The Retail Food Trades Wages Council (England and Wales) Wages Regulation (Holidays) Order, 1949

1949 No. 2030

Made - - - - 1*st November,* 1949
Coming into Operation 5*th December,* 1949

R.F.C. (4)

Whereas the Minister of Labour and National Service (hereinafter in this Order referred to as "the Minister") has received from the Retail Food Trades Wages Council (England and Wales) (hereinafter in this Order referred to as "the Wages Council") the wages regulation proposals set out in the Schedule hereto being proposals for requiring workers in relation to whom the Wages Council operates to be allowed holidays by their employers and for fixing holiday remuneration to be paid by their employers to those workers;

Now, therefore, the Minister, by virtue of the powers conferred on him by section 10 of the Wages Councils Act, 1945(**a**), and of all other powers in that behalf, hereby makes the following Order:—

Short title and interpretation

1.—(1) This Order may be cited as the Retail Food Trades Wages Council (England and Wales) Wages Regulation (Holidays) Order, 1949.

(2) In this Order the expression "the specified date" means the 5th day of December, 1949, provided that where as respects any worker who is paid wages at intervals not exceeding seven days that date does not correspond with the beginning of the period for which the wages are paid, the expression "the specified date" means, as respects that worker, the beginning of the next such period following that date.

(3) The Interpretation Act, 1889(**b**), applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

Fixing of holidays and holiday remuneration

2.—(1) Effect is hereby given to the said wages regulation proposals set out in the Schedule hereto.

(2) The provisions of the Schedule hereto shall have effect as from the specified date.

Signed by order of the Minister of Labour and National Service this 1st day of November, 1949.

Godfrey H. Ince,
Secretary of the
Ministry of Labour and National Service.

(**a**) 8 & 9 Geo. 6. c. 17. (**b**) 52 & 53 Vict. c. 63.

SCHEDULE

PART I

APPLICATION

Paragraph 1

This Schedule applies to every worker for whom statutory minimum remuneration has been fixed.

PART II

ANNUAL HOLIDAYS

Paragraph 2

(1) Subject to the provisions of sub-paragraph (2) of this paragraph and of paragraph 3 of this Schedule an employer shall, between the 5th day of December, 1949, and the 28th day of February, 1950, and in the year 1950 and in each succeeding year between the 1st day of April and the 31st day of October, allow a holiday (hereinafter in this Schedule referred to as an " annual holiday ") to every worker in his employment to whom this Schedule applies who has been employed by him during the twelve months immediately preceding the commencement of the holiday season for any one of the periods of employment (calculated in accordance with the provisions of paragraph 9 of this Schedule) set out in the first column of the table below and the duration of the annual holiday shall in the case of each such worker be related to that period as follows:—

Period of employment	Duration of annual holiday Where the worker's normal working week is			
	6 days	5 days	4 days	3 days or less
Not less than 12 months	12 days	10 days	8 days	6 days
„ „ 11 „ but less than 12 months	11 „	9 „	7 „	5 „
„ „ 10 „ „ „ 11 „	10 „	8 „	7 „	5 „
„ „ 9 „ „ „ 10 „	9 „	7 „	6 „	4 „
„ „ 8 „ „ „ 9 „	8 „	7 „	5 „	4 „
„ „ 7 „ „ „ 8 „	7 „	6 „	5 „	3 „
„ „ 6 „ „ „ 7 „	6 „	5 „	4 „	3 „
„ „ 5 „ „ „ 6 „	5 „	4 „	3 „	2 „
„ „ 4 „ „ „ 5 „	4 „	3 „	3 „	2 „
„ „ 3 „ „ „ 4 „	3 „	2 „	2 „	1 day
„ „ 2 „ „ „ 3 „	2 „	2 „	1 day	1 „
„ „ 1 month „ „ 2 „	1 day	1 day	1 „	nil

(2) Notwithstanding the provisions of the last foregoing sub-paragraph—

(*a*) the number of days of annual holiday to which a worker is entitled in any holiday season shall not exceed in the aggregate twice the period constituting the worker's normal working week ;

(*b*) where a worker does not wish to take his annual holiday or part thereof during the holiday season in the year 1950 or in any succeeding year, and, before the expiration of such holiday season, enters into an agreement in writing with his employer that the annual holiday or part thereof shall be allowed, at a date or dates to be specified in that agreement, after the expiration of the holiday season but before the first day of January in the following year, then any day or days of annual holiday so allowed shall be treated as having been allowed during the holiday season ;

(*c*) the number of days of annual holiday to be allowed to a worker during the holiday season ending on the 28th day of February, 1950, shall be reduced by the number of days (if any) of holiday with pay (not being days of customary holiday) which have been allowed by the employer to and taken by the worker during the period commencing on the 1st day of April, 1949, and ending upon the 5th day of December, 1949.

(3) In this Schedule the expression " holiday season " means in relation to the year 1949 the period commencing on the 1st day of April, 1949, and ending on the 28th day of February, 1950, and in relation to the year 1950 and any succeeding year, the period commencing on the 1st day of April, 1950, or the 1st day of April in such succeeding year (as the case may be) and ending on the 31st day of October of the same year.

Paragraph 3

Where at the written request of the worker at any time during the three months immediately preceding the commencement of the holiday season in any year, his employer allows him any day or days of annual holiday and pays him holiday remuneration in respect thereof calculated in accordance with the provisions of paragraphs 6 and 7 of this Schedule, then

(*a*) the annual holiday to be allowed in accordance with paragraph 2 of this Schedule in the holiday season in that year shall be reduced by the day or days of annual holiday so allowed prior to the commencement of that holiday season ; and

(*b*) for the purpose of calculating accrued holiday remuneration under paragraph 8 of this Schedule any day or days of annual holiday deducted in accordance with sub-paragraph (*a*) hereof shall be treated as if they had been allowed in the holiday season.

Paragraph 4

Annual holidays shall be allowed on consecutive working days, being days upon which the worker is normally called upon to work, but not being days of customary holiday, and days of holiday shall be treated as consecutive notwithstanding the intervention of a customary holiday on which the worker is not required to work.

Provided that—

(1) where the duration of an annual holiday to which a worker is entitled exceeds the period constituting the worker's normal working week the said holiday may be allowed in two separate periods of such consecutive working days, if one of such periods is not less than the period constituting the worker's normal working week ;

(2) one day of the annual holiday may be allowed on a non-consecutive working day (other than the worker's weekly short day) falling within the holiday season (or after the holiday season in the circumstances specified in sub-paragraph (2) (*b*) of paragraph 2 of this Schedule) where the annual holiday or a period of annual holiday, as the case may be, is allowed immediately after a customary holiday or so that such a holiday intervenes.

Paragraph 5

An employer shall give to a worker reasonable notice of the commencing date or dates and of the duration of his annual holiday. Such notice may be given individually to a worker or by the posting of a notice in the place where the worker is employed.

PART III

HOLIDAY REMUNERATION

Paragraph 6

(1) Subject to the provisions of paragraph 7 of this Schedule a worker entitled to be allowed an annual holiday under this Schedule shall be paid by his employer, on the last pay day preceding such holiday, one day's holiday pay (as defined in paragraph 11 of this Schedule) in respect of each day thereof.

(2) Where under the provisions of paragraph 4 of this Schedule an annual holiday is taken in more than one period the holiday remuneration shall be apportioned accordingly.

Paragraph 7

Where any accrued holiday remuneration has been paid by the employer to the worker (in accordance with the provisions of paragraph 8 of this Schedule) in respect of employment during any of the periods referred to in that paragraph, the amount of holiday remuneration payable by the employer in respect of any annual holiday for which the worker has qualified by reason of employment during the said period shall be reduced by the amount of the said accrued holiday remuneration unless that remuneration has been deducted from a previous payment of holiday remuneration made under the provisions of this Schedule.

ACCRUED HOLIDAY REMUNERATION PAYABLE ON TERMINATION OF EMPLOYMENT

Paragraph 8

Subject to the provisions of this paragraph, if a worker ceases to be employed before being entitled to be allowed an annual holiday or before being allowed the whole of any annual holiday to which he is entitled under this Schedule, the employer shall, immediately on the termination of the employment (hereinafter in this Schedule referred to as "the termination date"), pay to the worker as accrued holiday remuneration:—

(i) in respect of any period of employment occurring before the 1st April immediately preceding the termination date, an amount equal to the holiday remuneration to which the worker would have been entitled under the provisions of paragraph 6 of this Schedule if he had been allowed an annual holiday in respect of that period of employment at the termination date, LESS any holiday remuneration already paid for any day or days of annual holiday allowed subsequently to the 1st April aforesaid in respect of that period of employment, and

(ii) in respect of any period of employment since the 1st April immediately preceding the termination date, an amount equal to one day's holiday pay (as defined in paragraph 11 of this Schedule) multiplied by the number of days of annual holiday to which the worker would have been entitled under the provisions of paragraph 2 of this Schedule if by virtue of such period of employment he could have taken an annual holiday at the termination date, LESS any accrued holiday remuneration already paid by the employer to the worker in respect of that period.

Provided that no worker shall be entitled to the payment by his employer of accrued holiday remuneration if he is dismissed on the grounds of misconduct and is so informed by the employer at the time of dismissal.

PART IV

GENERAL

Paragraph 9

For the purposes of calculating any period of employment entitling a worker to an annual holiday or to any accrued holiday remuneration under this Schedule, the worker shall be treated:—

(*a*) as if he were employed for a month in respect of any month in which—

(i) he has worked for the employer for not less than 72 hours and has performed some work to which statutory minimum remuneration applies; or

(ii) he has worked for the employer for less than 72 hours, or has performed no work, solely by reason of proved illness or accident (provided that the number of months which may be treated as months of employment for such reason shall not exceed two in any such period as aforesaid); and

(*b*) as if he were employed on any day of annual holiday allowed under the provisions of this Schedule and, for the purpose of the provisions of sub-paragraph (*a*) of this paragraph, a worker who is absent on such a holiday shall be treated as having worked thereon for the employer for the number of hours ordinarily worked by him on that day of the week on work to which statutory minimum remuneration applies.

Paragraph 10

Where any day of annual holiday allowed to any worker under this Schedule falls upon a day of holiday or a half-holiday to which the worker may be entitled under any enactment other than the Wages Councils Act, 1945, that day of holiday or that half-holiday, as the case may be, shall be treated as part of the annual holiday allowed under this Schedule.

Provided that where the total number of days of annual holiday allowed to a worker under this Schedule is less than the number of days in his normal working week the said annual holiday shall be in addition to the said day of holiday or the said half-holiday.

Paragraph 11

In this Schedule, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"CUSTOMARY HOLIDAY" means—

Christmas Day (or, if Christmas Day falls on a Sunday, such week-day as may be prescribed by national proclamation or, if no such day is prescribed, the next following Tuesday), Boxing Day, Good Friday, Easter Monday, Whit Monday, August Bank Holiday and any day proclaimed as an additional Bank Holiday or a general holiday; or where in any establishment it is not the custom or practice to observe such days as holidays, such other days, not fewer in number, as may be substituted by agreement between the employer or his representative and the worker or his representative.

"MONTH" means the period commencing on a date of any number in one month and ending on the day before the date of the same number in the next month, or if the commencing date is the 29th, 30th, or 31st day of a month and there is no date of the same number in the next month, then on the last day of that month.

"NORMAL WORKING WEEK" means the number of days on which it has been usual for the worker to work in a week while in the employment of the employer during the twelve months immediately

preceding the commencement of the holiday season, or, where under paragraph 8 of this Schedule, accrued holiday remuneration is payable on the termination of the employment, during the twelve months immediately preceding the termination date;

Provided that—

(i) part of a day shall count as a day;

(ii) no account shall be taken of any week in which the worker did not perform any work for which statutory minimum remuneration has been fixed.

"ONE DAY'S HOLIDAY PAY" means the appropriate proportion of the remuneration which the worker would be entitled to receive from his employer at the date of the annual holiday (or where the holiday is taken in more than one period at the date of the first period) or at the termination date, as the case may be, for one week's work, if working his normal working week and the number of daily hours normally worked by him (exclusive of overtime), and if paid at the appropriate rate of statutory minimum remuneration for work to which statutory minimum remuneration applies and at the same rate for any work for the same employer to which such remuneration does not apply, and in this definition "appropriate proportion" means—

Where the worker's normal working week is six days ..	one-sixth
Where the worker's normal working week is five days ..	one-fifth
Where the worker's normal working week is four days ..	one-quarter
Where the worker's normal working week is three days ..	one-third
Where the worker's normal working week is two days ..	one-half
Where the worker's normal working week is one day ..	the whole.

"STATUTORY MINIMUM REMUNERATION" means minimum remuneration (other than holiday remuneration) fixed by a wages regulation order made by the Minister to give effect to proposals submitted to him by the Wages Council.

Paragraph 12

The provisions of this Schedule are without prejudice to any agreement for the allowance of any further holidays with pay or for the payment of additional holiday remuneration.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

The Schedule to this Order, which has effect from the 5th December, 1949, fixes the annual holidays which an employer is required to allow and the holiday remuneration which an employer is required to pay to workers (other than watchmen) in relation to whom the Retail Food Trades Wages Council (England and Wales) operates.