

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 of the annual holiday due to an employee;
- (b) make better provision for the calculation of the sum to be paid to an employee who has taken his annual holiday;
- (c) increase the penalties for offences under the Act;
- (d) make better provision for the Chief Labour Officer to initiate proceedings for offences under the Act; and
- (e) provide for related matters.

Arrangement of Sections

PART I

PRELIMINARY

1. Short title
2. Interpretation

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THE ANNUAL HOLIDAY OF AN EMPLOYEE

3. Administration
4. Grant of annual holiday
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BARBADOS

A Bill entitled

An Act to repeal and replace the *Holidays with Pay Act* to make better provision for the granting of an annual holiday with pay to employees.

ENACTED by the Parliament of Barbados as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Holidays with Pay Act, 2015*.

Interpretation

2. In this Act,

“average pay” means the sum, calculated in accordance with section 5, which an employer pays an employee, in respect of any period of employment, for the annual holiday of the employee or a part thereof;

“basic wage” means the payment made to an employee for the standard work period provided for in a contract of employment, whether the employee is paid monthly, weekly, fortnightly, daily, on an hourly basis, or by work done, as the case may be, but does not include any additional payment made to the employee as a bonus, commission or overtime;

“bonus” means a periodic, discretionary payment made to an employee which is either set at a specific sum or calculated on terms specified in a contract of employment, where the sum to be paid is

- (a) based on the performance of the employee or a group of employees; and
- (b) paid with the basic wage of the employee or paid separately on a quarterly or monthly basis;

“contract of employment” has the meaning assigned to it by section 3 of the *Employment Rights Act (Act 2012 - 9)*;

“commission” means a sum of money paid under the terms of a contract of employment which is based on the performance of the employee and paid

per unit of sale or per completed task, and where the payment of commission

- (a) forms a part of the salary, remuneration, or wage of the employee it shall be paid together with the basic wage; or
- (b) constitutes the basic wage of the employee it shall be paid in the manner in which the employee is to be paid whether on a monthly, weekly, fortnightly, daily, an hourly basis or by work done;

“employee” means a person who has entered into or works under a contract of employment irrespective of how that person is paid but does not include

- (a) an outworker who is
 - (i) a person to whom articles and materials are given to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for sale, where 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
 - (ii) a person who is given a task or job in circumstances where the task or job is performed in his own home or on other premises which not under the control or management of the person who contracted for the task or job to be performed; 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 or representative of that person where the agent or representative is directly or indirectly responsible for the payment, whether in whole or in part, of the total remuneration to an employee;

“public holiday” means a day designated as such in the *First Schedule* to the *Public Holidays Act, Cap. 352*;

“standard work period” means the time period or fixed hours stipulated in the contract of employment and includes the required hours of work which comprises a work day, as well as the required work days;

“terminated” means the end of a contract of employment 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 total sum paid to an employee in respect of the labour or services performed for his employer under a contract of employment, being the sum of his basic wage together with

- (a) any sum paid for services done or labour performed on a Sunday or Public Holiday where the contract of employment stipulates these days as a part of the standard work period;
- (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 employment 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 employment 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 sum paid as a bonus, commission, or any other sum paid based on the productivity of the employee where that sum is paid together with the basic wage, or paid in a similar manner as the salary or wage 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.

PART II

THE ANNUAL HOLIDAY OF AN EMPLOYEE

Administration

3.(1) The Chief Labour Officer shall be responsible for the application, administration and enforcement of this Act, and for such other matters as the Minister may direct.

(2) The functions of the Chief Labour Officer are to

- (a) receive and investigate any representations made to him or any instrument in writing sent to him concerning the Act or matters arising thereunder;
- (b) provide information and advice to employers and employees on the application of this Act; and
- (c) enforce the provisions of the *Labour Department Act*, Cap. 23, and the *Employment Rights Act* (Act 2012 - 9) where applicable to the provisions of this Act.

Grant of annual holiday

4.(1) An employee who completes a year of employment with the same employer shall be entitled to an annual holiday for a minimum 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 minimum 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 minimum 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 those subsections where the duration of the annual holiday is
 - (a) a part of the contract of employment of that employee;
 - (b) a part of a collective agreement which has been incorporated into the contract of employment or which is to be implied as a term of the contract of employment of 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 employer shall determine the date on which the annual holiday of an employee is due to commence and shall give the employee no less than 14 days notice of the date on which that annual holiday is due to commence.
- (7) An employee may, where the notice required by subsection (6) has not been given, notify the Chief Labour Officer of that fact by an instrument in writing and the Chief Labour Officer may, where he considers it necessary in the circumstances, make a complaint in respect of the matter to the Employment Rights Tribunal.

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

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

(9) 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.

(10) 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.

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

(12) Where a notice of termination has been given to an employee prior to or during an annual holiday, the employee shall notify the Chief Labour Officer of that fact by an instrument in writing and the Chief Labour Officer may, where he considers it necessary in the circumstances, make a complaint in respect of the matter to the Employment Rights Tribunal.

Payment for annual holiday

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

- (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
 - (i) determined by his contract of employment, a term to be implied into his contract of employment or by custom; and
 - (ii) greater than the minimum period specified in section 4

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 an 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 an 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

6.(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 and 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 further payment to the employee 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 employment

7.(1) Notwithstanding section 4, 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 the tenure of 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 total remuneration paid to the employee during his employment 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

8.(1) Notwithstanding sections 4, 5, 6 and 7, where a public holiday granted under the *Public Holidays Act*, Cap. 352 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*, Cap. 352, and accordingly shall not be computed as a part of the annual holiday of the employee, and the terms of the contract of employment of that employee as it relates to the payment for public holidays shall apply.

(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.

PART III
MISCELLANEOUS

Records to be kept

- 9.(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 employment or agreement provides for an earlier date;
 - (b) the basic wage of an employee or, where relevant, the amount paid as the salary of that employee, as well as the manner in which the sum is paid, that is whether the employee is paid monthly, weekly, fortnightly, daily, on an hourly basis, or by work done ;
 - (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, as well as the total remuneration paid for that annual holiday; and
 - (d) any other 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 time enter any premises or place where an employee is employed and inspect the records which are required to be kept under subsection (1).

Void contract or contract terms

10. A contract of employment or an agreement, or any term thereof between an employer and an employee which purport to exclude the operation of any of the provisions of this Act shall be null and void, and where the Chief

Labour Officer is notified by an instrument in writing of any such term, he may where he considers that the circumstances require it, make a complaint in respect of the matter to the Employment Rights Tribunal.

Offences

11.(1) Any employer who

- (a)* refuses to allow an employee to take an annual holiday to which he is entitled under this Act;
- (b)* gives an employee less of an annual holiday than the annual holiday to which that employee is entitled;
- (c)* fails to pay an employee the average pay or part thereof to which he is entitled under this Act;
- (d)* fails to keep records in accordance with section 9;
- (e)* knowingly enters or causes to be entered in the records required under section 9 any false particular; or
- (f)* wilfully delays or obstructs the Chief Labour Officer or any person duly authorised by him in the exercise of any power under section 9(3)

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

(2) Where a person is convicted of an offence under this Act and a fine is imposed, and that person fails to comply with the order of the court in respect of that fine, that person shall be liable to a further fine of \$500 for each day on which he fails to comply with the order of the court.

Power to initiate proceedings

12.(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.

(2) Where a magistrate finds an employer guilty of an offence under paragraphs (a),(b) or (c) of section 11(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 rate of interest as the magistrate considers appropriate in the circumstances.

Limitation period

13. 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

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

Savings

15. A person whose employment commenced after 1st day January, 1952 and before the commencement of the *Holidays with Pay Act, 2015* 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

16. The *Holidays with Pay Act, Cap. 348* is repealed.

SCHEDULE*(Sections 2 and 14)**ALLOWANCES*

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