section two of the principal Act is hereby extended to include any private hotel or boardinghouse in which the number of boarders is usually five or more or in which the number of persons employed other than members of the family of the occupier is usually two or more.

(2) The said section two is hereby consequentially amended by omitting from paragraph (b) of the definition of the term “restaurant” the words “in which three or more persons are usually employed other than members of the family of the occupier”, and substituting the words “in which the number of boarders is usually five or more or the number of persons employed

other than members of the family of the occupier is usually two or more”.

(3) The said section is hereby further consequentially amended by repealing paragraph (d) of the definition of the term “shop”, and substituting the following paragraph:—

“(d) Any private hotel or boardinghouse which is not a restaurant as hereinbefore defined.”

13. (1) Subject to the provisions of the principal Act and of this Act, no assistant shall be employed in or about any hotel or restaurant or its business—

Limiting hours of employment in hotels and restaurants.

- (a) For more than forty-four hours (excluding meal-times) in any one week; or
- (b) For more than eight hours (excluding meal-times) in any one day; or
- (c) For more than four hours and one-quarter continuously without an interval of at least one hour for a meal:

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Provided that the period of four and one-quarter hours referred to herein may be extended in respect of any of the assistants employed in or about any hotel or restaurant to not more than five hours in cases where the occupier allows to such assistants an interval of not less than ten minutes for rest in every working-period of not more than three hours; or

- (d) At any time after one o'clock in the afternoon on such working-day in each week as the occupier in the case of each assistant thinks fit; or
- (e) At any time during such period of twenty-four consecutive hours in each week (excluding from such period any part of the half-holiday referred to in the last preceding paragraph) as the occupier in the case of each assistant thinks fit.

(2) The working-hours or times prescribed by the last preceding subsection may be extended, but not for more than one hundred and twenty hours in any one year. Written notice of the extended time worked shall be given to the Inspector within twenty-four hours thereafter.

(3) Every assistant who is employed during extended hours as aforesaid shall, at the first regular pay-day thereafter, be paid therefor at not less than one-half as much again as the ordinary rate, but the overtime rate shall not in any case be less than one shilling and sixpence an hour.

(4) Section nine of the principal Act shall extend and apply to the limitations imposed by this section.

(5) The children of the occupier shall not be deemed to be assistants within the meaning of this section.

Consequential repeal.

(6) This section is in substitution for section thirty-eight of the principal Act, and that section is hereby accordingly repealed.

Commencement of this section.

(7) This section shall come into force on the first day of September, nineteen hundred and thirty-six:

Provided that the rate of pay for any overtime worked under section thirty-eight of the principal Act in the interval between the first day of July, nineteen hundred and thirty-six, and the commencement of this section shall be not less than the rate prescribed by subsection three of this section.

Restricting employment of boys at night.

14. Section forty of the principal Act, which restricts the employment of female assistants at night, is hereby extended to apply with respect to male assistants under the age of eighteen years.

Change of holiday or half-holiday.

15. (1) The occupier of every hotel and restaurant shall, except in exceptional circumstances previously approved by the Inspector, give seven days' notice in writing to each assistant of any change in the day fixed by the occupier under paragraph (d) or paragraph (e) of subsection one of section thirteen hereof or under section forty-one of the principal Act for that assistant's half-holiday or whole holiday, as the case may be.

(2) Section forty-four of the principal Act is hereby extended to apply with respect to the whole holiday provided for by paragraph (e) of subsection one of section thirteen hereof.

OFFICES.

Amending provisions as to closing-hours in certain offices.

16. Subsection one of section forty-six of the principal Act is hereby amended by omitting from the proviso all words after the words "forwarding agencies", and substituting the following words "or of passenger-transport services or agencies, or offices

of auctioneers situated in stock saleyards, or offices of Harbour Boards, woolbrokers, or woolbuyers ”.

17. (1) Every office shall be closed not later than noon on Saturday, or on such other day as may be substituted for Saturday pursuant to section forty-seven of the principal Act.

Offices to close at noon on Saturday.

(2) Section forty-six of the principal Act is hereby consequentially amended by omitting from subsection one the words “ one of the clock in the afternoon ”, and substituting the word “ noon ”.

18. Section forty-nine of the principal Act is hereby amended by adding the following paragraph to subsection four:—

Special provisions as to employment after hours of assistants in banks.

“(f) In the case of any office assistant employed in a bank, for any of the following purposes:—

“(i) The balancing of the cash or cash-book after the close of the day’s transactions;

“(ii) The periodical balancing of the ledgers;

“(iii) The yearly or half-yearly balance of the business of the bank;

“(iv) The writing-up of the books for the day’s transactions;

“(v) The remittance for collection of bills of exchange, promissory notes, cheques, and other mercantile instruments drawn on other places;

“(vi) Work incidental to the sending by mail out of New Zealand of documents relating to goods exported or to be exported from New Zealand;

“(vii) Special work arising in circumstances of urgency;

“(viii) The clearing up of arrears in office work due to special circumstances: .

“ Provided that he shall in no case be employed under this subparagraph for more than three hours on any one day nor for more than six days in any one month.”

19. (1) Every office-assistant who is employed during extended hours under subsection four of section forty-nine of the principal Act shall at the first regular pay-day thereafter be paid therefor at not less than one-half as much again as the ordinary rate,

Payment for overtime in offices.

but the overtime rate shall not in any case be less than one shilling and sixpence an hour:

Provided that in the case of banks such payment shall be made in respect only of extended hours worked in each fortnight in excess of a total of eighty hours, or, in the case of a period of four weeks for the purposes of each yearly or half-yearly balance, a total of ninety hours in each fortnight.

(2) In addition to any payment for overtime, every office-assistant shall be paid such allowance for meals as may be provided by any award or industrial agreement or, where no provision in that behalf is made by award or industrial agreement, shall on every day on which he is employed during extended hours be paid an allowance of one shilling and sixpence for a meal.

(3) This section is in substitution for subsection seven of section forty-nine of the principal Act, and that subsection is hereby accordingly repealed.

20. (1) Section eleven of the principal Act (as amended by section eight of this Act) and section twelve of the principal Act are hereby extended to apply with respect to offices and office-assistants as they apply with respect to shops and shop-assistants:

Provided that in its application to offices paragraph (c) of the said section eleven (as enacted in section eight of this Act) shall be construed as if the reference therein to weekly intervals was a reference to monthly intervals.

(2) For the purposes of this section the term "office" shall be deemed to include any solicitor's office, any mining company's office, and any miners' union office, and the term "office-assistant" shall have a corresponding meaning:

Provided that nothing in this subsection shall be construed to render it obligatory on an employer to make any payment for overtime to any assistant employed in any such office.

(3) Section forty-nine of the principal Act is hereby consequentially amended by repealing subsections five and six.

GENERAL AS TO SHOPS AND OFFICES.

21. No person who is employed in any shop or office at the commencement of this Act shall be dismissed nor

Consequential
repeal.

Applying to
offices the
provisions as
to the payment
of wages, and
wages and
time books in
shops.

Solicitors'
and mining
offices included.

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No. a.

Consequential
repeals.

Wages not to
be reduced
on account of
reduction in
working-hours.

shall the wages of any such person be reduced by reason merely of any reduction or alteration made in his working-hours pursuant to this Act. Where any such person is dismissed or the wages of any such person are reduced after the commencement of this Act the burden of proving that the dismissal or reduction, as the case may be, was not a breach of the provisions of this section shall be on the employer.

22. Where any worker is actually employed in or about a shop or an office during extended hours he shall be paid therefor in accordance with the provisions of subsection three of section seven of this Act, notwithstanding that the extension of hours may have been unlawful.

Payment for overtime worked unlawfully.

23. (1) Section sixty-two of the principal Act is hereby amended by omitting from paragraph (a) the word " three ", and substituting the word " six ".

Extension of time for commencing proceedings for offences.

(2) The extension of time for the commencement of proceedings provided for in the last preceding subsection shall apply in any case where the offence has been committed within six months before the commencement of this Act.

24. All awards and industrial agreements under the Industrial Conciliation and Arbitration Act, 1925 (whether made before or after the commencement of this Act), shall be read subject to the provisions of this Act:

Awards and industrial agreements to be read subject to this Act.

Provided that nothing herein shall be construed to reduce the rate of wages payable to any worker, pursuant to any award or industrial agreement, or to increase his working-hours as fixed by any such award or agreement.

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