

Himachal Pradesh Industrial Establishments (National And Festival Holidays And Casual And Sick Leave) Act, 1969

CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. National And Festival Holidays
4. Casual And Sick Leave
5. Wages
6. Account Of Holidays And Leave To Be
7. Inspectors
8. Powers Of Inspectors
9. Penalties
10. Power To Recover Wages
11. Penalty For Obstructing Inspector
12. Cognizance Of Offence
13. Exemptions
14. Right And Privileges Under Either Law Etc. Not Affected
15. Powers To Make Rules
16. Repeal And Saving

SCHEDULE 1 :- THE SCHEDULE

Himachal Pradesh Industrial Establishments (National And Festival Holidays And Casual And Sick Leave) Act, 1969

Be is enacted by the Himachal Pradesh Legislative Assembly in the Twentieth Year of the Republic of India as follows (Received the assent of the President of India on the 28th January, 1970, and was published in R.H.P.Extra, dated the 4th April, 1970 at page 298-303) Amended, repealed or otherwise affected by (i) A.O. 1973, published in R.H.P. Extra, dated the 20th January, 1973 at p.91-112. An Act to provide for the grant of national and festival holidays and casual and sick leave to persons employed in Industrial Establishments in Himachal Pradesh

1. Short Title, Extent And Commencement :-

This Act may be called the Himachal Pradesh Industrial Establishments (National and Festival Holidays and Casual and Sick Leave) Act, 1969.

(1) It extends to the whole of the [State] of Himachal Pradesh.

(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires -

(a) "Day" means a period of twenty-four hours beginning at mid-night -

Provided that in the case of a worker who works in a shift which extends beyond mid-night such period of twenty-four hours shall begin when his shift ends -

(b) "Employer" in relation to an industrial establishment, means the person who has the ultimate control over the affairs of the industrial establishment and where the affairs of any industrial establishment are entrusted to any other person, whether called a managing agent, manager, superintendent or by any other name, such other person shall be deemed to be the employer.

(c) * * * *

(d) "Industrial establishment" means -

(i) any factory as defined in clause (m) of Section 2 of the Factories Act, 1948, (63 of 1948), or any place which is deemed to be a factory under sub-section (2) of section 85 of that Act; or

(ii) any plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1952, (69 of 1951);

(e) "Inspector" means an Inspector appointed under sub section (1) of Section 7;

(f) "Notification" means a notification published under proper authority in the Official Gazette;

(g) "Official Gazette" means the Rajpatra, Himachal Pradesh;

(h) "Prescribed" means prescribed under this Act;

(i) "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the term of employment, expressed or implied, were fulfilled, be payable to a workers in respect of his employment, but does not include -

(a) Any bonus;

(b) The value of any house accommodation, supply of light, water, medical facilities or other amenity or of any service or of any concessional supply of food grains or other articles;

(c) Any contribution paid or payable by the employer -

(i) To any pension or provident fund, and the interest which may have accrued thereon; or

- (ii) For the benefits of the workers under any law for the time being in force;
- (d) Any travelling allowance or the value of any travelling concession;
- (e) Any sum paid to the worker to defray special expenses entailed on him by the nature of his employment; or
- (f) Any gratuity payable on the termination of employment; and
- (j) "Worker" means -
 - (i) any person (including an apprentice) employed in industrial establishment to do any skilled or unskilled, manual, supervisory or clerical work for hire or reward whether the term of employment be expressed or implied; or
 - (ii) any other person employed in any industrial establishment whom the Government may, by notification, declare to be a work for the purpose of this Act.

3. National And Festival Holidays :-

- (l) Every workers shall, in each year, be allowed in such manner, and on such conditions, as may be prescribed -
 - (a) Three national holidays of one whole day each on 26th January, 15th August and 2nd October; and
 - (b) Four other holidays on any of the festivals specified in the Schedule out of which one shall be Himachal Day:
Provided that for purpose of clause (b), where at least ten percent of the workers of an industrial establishment so desire, they may, in lieu of any festival holiday, avail two half holidays on any of the festival days of their choice specified in the schedule after settlement in this behalf has been made between the employer and the representatives of the workers in such manner as may be prescribed.
- (2) The Government may, by notification, add to or omit from the Schedule any festival, and thereupon the Schedule shall be deemed to be amended accordingly.

4. Casual And Sick Leave :-

Every worker shall in each year, be allowed by the employer casual leave for seven days and sick leave for fourteen days in such manner, and on such condition (including a condition to the effect that one kind of leave shall not be linked with an other kind of leave, whether due under this Act, or under any other law for the time being in force), as may be prescribed.

5. Wages :-

(1) Notwithstanding any contract to the contrary, every worker shall for each of the national festival holidays and of the days of casual or sick leave, be paid by the employer wages at a rate equivalent to his average daily wage;

Provided that -

(a) No worker shall be entitled to be paid such wages for any holiday or leave, other than a national holiday, if his name was not on the rolls of the industrial establishment continuously for a period of one month immediately preceding such holiday or leave;

(b) Where a worker is entitled to sickness benefit under the Employees State Insurance Act, 1948 (34 of 1948) or sickness allowance under the Plantation Labour Act, 1951, (69 of 1951) shall not be entitled to be paid such wages for the days of sick leave allowed to him under this Act; and

(c) Where a worker is not entitled to such sickness benefit or sickness allowance, he shall be paid wages for the days of sick leave allowed to him under this Act at a rate equivalent to one-half of his average daily wage

(2) Where a worker works on any holiday allowed under section 3, he shall, at his option, be entitled to

(a) Twice his average daily wage for that day, or, his average daily wage on any other day within ninety days from the day on which so works.

(b) His average daily wage for the day and a substituted holiday with his average daily wage on any other day within ninety days from the day on which he so works.

Explanation -For the purpose of this section, the average daily wage of worker shall be computed on the basis of his total full-time wages during the preceding three months, exclusive or any overtime wages, if any:

Provided that the average daily wage of a worker who is paid wages by the day or at piece rate shall be computed on the basis of his wages for the days on which he actually worked during the month immediately preceding such holiday or leave.

6. Account Of Holidays And Leave To Be :-

Kept-Every employer shall keep, in such form and manner as may be prescribed, an account of festival holidays, casual leave and sick leave of every worker and every worker shall have access to such

account.

7. Inspectors :-

(1) The Government may, by notification, appoint such persons or class of persons as it may think fit to be Inspectors for carrying out the purposes of this Act for such areas as may be specified in the notification.

(2).Every Inspectors shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, (45 of 1960).

8. Powers Of Inspectors :-

Subject to any rules made by the Government in this behalf, an Inspector may, within the area for which he is appointed -

(a) Enter at all reasonable times any place which is, or which he has reason to believe to be, an industrial establishment;

(b) Make such examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise the evidence of such person as he may deem necessary for carrying out the purposes of his Act; and

(c) Exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

9. Penalties :-

Any employer who contravenes any of the provisions of Section 3, Section 4, Section 5 or Section 6 shall be punishable, for the first offence, with the fine which may extend to one hundred rupees and for a second or subsequent offences, with fine which may extend to two hundred and fifty rupees.

10. Power To Recover Wages :-

(1) where a Magistrate while convicting an employer under section 9 is satisfied that the worker has not been paid his dues wages under this Act, the amount which shall be determined by the Magistrate, he shall direct the employer to pay such wages to the workers.

(2). The amount of wages determined under sub-section (1) shall, for the purpose of recovery be deemed to be a fine imposed under

this Act, in addition to the penalty imposed under section 9 and shall be realized as such.

11. Penalty For Obstructing Inspector :-

Whoever willfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or intentionally omits to produce on demand in writing by an Inspector any register, record or notice in his custody which may be required to be kept in pursuance of this Act or of any rule made thereunder shall be punishable with imprisonment for a term which may be extended to three months, or with fine which may extend to five hundred rupees, or with both.

12. Cognizance Of Offence :-

(1) No court shall take cognizance of any offence under this Act or the rules made thereunder except on a complaint in writing by an aggrieved person or an Inspector.

(2) No court below that of a Magistrate of the first class shall try any offence punishable under this Act or rules made thereunder.

13. Exemptions :-

(1) Nothing contained in this Act shall apply to -

(a) Any workers drawing wages exceeding five hundred rupees per mensem and employed mainly in a managerial administrative or supervisory capacity;

(b) Any worker employed in an industrial establishment under the control of Government or Central Government or any State Government to whom Civil Service Rules or any other similar rules or regulations notified in this behalf by the Government, Central Government or any State Government, as the case may be, apply; and

(d) Any worker employed in any mine or an oil field.

(2) The Government may, in public interest by notification, exempt either permanently or for a specified period any class of industrial establishments from all or any of the provisions of this Act subject to such conditions as the Government may deem fit.

14. Right And Privileges Under Either Law Etc. Not Affected :-

Nothing contained in this Act shall affect any rights or privileges

which any worker is entitled to receive under any other law, contract, custom or usage, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

15. Powers To Make Rules :-

(1) The Government may, by notification and after previous publication make rules for the purpose of carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generally or the foregoing power, such rules may provide for: (a) The manner in which, and the conditions on which, national and other holidays shall be allowed to workers under section 3;

(b) The number of days for which, the manner in which, and the conditions on which, casual and sick leave shall be allowed to workers under Section 4;

(c) The form in which and the manner in which an account of festival holidays, casual leave and sick leave of workers, shall be maintained by employers under section 6; and

(d) Any other matter which is to be or may be provided.

(3) In making a rule under this Section, the Government may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) Every rule made under this section, shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days which may be comprised in one in one session or in two successive sessions, and if, before expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rules or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

16. Repeal And Saving :-

(1) The Punjab Industrial Establishments (National and Festival Holidays and Casual and Sick Leave) Act, 1965 (14 of 1965), as in force in the territories added to Himachal Pradesh under section 5 of the Punjab Reorganisation Act, 1966 (31 Of 1966) is hereby repealed. (2) The repeal of the Punjab Industrial Establishments

(National and Festival Holidays and Casual and Sick Leave) Act, 1965 by sub-section (1) shall not effect -

(a) The previous operation of that Act or any thing duly done or suffered thereunder;

(b) Any penalty or punishment incurred in respect of any offence committed against that Act; or

(c) Any investigation, legal proceeding or remedy in respect of any such penalty or punishment and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if that Act has not been repealed.

(3) Subject to the provisions contained in sub-section (2), anything done or any action taken, including any appointment order, notification or notice made, issued or given under the provision of the Act repealed by sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act.

SCHEDULE 1

THE SCHEDULE

[see section 3(I)(b)]

New Years Day

BasantPanchami.

Guru Ravi Dasss Borthday.

Shivratri

Holi

Id-ul-Fiter

Ram Naumi

Lord Mahavira s Birthday

Good Friday.

Vaisakhi

Himachal Day

Id-ul-Zuha

Muharram

Solan Fair

Milad-un-Nabi.

Janam Ashtami.

Bawan Dwadshi Fair (Nahan)

Raksha Bandhan.

Minjar Fair (Chamba).

Dussehra.

Maharishi Balmikis Birthday.

Lavi Fair (Rampur).

Diwali.

Lala Lajpatrais Death Anniversary.

Guru Nanaks Birthday.

Lohri.

Guru Gobind Singhs Birthday.

Vishwa Karma Jainti.

Christmas Day.
May Day