

International
Labour Office

Legislative Series
1952—Bur. 1

BURMA 1

The Leave and Holidays Act, 1951: No. 58, Dated 11 January 1952.

1. (1) This Act may be called the Leave and Holidays Act, 1951.

(2) It shall come into force on such date as the President may, by notification, appoint in this behalf, and different dates may be appointed for different areas in respect of different classes of trades, industries and establishments specified in the Schedule to this Act.

2. In this Act, unless there is anything repugnant in the subject or context:

- (1) "day" means a period of 24 hours beginning at midnight;
- (2) "leave" includes earned leave, casual leave and leave on medical certificate;
- (3) "earned leave" means leave earned in respect of the period of service or period spent on duty;
- (4) "employee" means any person who is employed, whether permanently or temporarily, either in or upon any trade or industry or establishment specified in the Schedule to this Act, and employed either on wages or on basic pay not exceeding 400 rupees per month, but does not include:
 - (a) any member of the family of any employer in cases where the latter is carrying on his own trade or industry or establishment,
 - (b) persons who are remunerated out of the profits of the trade or industry or establishment in the shape of shares;
 - (c) domestic servants;
 - (d) workers in respect of whom leave and holidays are provided under the Minimum Wages Act, 1949¹ and
 - (e) persons employed in government offices and undertakings, or offices and undertakings under the Government, or offices and undertakings of local authorities or offices and undertakings under local authorities, which are neither factories nor offices of factories.

¹ Legislative Series, 1949 (Bur. 1).

Explanation: "Members of the family of an employer" means parents, husband, wife, children, brothers and sisters of the employer.

- (5) "employer" includes any body of persons, whether incorporated or not, and any managing agent of an employer and the legal representative of a deceased employer;
- (6) "pay" means basic pay plus cost-of-living allowance, if any;
- (7) "registered medical practitioner" means any person registered under the Burma Medical Act, or any existing Act providing for the maintenance of a register of medical practitioners, and also includes any person declared by the President, by notification, to be a medical practitioner for the purposes of the Act for any area where a medical practitioner is non-existent;
- (8) "prescribed" means prescribed by rules made under this Act or by any form prescribed by those rules;
- (9) "wages" means wages as defined in section 2 (vi) of the Payment of Wages Act².

3. (1) Every employee shall be granted by his employer the following public holidays with full wages or pay (as the case may be), namely:

Independence Day	one day
Full Moon of Tabaung	one day
Thingyan	three days
Burmese New Year	one day
May Day	one day
Full Moon of Kason	one day
Resistance Day	one day
Beginning of Buddhist Lent	one day
Martyrs' Day	one day
End of Buddhist Lent	one day
Full Moon of Tansaungmon	one day
National Day	one day

(2) If any public holiday falls on any weekly day of rest or on any other holiday, an alternative holiday shall not be allowed, but that weekly day of rest or holiday (as the case may be) on which the public holiday incidentally falls shall be regarded as a public holiday. If, however, an employee is required to work on a public holiday, he shall be paid basic wages or pay (as the case may be) at double the usual rate, as well as the cost-of-living allowance, if admissible, at the ordinary single rate.

(3) A holiday without wages or pay may be granted on the occasion of religious festivals to non-Buddhist employees by mutual agreement between employers and employees.

² The Burma Code, Vol. II, p. 620. See India Act No. IV of 1936: *Legislative Series, 1936 (Ind. 1)*.

4. (1) Every employee who has completed a period of 12 months' continuous service shall be granted by his employer during the subsequent period of 12 months—

- (a) in the case of employees over 15 years of age, earned leave with average wages or average pay (as the case may be) for a period of ten consecutive days; and
- (b) in the case of employees under 15 years of age, earned leave with average wages or average pay as the case may be for a period of 14 consecutive days.

(2) Earned leave shall be granted after completion of a period of 12 months' continuous service during which an employee has worked at least 24 days in every month: Provided that an employee shall forfeit one day from his earned leave for every month in which he has not worked 24 days.

Explanation: An employee shall be deemed to have completed a period of 12 months' continuous service notwithstanding any interruptions in service during those 12 months brought about by sickness or accident or absence duly authorised under this Act, which, counted together, do not exceed 90 days, or by a lockout or a strike which is not an illegal strike or by intermittent periods of involuntary unemployment which, counted together, do not exceed 30 days.

(3) An employer shall fix the time at which earned leave may be taken by his employee within three months from the last date of the period of 12 months in respect of which the earned leave is to be granted. Accumulated earned leave admissible may, however, by mutual agreement between the employer and the employee concerned be granted to the employee at any time during any period not exceeding three years.

(4) An employee who has been granted earned leave shall, before his earned leave begins, be paid the wages or pay (as the case may be) due for the period of earned leave allowed. Such payment shall be made to the employee or his authorised representative at the place where wages or pay are or is usually paid.

(5) If an employee who is entitled to earned leave resigns, or is discharged by his employer, or dies before he has taken his earned or accumulated leave, the employer shall pay him or his legal representative wages or pay (as the case may be) in lieu of earned leave at a rate equivalent to the daily average of the wages or pay (as the case may be) for the days on which he had worked during the 30 days immediately preceding his resignation, discharge or death. Such payment shall, in the case of resignation or discharge, be made within two days and, in case of death, as soon as possible after a claim is made for such payment.

5. (1) An employee shall be admissible to casual leave with wages or pay (as the case may be) aggregating six days in a year:

Provided that he shall only be admissible to a maximum casual leave of three days at any one time.

(2) Casual leave shall not be combined with any other kind of leave.

(3) If the employee does not take the casual leave which he is entitled to within the year, it shall lapse.

6. (1) An employee shall be admissible to leave on medical certificate with wages or pay (as the case may be) not exceeding 30 days in a year:

Provided that leave on medical certificate shall not be admissible to an employee until he has been in service for at least six months, and that the grant of such leave shall be subject to a waiting period of three days for which he shall be paid half his usual pay or wages (as the case may be).

If, however, an employee has not been in service for at least six months, he shall be admissible to leave on medical certificate without pay.

(2) Leave on medical certificate shall be granted on production of a certificate (in order of priority) from the medical officer of the trade, industry or establishment concerned, or a doctor approved by the trade, industry or establishment, or from a government medical officer in the case of government employees, or from the railway medical officer in the case of railway employees, or from any other registered medical practitioner.

(3) The President may prescribe the fee payable to medical officers for such certificates.

(4) An employee, who has been granted leave on medical certificate shall, if so requested by him, be paid the wages or pay (as the case may be) due to him weekly during the period of leave on medical certificate. Such payment shall be made to the employee or his authorised representative at the place where wages or pay are or is usually paid.

(5) If the employee does not take the medical leave which he is entitled to within the year, it shall lapse.

7. Subject to the provisions of subsection (5) of section 6, leave on medical certificate may be granted in continuation of earned leave.

8. Notwithstanding the provisions contained in sections 4, 5 and 6, an employee who works in any trade, industry or establishment where work is not carried on continuously for 12 months

shall be granted by his employer earned leave, casual leave or leave on medical certificate proportionate to his period of service. *Proposed*

9. Any agreement or contract of service whereby an employee agrees to take leave or holidays on terms less favourable than those provided in this Act shall be null and void in so far as it purports to reduce the liability of an employer.

10. (1) Any change in ownership of any trade, industry or establishment shall not affect the employee's rights under this Act.

(2) Nothing in this Act shall operate to the prejudice of any rights to which an employee may be entitled under any other law or under the terms of any award, agreement or contract of service or under any custom or practice, which provides better rights in respect of leave and holidays with wages or pay (as the case may be) than those provided in this Act.

11. Every employer shall keep and maintain such registers and records as may be prescribed.

12. (1) An inspector of factories, appointed under the Factories Act, shall be an inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) The President may, by notification, appoint such other persons as he may deem fit to be inspectors for the purposes of this Act, and may define their functions and the class of employees and trade, industry or establishment in respect of which, or the areas in which, they shall exercise their functions.

(3) An inspector may, at all reasonable hours, enter on any premises and make such examinations of any register or record required to be kept and maintained, and take on the spot or later such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(4) Every inspector shall be deemed to be a public servant within the meaning of section 21 of the Penal Code³.

13. The President may, by notification, exempt any class of trade, industry or establishment, or any class of employees of any such trade, industry or establishment, from all or any of the provisions of this Act, for such period and subject to such conditions as may be specified therein.

14. [Penalties.]

15. [Determination of employer in certain cases.]

16. [Cognizance of offences.]

³ The Burma Code, Vol. IV, p. 1.

17. The President may, by notification, alter, add to or delete any of the provisions of the Schedule, and any such amendment shall have effect as if it were a provision of this Act.

18. The President may, by notification, make rules for carrying out the purposes of this Act.

SCHEDULE [Section 2 (4)]

- (1) Factories as defined in the Factories Act⁴, or notified as factories thereunder.
- (2) Factories and undertakings as defined as "railways" in the Railways Act⁵.
- (3) Ports as defined in the Rangoon Port Act⁶ and in the Ports Act⁷; in so far as labour directly employed by the ports authorities is concerned.
- (4) Notified oilfields as defined in the Oilfields Act⁸.
- (5) Mines as defined in the Mines Act⁹.
- (6) Shops, commercial establishments and establishments for entertainment as defined under the Shops and Establishments Act, 1951¹⁰.
- (7) Factories and offices of factories of or under the Union Government, or of or under any Board constituted by the Government.
- (8) Factories and offices of factories of or under any local authority, or of or under any Board constituted by a local authority.

⁴ See s. 2 (m) of the Factories Act, 1951: *Legislative Series, 1951* (Bur. 6).
⁵ *The Burma Code*, Vol. III, p. 448.
⁶ *The Burma Code*, Vol. III, p. 676.
⁷ *The Burma Code*, Vol. III, p. 653. See India Act No. XV of 1908: *Legislative Series, 1922* (Ind. 3).
⁸ *The Burma Code*, Vol. II, p. 645.
⁹ *The Burma Code*, Vol. II, p. 596.
¹⁰ *Legislative Series, 1951* (Bur. 5).