

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, the 5th Day of November 1974

ANNUAL HOLIDAYS AMENDMENT BILL

Proposed Amendments

Hon. Mr FAULKNER, in Committee, to move the following amendments:

Clause 2 (1): To add to the proposed definition of "average weekly earnings" the following proviso:

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

To add to the proposed definition of the term "gross earnings" the following proviso:

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

Clause 3: To insert in the proposed new section 3, after subsection (1), the following subsection:

"(1A) Where before the commencement of this section a worker has become entitled to an annual holiday on holiday pay but has not taken the whole of that holiday,—

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

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

To omit subsections (2) and (3) of the proposed new section 3, and substitute the following subsections:

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

“(3) Except where any award or collective agreement applicable to the worker or the worker’s contract of service otherwise provides, the time at which any holiday to which the worker has become entitled under subsection (1) of this section shall be fixed by his employer after consultation with the worker, and in fixing that time work requirements and the opportunities for rest and recreation available to the worker shall be taken into account. Subject to subsection (2) of this section, where the worker and his employer so agree that holiday may be taken by the worker in more than one period.

To add to subsection (5) of the proposed new section 3 the words “and shall pay forthwith to the worker, in addition to all other amounts due to him, holiday pay for that balance”.

To add to the proposed section 3A the following subsection:

“(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.

To add to subsection (5) of the proposed section 3B the words “and shall pay to the worker the amount so assessed reduced by the amount of holiday pay paid in respect of so much of his annual holiday as has been taken in advance. That amount shall be paid, in the case of a worker who has taken the whole of his annual holiday in advance, at the end of his year of entitlement, and, in the case of any other worker, at the time specified in section 3D of this Act.”

To omit subsections (6), (7), and (8) of the proposed section 3B.

To add to the proposed section 3C the following subsections:

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

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

Clause 4: To omit from the proposed new subsection (2) the word "subsection" in line 41, and substitute the word "section".

To insert, after the proposed new subsection (2), the following subsection:

"(2A) 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.

To omit from the proposed subsection (3) the words "earned by him" in line 11 on page 8, and substitute the words "for the time worked by him".

New clause 5A: To insert, after clause 5, the following clause:

5A. Repeal of provisions as to commencement of employment—Section 8 of the principal Act is hereby repealed.

Clause 7: To omit this clause, and substitute the following clause:

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

EXPLANATORY NOTE

Clause 2 (1): The amendment to the definition of "average weekly earnings" provides that for the purpose of calculating a worker's average weekly earnings each week of incapacity for work due to sickness or injury is to be disregarded, and his weekly earnings will be averaged out over the period he was at work.

The amendment to the definition of "gross earnings" defines what are the earnings of industrial life insurance agents who pursuant to section 2 of the Annual Holidays Amendment Act 1945 are "workers" for the purposes of the principal Act.

Clause 3: The effect of the proposed new *subsection (1A)* is that a worker who has become entitled to an annual holiday before the commencement of the new section but has not taken the whole of that holiday will be entitled to an annual holiday of 3 weeks on holiday pay, reduced by so much (if any) of his annual holiday as was taken by him before the commencement of the section. His holiday pay for so much of his annual holiday as is taken after the commencement of the section is to be calculated at the rate provided for in the new *section 3A*.

The effect of the new *section 3 (2)* is that the uninterrupted holiday period of at least 2 weeks must commence within 6 months after the date on which the worker becomes entitled to the holiday and any balance must commence within 12 months after that date.

The effect of the new *section 3 (3)* is that unless the time at which a worker is to take his holidays is fixed by any award or collective agreement, it is to be fixed by his employer after consultation with the worker and taking into account the opportunities for rest and recreation available to the worker.

The amendment to the new *section 3 (5)* expressly requires the employer to pay to a worker whose employment is terminated holiday pay for the balance of his holiday entitlement not already taken.

The effect of the new *section 3A (5)* is that the employer may fix for the purposes of assessing holiday pay pursuant to *section 3A* a cut-off date other than the anniversary of the date on which the worker commenced employment.

The amendments to *section 3B* are for the purposes of simplification only, and do not alter the effect of this section. The effect of the amended subsection (5) is that in any case where a worker has taken his annual holiday wholly or partly in advance, the employer must pay to him the amount of holiday pay that he would have been entitled to receive if he had not taken any part of that holiday in advance, reduced by any amount of any holiday pay received in respect of the period taken in advance. This amount is to be paid at the end of the workers' year of entitlement in the case of a worker who has taken the whole of his annual holiday in advance, and at the time specified in the proposed *section 3D* in any other case.

The effect of the new *section 3C (7)* is that if a worker whose work ceases periodically was incapacitated for work due to sickness or injury, his gross earnings on which the 6 percent mentioned in subsection (2) is to be calculated are to include an amount equal to the amount of ordinary pay that he would have received in each complete week of incapacity had he not been absent. Any sick pay received in respect of any such week is to be deducted from that amount, as that sick pay will form part of his gross earnings.

The effect of the new *section 3C (8)* is that the employer may fix for the purposes of assessing holiday pay pursuant to *section 3C* a cut-off date other than the anniversary of the date on which the worker commenced employment.

Clause 4: The amendment to the proposed new *subsection (2)* corrects an error.

The effect of the proposed new *subsection (2A)* is that if a worker whose employment is terminated before he has been employed for a year was incapacitated for work due to sickness or injury, his gross earnings on which the 6 percent mentioned in subsection (2) is to be calculated are to include an amount equal to the amount of ordinary pay that he would have received in each complete week of incapacity had he not been absent. Any sick pay received in respect of any such week is to be deducted from that amount, as that sick pay will form part of his gross earnings.

The amendment to the proposed *subsection (3)* is a drafting amendment for the purposes of clarification. Its effect is that the worker will be entitled to 6 percent of the total ordinary pay for the hours worked by him during the period and not 6 percent of the total ordinary pay earned by him during the period. A worker may have earned ordinary pay for only part of the period worked by him as he may have worked for part of the period at overtime rates, and this amendment will entitle him to holiday pay in respect of all the hours worked by him.

Clause 5A repeals *section 8* of the principal Act, which is a spent transitional provision that was necessary for the purposes of the principal Act.

Clause 7: This is a drafting amendment also, to accord more with the wording of *section 230* of the Industrial Relations Act 1973.
