

OBJECTS AND REASONS

This Bill would repeal and replace the *Holidays with Pay Act*, Cap. 348 in order to

- (a) make better provision for the granting and calculation of the annual holiday due to an employee;
- (b) increase the penalties for offences under the Act;
- (c) make better provision for the Chief Labour Officer to initiate proceedings for offences under the Act; and
- (d) provide for related matters.

Arrangement of Sections

Section

1. Short title.
2. Interpretation.
3. Grant of annual holiday.
4. Payment in respect of annual holiday.
5. Termination and annual holiday.
6. Termination after three months of employment.
7. Public holidays and annual holidays.
8. Records to be kept.
9. Void contract.
10. Offences.
11. Power to initiate proceedings.

Section

12. Limitation period.
13. Minister may amend Schedule.
14. Savings.
15. Repeal.

SCHEDULE

BARBADOS

A Bill entitled

An Act to make better provision for the granting and calculation of annual holidays with pay for employees.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Holidays with Pay Act, 2012*. Short title.

Interpreta-
tion.

2. In this Act,

"average pay" means the sum, calculated in accordance with section 4, which an employer pays an employee, in respect of any period of employment, for the annual holiday of the employee or a part thereof;

"employee" means a person who has entered into or works under a contract of service, or apprenticeship, with an employer whether the contract is expressed or implied, oral or in writing, and whether the total remuneration is paid monthly, weekly, daily, hourly or calculated by time or work done but does not include

- (a) an outworker, that is to say a person to whom articles and materials are given to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale, and the articles are dealt with in his own home or on other premises not under the control or management of the person who gave out the articles or materials; or
- (b) a person who is a member of the family of the employer who works exclusively on the behalf of the employer and who lives in the house of the employer;

"employer" means a person who employs one or more employees and includes any agent, manager or representative of that person where the agent, manager or representative is directly or indirectly responsible for the payment, whether in whole or in part, of the total remuneration to an employee;

"terminated" means the end of an employment contract by

- (a) an employer dismissing the employee;
- (b) an employer making the employee redundant; or
- (c) the employee tendering his resignation and resigning from his employment;

"total remuneration" means the entire sum paid to an employee in respect of labour or services performed for his employer, being the sum of his monthly, weekly, fortnightly, daily, or hourly wages or salary, as the case may be together with

- (a) any sum paid for services done or labour performed beyond the time contracted for the workday of the employee, or on a Sunday or a public holiday;
- (b) the cash value of any boarding or lodging provided by the employer which shall be paid at the rate specified in the *Schedule*, unless the terms of the contract of service between the employer and employee, or any other agreement or implied term states otherwise and provides for a rate that is higher than the rate specified in the *Schedule*;
- (c) the cash value of any meals provided by the employer which shall be paid at the rate specified in the *Schedule* unless the terms of the contract of service between the employer and employee, or any other agreement or implied term states otherwise and provides for a rate that is higher than the rate specified in the *Schedule*; and
- (d) any amount paid as an allowance, a commission, a bonus or an amount paid as incentive to productivity but does not include the payment of any sum that is not directly related to the productivity of the employee;

"year of employment" means any period of 12 months during which an employee has performed labour or rendered services for the same employer, and where the employee is employed on a weekly, fortnightly, or monthly basis the year of employment shall be a minimum aggregate of 208 days; and where the employee is employed, other than on a weekly, fortnightly or monthly basis, the year of employment shall be a minimum aggregate of 150 days.

Grant of
annual
holiday.

3. (1) An employee who completes a year of employment with the same employer shall be entitled to an annual holiday for a period of 3 weeks.

(2) An employee who has been in the employment of the same employer for more than one year of employment but less than 5 years of employment shall be entitled to an annual holiday for a period of 3 weeks.

(3) An employee who has been in the employment of the same employer for 5 or more years of employment shall be entitled to an annual holiday for a period of 4 weeks.

(4) Notwithstanding subsections (1), (2) and (3), an employee may be granted an annual holiday which is greater than any period specified in these subsections where the duration of the annual holiday is

- (a) a part of the contract of service for that employee;
- (b) a part of a collective agreement which is to be implied as a term of the contract of service for that employee; or
- (c) granted by way of custom or practice at his place of work for his years of service as an employee.

(5) An annual holiday shall be given and taken in a single continuous period unless the employer and the employee agree otherwise, and where they so agree, the annual holiday may be taken in two separate periods or in such periods as may be agreed.

(6) An employee who is entitled to an annual holiday shall be granted his annual holiday by his employer within a 6 month period from the date on which his entitlement to his annual holiday accrues unless

- (a) the employer and the employee agree in writing to postpone the annual holiday until a specific date; and

(b) the Chief Labour Officer is notified and submits his consent in writing in respect of the postponement of the annual holiday until that specific date.

(7) The employer shall determine the date on which the annual holiday of an employee commences and the employer shall give the employee no less than 14 days notice of the date on which the annual holiday commences.

(8) Where the employer and employee so agree, the annual holiday may be taken, wholly or partly, in advance, that is before the employee becomes entitled to the annual holiday.

(9) Where an annual holiday or any part thereof has been taken before the entitlement to that annual holiday has accrued, the employee shall not be entitled to another annual holiday, though he may be granted any remainder where only a part has been taken in advance, until the expiration of the 12 month period in respect of that annual holiday has passed.

(10) An employer shall not give an employee a notice of termination immediately prior to or during an annual holiday and where any such notice is given, it shall be void and of no effect.

4. (1) An employee who takes his annual holiday shall be paid the average pay for his annual holiday by his employer and in respect of an employee Payment in respect of annual holidays.

(a) who has one or more years of employment but less than 5 years of employment, with the same employer, the average pay shall be $\frac{3}{52}$ of total remuneration for that year of employment;

(b) whose employment with the same employer is for a period of 5 or more years of employment, the average pay shall be $\frac{4}{52}$ of the total remuneration for that year of employment;

(c) whose annual holiday is determined by his contract of service, custom or a term to be implied into his contract of service and the annual holiday is greater than the minimum period specified in section 3, the average pay shall be the number of weeks given for the annual holiday divided by 52 and multiplied by the total remuneration of the employee for that year of employment.

(2) An employee, whether employed on a weekly, fortnightly or monthly basis, who takes his annual holiday or part thereof shall not be paid any less for the duration of that holiday than he would have been paid for a week, fortnight or month in the course of his usual employment.

(3) Where the employee takes his annual holiday as a single period his average pay shall be paid to him no later than the day immediately preceding the commencement of his annual holiday.

(4) Where the employee takes his annual holiday in separate periods, the proportionate part of his average pay shall be paid to him in respect of each period, and payment shall be made no later than the day immediately preceding the commencement of each period.

Termination
and annual
holiday.

5. (1) An employee whose employment is terminated before he has taken the annual holiday to which he is entitled shall be deemed to have been given his annual holiday from the date of his termination and the employer shall forthwith pay to the employee, in addition to any other amount due to him, his average pay in respect of his annual holiday.

(2) An employee who has taken a part of his annual holiday whose employment is terminated before he has taken the remainder of his annual holiday shall be deemed to be given the remainder of his annual holiday from the date of the termination; and the employer shall forthwith pay to the employee, in addition to any other amount due to him, his average pay in respect of the remainder of his annual holiday.

(3) Where the annual holiday or any part thereof has been taken in advance by an employee and

- (a) the employment of the employee is terminated before he has completed his year of employment in respect of which the annual holiday or part thereof was taken; and
- (b) the sum paid by the employer to the employee in respect of the annual holiday or part thereof exceeds the sum which the employer is required to pay to the employee under subsection (1) or (2),

the employer shall not be liable to make any payment to the employee under that subsection and shall be entitled to deduct the amount of any such excess from any remuneration payable to the employee upon the termination of his employment.

Termination
after 3 months
of employ-
ment.

6. (1) Notwithstanding section 3, an employee who

- (a) has been employed by the same employer for a period of at least 3 months; and
- (b) has his employment terminated

shall, in addition to all other sums due to him, be entitled to payment for the portion of the annual holiday which has accrued during his employment; and his employer shall forthwith pay that sum and all other sums due to the employee.

(2) Where subsection (1) applies to an employee, the sum to be paid shall be determined by multiplying the sum of the wages paid to the employee during his employment, in addition to any sums to be added thereto, by $\frac{3}{52}$.

(3) For the purposes of this section,

"3 months" means an aggregate of no less than 48 days in three consecutive months during which the employee was employed by the same employer.

Public
holidays and
annual
holidays.
Cap. 352.

7. (1) Notwithstanding sections, 4, 5 and 6, where a public holiday granted under the *Public Holidays Act* occurs within any period taken by an employee as annual holiday or as a part thereof, those days shall be deemed to be granted in accordance with the *Public Holidays Act*; and accordingly shall not be computed as a part of the annual holiday of the employee.

(2) Where subsection (1) applies,

- (a) the period of the annual holiday shall be increased by one day in respect of that public holiday; and
- (b) the employee shall be paid his average pay in respect of that additional day.

Records to
be kept.

8. (1) An employer shall keep a record of

- (a) the date on which an employee begins his employment, that is the first day that the employee reports for work unless the contract of service or agreement provides for an earlier date;
- (b) the remuneration period of each employee and the sum paid;
- (c) the annual holiday or part thereof taken by an employee specifying the date on which the annual holiday or part thereof began and the date on which it ended, and state the duration thereof in days or weeks as the case may be; and
- (d) the sums paid to an employee for his annual holiday or part thereof.

(2) The records shall be kept by the employer in such form as may be prescribed by the Chief Labour Officer.

(3) The Chief Labour Officer, or any person duly authorised by him, may at any reasonable times enter any premises or place where an employee is employed and inspect the records which are required to be kept under subsection (1).

9. A contract or an agreement, or any term thereof between an employer and an employee that purports to exclude the operation of any of the provisions of this Act shall be null and void. Void contract.

10. (1) Any employer who Offences.

- (a) refuses to allow any employee to take an annual holiday to which he is entitled under this Act;
- (b) fails to pay any employee the average pay or part thereof to which he is entitled under this Act;
- (c) fails to keep records in accordance with section 8;
- (d) knowingly enters or causes to be entered in the records required under section 8 any false particular;
- (e) wilfully delays or obstructs the Chief Labour Officer or any person duly authorised by him in the exercise of any power under section 8(3).

is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 1 year or to both.

(2) Where a person is convicted of an offence under this Act in respect of which a fine is imposed, and the person fails to comply with the order of the court in respect of the fine, that person shall be liable to a further fine, not exceeding \$500, for each day on which he fails to comply with the order of the court.

11. (1) The Chief Labour Officer may institute proceedings in his own name against an employer for any offence under this Act and may appear and conduct the proceedings. Power to initiate proceeding.

(2) Where a magistrate finds an employer guilty of an offence under paragraph (a) or paragraph (b) of section 10(1) the magistrate may, in addition to the fine or sentence imposed, if any, order an employer convicted of such an offence to pay to the employee concerned any payment due to him under the Act; and this payment shall be subject to such a rate of interest as the magistrate considers appropriate in the circumstances.

Limitation
period.

12. No prosecution for an offence under this Act shall be instituted after the expiration of one year from the date of the commission of the offence.

Minister
may amend
Schedule.
Schedule.

13. The Minister may by Order amend the *Schedule*.

Savings.

14. (1) A person who was employed on January 1st, 1952 and to whom this Act is applicable shall be treated as if his year of employment had begun on the 1st of January, 1952.

Act 2012-

(2) A person whose employment commenced after 1st January, 1952 and before the commencement of the *Holidays with Pay Act, 2012* shall be treated as if his year of employment had begun on the date on which he commenced his employment, or, if that date is sooner, the date on which he signs his contract of employment.

Repeal of
Cap. 348.

15. The *Holidays with Pay Act* is repealed.

SCHEDULE

(Sections 2 and 13)

ALLOWANCES

Nature of the Allowance	Minimum Monetary Value per Week
	\$
Boarding or Lodging	8.00
Meals	25.00

