The Retail Food Trades Wages Council (Scotland) Wages Regulation (Holidays) Order, 1949

1949 No. 2031

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

R.F.C.S. (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 (Scotland) (hereinafter in this Order referred to as "the Council") the wages regulation proposals set out in the Schedule hereto being proposals for requiring workers in relation to whom the 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 (Scotland) 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 paragraphs 3 and 6 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 10 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
Not less than 12 months	12 days
11 „ but less than 12 months	11 „
10 „ „ „ „ 11 „	10 „
9 „ „ „ „ 10 „	9 „
8 „ „ „ „ 9 „	8 „
7 „ „ „ „ 8 „	7 „
6 „ „ „ „ 7 „	6 „
5 „ „ „ „ 6 „	5 „
4 „ „ „ „ 5 „	4 „
3 „ „ „ „ 4 „	3 „
2 „ „ „ „ 3 „	2 „
1 month „ „ „ 2 „	1 day

(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 for the purposes of this Schedule be treated as having been allowed during the holiday season.

(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 7 and 8 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 9 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, and days of annual holiday shall be treated as consecutive notwithstanding the intervention of a customary holiday on which the worker is not required to work for the employer.

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 half holiday) 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 on which the worker is not required to work for the employer or so that such a holiday intervenes ;

(3) no day of customary holiday (as defined in paragraph 12 of this Schedule) shall be counted as a day of annual holiday.

Paragraph 5

An employer shall give to a worker not later than the first day of April in each year notice of the commencing date or dates and of the duration of his annual holiday. Such notice may be given individually to the worker or by the posting of a notice in the place where the worker is employed.

Provided that, as regards any annual holiday allowed during the holiday season ending on the 28th day of February, 1950, the foregoing provision shall be read as if the word " reasonable " were substituted for the words " not later than the first day of April in each year ".

Paragraph 6

Where between the 1st day of April, 1949 and the 5th day of December, 1949, any day or days of holiday have been allowed to a worker, being a day or days which would have counted as a day or days of annual holiday under this Schedule if it had been in force at the date of any such holiday

and if it had provided that an annual holiday could be allowed during the period commencing on the 1st day of April, 1949, and ending on the 5th day of December, 1949, then the number of days of annual holiday to be allowed to the worker under this Schedule during the period commencing on the 5th day of December, 1949, and ending on the 28th day of February, 1950, shall be reduced by the number of days of holiday allowed as aforesaid.

PART III

HOLIDAY REMUNERATION

Paragraph 7

(1) Subject to the provisions of paragraph 8 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 12 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 8

Where any accrued holiday remuneration has been paid by the employer to the worker (in accordance with paragraph 9 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 9

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 called " 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 7 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 12 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 connected with his employment and is so informed by the employer at the time of dismissal.

PART IV

GENERAL

Paragraph 10

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 as if he were employed for a month in respect of any month throughout which he has been in the employment of the employer.

Paragraph 11

Subject to the provisions of (3) of the proviso to paragraph 4 of this Schedule, 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 Acts, 1945 to 1948, 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.

Paragraph 12

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—

New Year's Day (or, if New Year's Day falls on a Sunday, the following Monday), the local Spring Holiday, the local Autumn Holiday, Christmas Day (or, if Christmas Day falls on a Sunday, the following Monday) and two other days, observed by local custom as holidays, to be fixed by the employer and notified to the worker.

"MONTH" means "calendar month".

"ONE DAY'S HOLIDAY PAY" means the amount which the worker would be entitled to receive from his employer for a day's work under the arrangement current immediately prior to the annual holiday, or the termination date, as the case may be, if he worked the number of daily hours normally worked by him (exclusive of overtime) on that day of the week.

Paragraph 13

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, sets out the annual holidays to be allowed and the holiday remuneration to be paid to workers (other than caretakers) in relation to whom the Retail Food Trades Wages Council (Scotland) operates.