

## HOLIDAYS BILL

### EXPLANATORY NOTE

THIS Bill consolidates the Annual Holidays Act 1944, the Public Holidays Act 1955, sections 26 to 32 of the Factories Act 1946, and the amendments to those enactments. No substantive amendments have been made, although clauses may have been redrafted.

This Bill does not bring in the Sovereign's Birthday Observance Act 1952, the Anzac Day Act 1966, section 95 of the Industrial Relations Act 1973, the Waitangi Day Act 1976, or sections 22-25 of the Banking Act 1908 (which relates to bank holidays).

The source of each clause is given in the form of a footnote to that clause.

*Clause 1* relates to the Short Title and commencement. The Bill is expressed to come into force on 1 January 1981, the same day that the *Factories and Commercial Premises Bill 1980* is expressed to come into force.

*Clause 2* is the general interpretation clause. The definition of the term "undertaking" is new, and is used in *clause 30* of the Bill.

*Clause 3* defines the term "gross earnings".

*Clause 4* defines the term "ordinary pay".

*Clause 5* determines how the cash value of board or lodging provided for a worker is to be fixed. The amounts of \$10 and \$6.50 in *subclause (1) (c)* have been increased from the existing amounts of \$6 and \$2 respectively.

*Clause 6* provides that certain reimbursement allowances approved by the Commissioner of Inland Revenue are not to form part of a worker's remuneration for the purposes of the Bill.

*Clause 7* provides that *clauses 24 to 30* of the Bill (which relate to holidays in factories and, subject to the provisions of any award or agreement, to undertakings) are to bind the Crown.

#### *Public Holidays*

*Clause 8* relates to anniversary days.

*Clause 9* provides for the days on which Christmas Day and New Year's Day holidays are to be observed if those days fall on a Saturday or Sunday.

*Clause 10* relates to Labour Day.

### *Annual Holidays*

*Clause 11* provides for an annual holiday of 3 weeks with pay for each worker.

*Clause 12* relates to when the holidays are to be taken.

*Clause 13* provides for the payment of holiday pay to any worker whose employment has been terminated.

*Clause 14* provides that no period not able to be worked because of sickness or injury is to be counted as part of an annual holiday.

*Clause 15* requires an extra day's holiday to be granted where a special holiday occurs during any period taken as an annual holiday.

*Clauses 16, 17, and 18* relate to the calculation of holiday pay.

*Clause 19* requires an employer to give 7 days' notice of any date when a worker is to start his annual holidays.

*Clause 20* provides that the employment of a worker who is dismissed but re-employed within one month of the dismissal is to be deemed to be continuous employment for the purposes of annual holidays.

*Clause 21* relates to the calculation of holiday pay when the employment is for less than one year.

*Clause 22* deems holiday pay to be salary or wages and subject to lawful deductions accordingly.

*Clause 23* declares that, on a comparison of holiday provisions contained in any award or agreement with certain holiday provisions contained in the Bill, those provisions in the Bill are to prevail unless the award or agreement provisions are no less favourable to the worker.

### *Holidays in Factories*

*Clause 24* provides for certain holidays (usually referred to as "statutory holidays") to be granted to factory workers.

*Clause 25* prescribes the method of calculating payment to any worker for the statutory holiday.

*Clause 26* relates to factories of the New Zealand Government Railways Department. This provision was previously contained in the Factories Act, 1946, Modification Order 1948 (S.R. 1948/72) which is now revoked by *clause 36 (3)*.

*Clause 27* sets out the pay a worker is to receive for Sunday work.

*Clause 28* relates to night workers on newspapers, and provides a gloss on the definitions of the terms "Sunday" and "holiday".

*Clause 29* authorises the Governor-General, by Order in Council, to amend certain of the holiday provisions with respect to any specified factory or factories or class or classes of factories.

*Holidays in Undertakings*

*Clause 30* provides that, unless an award or agreement relating to a worker in an undertaking (a defined term including such businesses as cinemas, hotels, shops, and warehouses) deals with the provision of statutory holidays and pay for those holidays and Sunday work, the provisions of the Bill are to apply to that worker as if the undertaking were a factory.

*General Provisions*

*Clause 31* requires employers to keep holiday books. The period of 6 years expressed in *subclause (3)* as being the period for which a holiday book is to be kept is increased from the period of 2 years required at present.

*Clause 32* authorises an Inspector of Factories to request and obtain information for the purposes of the Bill.

*Clause 33* prevents contracts and agreements from depriving a worker of any rights, powers, privileges, and benefits provided under the Bill.

*Clause 34* relates to offences and penalties.

*Clause 35* authorises an Inspector of Factories to take civil proceedings for the recovery of money owing pursuant to the Bill to any person in the name of and on behalf of that person.

*Clauses 36 and 37* relate to repeals, amendments, and a revocation.

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*Hon. Mr Bolger*

## HOLIDAYS

### ANALYSIS

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## A BILL INTITULED

**An Act to consolidate certain enactments relating to the observance of certain days as public holidays and to the provision of annual holidays with 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: 5

**1. Short Title and commencement**—(1) This Act may be cited as the Holidays Act 1980.

(2) This Act shall come into force on the 1st day of January 1981. 10

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

“Agreement” means any instrument or contract relating to the terms of employment of any worker; and includes an agreement within the meaning of the Industrial Relations Act 1973: 15

“Annual holiday” means an annual holiday as provided under section 11 of this Act:

“Average weekly earnings”, in relation to any worker, means  $1/52$  of his gross earnings: 20

Provided that where during the period of employment the worker is unable to work because of sickness or injury, or is absent from work while on protected voluntary service or training (within the meaning of the Volunteers Employment Protection Act 1973), 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 or was absent from work: 25 30

“Award” means an award within the meaning of the Industrial Relations Act 1973, or an award within the meaning of the Aircrew Industrial Tribunal Act 1971:

“Employer” means any person employing any worker or workers: 35

“Factory” means a factory as defined in section 2 (1) of the Factories and Commercial Premises Act 1980:

“Inspector of Factories” means an Inspector of Factories appointed under the Factories and Commercial Premises Act 1980; and includes a Trainee Inspector of Factories appointed under that Act where the 40

Trainee Inspector is acting under the supervision of any Inspector of Factories who is not a Trainee Inspector:

“Minister” means the Minister of Labour:

5 “Undertaking” has the same meaning as in the Factories and Commercial Premises Act 1980; but does not include a factory:

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

10 “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; and also  
15 includes a person deemed to be a worker under subsection (2) of this section.

(2) For the purposes of the definition of the term “worker” in subsection (1) of this section, every person who is wholly  
20 or mainly engaged in procuring proposals or contracts of industrial life assurance or in collecting industrial life assurance premiums for any person, firm, company, society, association, or corporation carrying on industrial life assurance business and is remunerated wholly or partly by fees or commission shall be deemed to be a worker employed by that  
25 person, firm, company, society, association, or corporation, whether or not the relationship between them is that of master and servant.

(3) For the purposes of this Act, in determining whether or not any place is a factory or in counting the number of  
30 persons employed in a factory the occupier (within the meaning of the Factories and Commercial Premises Act 1980) of any place or factory or, if the occupier is married, the occupier together with the occupier’s spouse, shall be considered as one person employed at that place or factory.

35 Cf. 1944, No. 5, s. 2; 1945, No. 20, s. 2; 1946, No. 43, s. 97; 1955, No. 100, s. 2; 1973, No. 19, s. 234 (1); 1974, No. 149, s. 2; 1976, No. 74, s. 2

**3. Meaning of term “gross earnings”**—(1) For the purposes of this Act, the term “gross earnings” means,—

40 (a) In relation to any worker (except any person deemed to be a worker under section 2 (2) of this Act) in respect of any specified period, 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 as determined under section 5 of this Act: 5

- (b) In relation to any person deemed to be a worker under section 2 (2) of this Act, 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. 10 15

(2) Notwithstanding subsection (1) of this section but subject to sections 18 (7) and 21 (3) of this Act, the term “gross earnings” 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, nor, in the case of a worker who, during the period of employment, is unable to work because of sickness or injury, or is absent from work while on protected voluntary service or training (within the meaning of the Volunteers Employment Protection Act 1973), any sick pay or pay in respect of any such service or training received by the worker in respect of every complete week of inability to work or training. 20 25

Cf. 1944, No. 5, s. 2; 1974, No. 149, s. 2

**4. Meaning of term “ordinary pay”**—(1) For the purposes of this Act, the term “ordinary pay”, in relation to any worker, means the 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 as determined under section 5 of this Act. 30 35

(2) For the purposes of subsection (1) of this section,—

- (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 40

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:

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- (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.

Cf. 1944, No. 5, s. 2; 1974, No. 149, s. 2

- 20 **5. Cash value of board or lodging—**(1) For the purposes of sections 3 (1) (a) and 4 (1) of this Act, the cash value of board or lodging provided for a worker—

- 25 (a) Shall be its cash value as fixed by or under any Act, award, or agreement relating to the worker's employment; or  
(b) If it is not so fixed, shall be its cash value as assessed for the purposes of section 72 of the Income Tax Act 1976; or  
30 (c) If it is not so assessed, shall be calculated at the rate of \$10 a week for board and \$6.50 a week for lodging, or at such other rate as the Governor-General may from time to time by Order in Council determine.

- (2) Notwithstanding subsection (1) of this section, the value of any board or lodging or the amount of any payment  
35 in respect of board or lodging shall not be included in the remuneration of any worker 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 else-  
40 where than at his genuine place of residence, or because of any other special circumstances.

Cf. 1944, No. 5, s. 2 (1A); 1974, No. 149, s. 2 (2)

**6. Certain allowances not to form part of remuneration—** Notwithstanding anything to the contrary in this Act, to the extent that the Commissioner of Inland Revenue determines under section 73 of the Income Tax Act 1976 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 for the purposes of this Act. 5

Cf. 1944, No. 5, s. 2 (1A) (c); 1974, No. 149, s. 2 (2)

**7. Certain provisions to bind the Crown—**Sections 24 to 30 of this Act shall bind the Crown. 10

Cf. 1946, No. 43, s. 103

### *Public Holidays*

**8. Anniversary days—**(1) Where in this or any Act, award, or agreement provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on the day of the anniversary of any province,— 15

(a) If that day falls on a Friday or a Saturday or a Sunday, those provisions shall apply on the next succeeding Monday as if it were that anniversary day: 20

(b) If that day falls on a Tuesday or a Wednesday or a Thursday, those provisions shall apply on the immediately preceding Monday as if it were that anniversary day. 25

(2) For the purposes of this section, Northland (being that portion of the North Island north of the southern boundary for the time being of the County of Otamatea) shall be deemed to be a province and the 29th day of January in each year shall be deemed to be the anniversary day of that province. 30

(3) For the purposes of this section, the Chatham Islands shall be deemed to be a province and the 30th day of November in each year shall be deemed to be the anniversary day of that province. 35

Cf. 1955, No. 100, s. 4; 1962, No. 95, s. 2; 1976, No. 33, s. 6

**9. Christmas and New Year holidays—**(1) Where Christmas Day and New Year's Day fall on Fridays the following rules shall apply with respect to the construction of the provisions of this or any Act, award, or agreement: 40

- 5 (a) Where provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on Saturdays, those provisions shall apply without modification on the Saturdays being Boxing Day and the second day of January:
- 10 (b) Where provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on Boxing Day or the second day of January (however those days are described), those provisions shall apply on the next succeeding Monday as if it were Boxing Day or the second day of January, as the case may be.
- 15 (2) Where Christmas Day and New Year's Day fall on Saturdays the following rules shall apply with respect to the construction of the provisions of this or any Act, award, or agreement:
- 20 (a) Where provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on Saturdays, those provisions shall apply without modification on the Saturdays being Christmas Day and New Year's Day:
- 25 (b) Where provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on Sundays, those provisions shall apply without modification on the Sundays being Boxing Day and the second day of January:
- 30 (c) Where provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on Christmas Day or New Year's Day, those provisions shall apply on the next succeeding Monday as if it were Christmas Day or New Year's Day, as the case may be:
- 35 (d) Where provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on Boxing Day or the second day of January (however those days are described), those provisions shall apply on the next succeeding Tuesday as if it were Boxing Day or the second day of January, as the case may be.
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(3) Where Christmas Day and New Year's Day fall on Sundays the following rules shall apply with respect to the construction of the provisions of this or any Act, award, or agreement:

- (a) Where provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on Sunday, those provisions shall apply without modification on the Sundays being Christmas Day and New Year's Day: 5
- (b) Where provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on Christmas Day or New Year's Day, those provisions shall apply on the next succeeding Monday as if it were Christmas Day or New Year's Day, as the case may be: 10 15
- (c) Where provision is made for the granting of a holiday, or the observance of certain hours of labour, or the payment of certain rates of wages on Boxing Day or the second day of January (however those days are described), those provisions shall apply on the next succeeding Tuesday as if it were Boxing Day or the second day of January, as the case may be. 20

Cf. 1955, No. 100, s. 3

**10. Labour Day**—Where in this or any Act, award, or agreement reference is made to Labour Day, that reference shall be deemed to be to the fourth Monday in October. 25

Cf. 1955, No. 100, s. 5

#### *Annual Holidays*

**11. Entitlement to annual holidays with pay**—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. 30

Cf. 1944, No. 5, s. 3 (1); 1974, No. 149, s. 3

**12. When annual holidays to be taken**—(1) Where a worker becomes entitled to an annual holiday, then, subject to section 14 of this Act, 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. 40

(2) Except where any award or agreement applicable to the worker or the worker's contract of service otherwise provides, the time at which any annual holiday to which the worker has become entitled may be taken shall be fixed  
5 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.

(3) Subject to subsection (1) of this section, where the  
10 worker and his employer so agree, an annual holiday may be taken by the worker in more than one period.

(4) Where a worker and his employer so agree, any annual holiday to which the worker may become entitled may be taken by the worker wholly or partly in advance.

15 Cf. 1944, No. 5, s. 3 (3), (4), (5); 1974, No. 149, s. 3

**13. Entitlement to annual holidays when employment terminated**—Where the employment of a worker is terminated before he has taken the whole of any annual holiday to which he has become entitled, his employer shall be deemed  
20 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.

25 Cf. 1944, No. 5, s. 3 (6); 1974, No. 149, s. 3

**14. Effect of sickness or injury on annual holidays**—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.

30 Cf. 1944, No. 5, s. 3 (7); 1974, No. 149, s. 3

**15. Extra day to be given when special holiday taken**—Where any special holiday for which a worker is entitled to payment under this or any Act, award, or agreement (or, as the case may be, for which he would have been so  
35 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 Act, the period of the annual holiday shall be deemed to be increased by one day in respect of that special holiday.

40 Cf. 1944, No. 5, s. 3 (8); 1974, No. 149, s. 3

**16. 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 section 11 of this Act, his holiday pay in respect of the whole of the holiday shall be calculated in accordance with this section. 5

(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. 10

(3) Where it is agreed under section 12 (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. 15

(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. 20

(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. 25

Cf. 1944, No. 5, s. 3A; 1974, No. 149, s. 3

**17. Calculation of holiday pay where annual holiday taken in advance—**(1) Where, pursuant to an agreement made under section 12 (4) 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. 30

(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. 35

(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 40

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  
5 specified time.

(4) In subsections (2) and (3) of this section, the term “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  
10 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 section 11 of this Act, his employer shall assess the total amount that would have been payable to the  
15 worker under section 16 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.  
20 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 19 of this Act.

(6) Notwithstanding any other provision in this section,  
25 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.

30 Cf. 1944, No. 5, s. 3B; 1974, No. 149, s. 3

**18. 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  
35 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 section 11 of this Act become entitled to an annual holiday, the holiday pay of that worker in respect of that period shall,  
40 subject to any agreement made under section 12 (4) 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. 5

(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 17 of this Act in respect of any annual holiday to which he has not become entitled under section 11 of this Act at the date when the premises are closed or the work is discontinued. 10

(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. 20

(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. 25

(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, award, or agreement.

(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. 35

(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. 40

Cf. 1944, No. 5, s. 3c; 1974, No. 149, s. 3

19. **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  
5 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.

10 (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 section 18 (1) of this Act when the premises are closed or the work is discontinued.

15 Cf. 1944, No. 5, s. 3D; 1974, No. 149, s. 3

20. **Employment may be deemed continuous if worker dismissed and re-employed within one month**—(1) If the employment of any worker is terminated and the worker is again employed by the same employer at any time within  
20 one month after the date of the termination of the employment, the employment of the worker shall for the purposes of this Act be deemed to have continued as if the termination had not occurred, unless an Inspector of Factories certifies in writing that he is satisfied that in terminating the employment  
25 the employer acted in good faith and not for the purpose of evading or attempting to evade any obligation imposed by this Act or any payment required to be made under it.

30 (2) Any employer or worker affected by any determination of an Inspector of Factories under this section may, at any time within 14 days after the communication to him of the Inspector's determination, appeal in the prescribed manner to the Arbitration Court, and the decision of the Court shall be final and binding on all parties.

Cf. 1947, No. 60, s. 4

35 21. **Proportionate holiday pay in respect of employment for less than one year**—(1) This section applies with respect to every period of employment of a worker by any employer which is less than one year, computed from the date of the

commencement of the employment or (where the worker has during the employment become entitled to any annual holiday or holidays) from the date on which he became entitled to that annual holiday or to the last annual holiday, as the case may be. 5

(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. 10

(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. 15 20

(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. 25

(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 17 of this Act in respect of any annual holiday to which the worker has not become entitled at the date of termination of his employment. 30

Cf. 1944, No. 5, s. 4; 1974, No. 149, s. 4 35

**22. Holiday pay to be deemed salary or wages, and to be subject to deductions accordingly**—All money payable by an employer to any worker under this Act shall be deemed to be salary or wages earned by the worker, and shall be subject accordingly to all deductions that the employer is required by any enactment to make from salaries or wages, whether in respect of income tax or otherwise. 40

Cf. 1944, No. 5, s. 6

23. **Special provisions as to workers entitled to annual holidays otherwise than under this Act**—(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 or agreement for annual holidays or annual leave for any worker:

- (a) Where the worker is entitled under any such provision to any benefit that is not less favourable to the worker than the overall benefits provided by sections 11 to 15 of this Act taken together or by the benefits provided by any of sections 16 to 19 or section 21 of this Act, as the case may be, those sections or that section shall not apply to the worker:
- (b) Where any such provision is less favourable to the worker than those sections or any such section, those sections or that section shall apply to the worker, and no benefit shall be allowed to the worker under that provision.

(2) Workers employed under the terms of any order of the Waterfront Industry Tribunal appointed under the Waterfront Industry Act 1976 and workers employed on the waterfront as tally clerks and workers employed as shipwrights or carpenters in the preparation of ships for cargo or in the loading or unloading of cargo shall be allowed such holidays on such terms and conditions as may from time to time be approved by the Minister. Except as provided by any such terms and conditions, sections 11 to 19 and section 21 of this Act shall not apply to any such workers.

Cf. 1944, No. 5, s. 7; 1950, No. 68, s. 5 (a); 1962, No. 56, s. 2 (1); 1974, No. 149, s. 5

#### *Holidays in Factories*

24. **Holidays in factories**—(1) Subject to this Act, the occupier of a factory shall allow to every person employed in the factory a whole holiday on each of the following days in every year:

- (a) Christmas Day:  
 (b) Boxing Day:  
 (c) New Year's Day:  
 (d) The 2nd day of January (or another day in its place):  
 (e) Good Friday:  
 (f) Easter Monday:  
 (g) Anzac Day (within the meaning of the Anzac Day Act 1966):

- (h) Labour Day:
- (i) The birthday of the reigning Sovereign (within the meaning of the Sovereign's Birthday Observance Act 1952):
- (j) Waitangi Day (within the meaning of the Waitangi Day Act 1976): 5
- (k) The day of the anniversary of the province in which the factory is situated (or another day in its place).
- (2) Notwithstanding subsection (1) of this section, the occupier of a factory may employ any worker on any such holiday except as otherwise expressly provided. 10
- Cf. 1946, No. 43, s. 26; 1976, No. 33, s. 7 (4)

**25. Wages payable for holidays allowed and for holidays worked**—(1) Where any person has been employed in any factory at any time during the fortnight ending on the day on which any of the whole holidays referred to in section 24 (1) of this Act occurs, each employer who employs him in a factory during that fortnight shall, subject to subsection (2) of this section, pay him for the holiday, on or before the next regular pay day after the holiday, an amount equal to one-tenth of his wages for an ordinary working day multiplied by the number of ordinary working days on which he is employed during the fortnight by that employer. 15 20

(2) Where on any ordinary working day during the fortnight ending as aforesaid any such person has not otherwise been employed in any employment in which he is entitled to payment for the holiday, the employer who last employed him in the factory during that fortnight shall be liable to pay him in respect of each day on which he was not otherwise employed as aforesaid an amount equal to one-tenth of his wages for an ordinary working day. 25 30

(3) For the purposes of this section, a certificate in writing by any person that he has not for any period during the fortnight ending as aforesaid been employed on an ordinary working day in any employment for which he is entitled to payment for any whole holiday referred to in section 24 (1) of this Act shall be prima facie evidence of that fact. 35

(4) Notwithstanding the provisions of this section, no worker shall be entitled to receive payment under the foregoing provisions of this section for more than the equivalent of one ordinary day's wages for any such whole holiday. 40

(5) For the purposes of this section, the expression "ordinary working day" includes any such whole holiday if that holiday is granted on a day on which the person concerned would normally work.

5 (6) The employment of a casual worker merely for the purpose of baking, or preparing for baking, any article of food required for sale for human consumption to meet a public demand resulting from the observance of any of the said whole holidays shall not for the purposes of the foregoing  
10 provisions of this section be deemed to be employment in a factory.

(7) Subject to subsection (8) of this section, every person who is actually employed in any factory on any of the said whole holidays shall, in addition to the payment to which  
15 he is entitled under the foregoing provisions of this section, be paid therefor at not less than double the ordinary rate.

(8) Where any worker employed in or about a dairy factory or a creamery in which not more than 2 workers are regularly employed is actually employed on any of the  
20 said whole holidays he may, instead of payment therefor in accordance with subsection (7) of this section, be allowed 2 whole holidays at such time or times as the occupier may determine, being not later in any case than one month after the close of the season in which the said whole holiday  
25 occurred.

Cf. 1946, No. 43, s. 28

**26. Government railways factories**—(1) This section applies to every person being a worker in a factory of the New Zealand Government Railways Department.

30 (2) Notwithstanding section 24 (1) of this Act, any person to whom this section applies may elect to receive no payment for a whole holiday allowed, but instead to have a day off duty on pay at some subsequent date to be agreed upon between that person and his employer.

35 (3) Notwithstanding section 25 (7) of this Act, any person to whom this section applies may elect to receive in respect of work done on a whole holiday payment at double the ordinary rate only and no payment at the ordinary rate, but  
40 instead to have a day off duty at the ordinary rate at some subsequent date to be agreed upon between that person and his employer.

Cf. S.R. 1948/72

**27. Wages payable for work on Sundays—**(1) Subject to this section and to section 28 of this Act, where any worker employed in a factory in which work is regularly performed on Sundays is actually employed on any Sunday, he shall, in addition to his ordinary rate of pay, be paid for the time worked on such Sunday at not less than the ordinary rate. 5

(2) Every person who is actually employed in any factory on any Sunday shall be paid for the time worked on such Sunday at not less than double the ordinary rate of pay. 10

Cf. 1946, No. 43, s. 29

**28. Special provisions for night workers on newspapers—**

(1) For the purposes of sections 24 to 27 of this Act in their application to night workers in a newspaper factory—

(a) The term “Sunday” shall mean the period from noon on Sunday until noon on the following day; and a reference to any other day shall be read as a reference to the period from noon on that day until noon on the following day: 15

(b) The term “holiday” shall, where the newspaper is published on the holiday, mean the period from noon on the day of the holiday until noon on the following day, and shall, where the newspaper is not published on the holiday, mean the period from noon on the day preceding the holiday until noon on the day of the holiday. 20 25

(2) In this section, the term “newspaper” means a paper containing public news, printed and published in New Zealand periodically or in parts or numbers, at intervals not exceeding 26 days between one publication and the next. 30

Cf. 1946, No. 43, s. 32; 1948, No. 77, s. 15

**29. Modification by Order in Council of requirements as to pay for work on holidays and Sundays—**(1) The Governor-General may from time to time, by Order in Council; modify with respect to any specified factory or specified factories, or with respect to any specified class or specified classes of factories, subject to such conditions or requirements as he thinks fit, all or any of the requirements of sections 24 to 28 of this Act. 35

(2) Any Order in Council under this section may be at any time in like manner amended or revoked.

(3) Every Order in Council under this section shall have effect according to its tenor.

5 Cf. 1946, No. 43, s. 31

#### *Holidays in Undertakings*

30. **Holidays in undertakings**—Except where any award or agreement relating to the employment of any person in an undertaking otherwise provides, the provisions of sections  
 10 24, 25, 27, and 28 of this Act shall apply in respect of that person in the same manner and to the same extent as if that person was employed in a factory.

#### *General Provisions*

31. **Employers to keep holiday books**—(1) Every employer  
 15 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:

20 (c) The date of the termination of his employment:

(d) The date on which he has become entitled to each annual holiday:

(e) The dates on which each such holiday is taken:

25 (f) The amount paid to him in respect of each such holiday:

(g) The amount paid to him in respect of holidays upon the termination of his employment:

(h) Such other particulars as the Minister may from time to time prescribe by notice in the *Gazette*.

30 (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.

(3) The holiday book in use for the time being, and any such book used within the preceding 6 years, shall at all times  
 35 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 other manner and form as he may direct.

40 Cf. 1944, No. 5, s. 10

**32. Power of Inspectors to require information—**(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 thinks necessary in order to ascertain whether the provisions of this Act are being or have been complied with. 5

(2) Every Inspector exercising the powers conferred on him by this section shall, on demand, produce a warrant or other evidence of his appointment as an Inspector of Factories.

Cf. 1944, No. 5, s. 12 10

**33. No contracting out—**(1) Except as otherwise expressly provided by this Act, 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. 15

(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.

Cf. 1944, No. 5, s. 9 20

**34. Offences and penalties—**(1) Every person commits an offence against this Act who—

(a) Acts in contravention of or fails to comply in any respect with any provision of this Act:

(b) With intent to deceive, makes any false or misleading statement or any material omission in any holiday book 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: 25 30

(c) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under this Act.

(2) Every person who commits an offence against this Act shall be liable to a penalty not exceeding \$500 and (if the offence is a continuing one) to a further penalty not exceeding \$100 for every day during which the offence continues. 35

(3) A penalty for an offence against this Act may be recovered by any Inspector of Factories in the same manner as a penalty for a breach of an award, and the provisions of the Industrial Relations Act 1973 shall, so far as they are applicable and with the necessary modifications, apply accordingly.

Cf. 1944, No. 5, s. 13; 1946, No. 43, s. 85 (1); 1949, No. 51, s. 2 (2); 1974, No. 149, s. 7

**35. Proceedings may be taken by Inspector of Factories—**  
 10 Without limiting the powers or remedies of any other person, it is hereby declared that—

(a) Civil proceedings for the recovery of any money 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.

Cf. 1944, No. 5, s. 14

**36. Repeals, amendment, and revocation—**(1) The enactments specified in the Schedule to this Act are hereby consequentially repealed.

(2) Section 308 (7) of the Companies Act 1955 is hereby consequentially amended by omitting from paragraph (b) the words “the Annual Holidays Act 1944”, and substituting the words “sections 11 to 23 of the Holidays Act 1980”.

(3) The Factories Act, 1946, Modification Order 1948 is hereby consequentially revoked.

**37. Act to be administered in Department of Labour—**The First Schedule to the Labour Department Act 1954 (as substituted by section 2 (2) of the Labour Department Amendment Act 1979) is hereby amended—

(a) By omitting the item “The Annual Holidays Act 1944.” and the item “The Public Holidays Act 1955.”:

(b) By inserting, after the item “The Higher Salaries Commission Act 1977.”, the item “The Holidays Act 1980.”.

## SCHEDULE

Section 36 (1)

## ENACTMENTS REPEALED

- 1944, No. 5—The Annual Holidays Act 1944. (Reprinted 1975, Vol. 2, p. 1677.)
- 1945, No. 20—The Annual Holidays Amendment Act 1945. (Reprinted 1975, Vol. 2, p. 1692.)
- 1946, No. 43—The Factories Act 1946: Sections 26, 28, 29, 31, and 32. (R.S. Vol. 2, p. 387.)
- 1947, No. 60—The Statutes Amendment Act 1947: Sections 3 and 4. (Reprinted 1975, Vol. 2, p. 1677.)
- 1949, No. 51—The Statutes Amendment Act 1949: Section 2. (Reprinted 1975, Vol. 2, p. 1693.)
- 1950, No. 68—The Annual Holidays Amendment Act 1950. (Reprinted 1975, Vol. 2, p. 1694.)
- 1955, No. 100—The Public Holidays Act 1955. (R.S. Vol. 4, p. 227.)
- 1962, No. 56—The Annual Holidays Amendment Act 1962. (Reprinted 1975, Vol. 2, p. 1695.)
- 1962, No. 95—The Public Holidays Amendment Act 1962. (R.S. Vol. 4, p. 231.)
- 1974, No. 149—The Annual Holidays Amendment Act 1974. (Reprinted 1975, Vol. 2, p. 1696.)
- 1976, No. 33—The Waitangi Day Act 1976: Section 6.
- 1977, No. 108—The Industrial Relations Amendment Act 1977: So much of the Second Schedule as relates to the Annual Holidays Act 1944. (Reprinted 1977, Vol. 4, p. 3576.)