



Statutory Document No. 102/07

THE EMPLOYMENT ACT 2006

THE ANNUAL LEAVE REGULATIONS 2007

Approved by Tynwald

21st March 2007

Coming into operation

30th September 2007

In exercise of the powers conferred on the Department of Trade and Industry by section 167 of the Employment Act 2006¹, as extended by the Annual Leave (Agency Workers and Trainees) Order 2007², and of all other enabling powers, the following Regulations are hereby made:—

1. Citation and commencement

These Regulations may be cited as the Annual Leave Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 30th September 2007.

2. Interpretation

In these Regulations —

"the Act" means the Employment Act 2006;

"agency worker" has the same meaning as in the Annual Leave (Agency Workers and Trainees) Order 2007;

"agricultural wages order" means an order under section 2 of the Agricultural Wages Act 1952³;

"calendar year" means the period of 12 months beginning with 1st January in any year;

"day" means a period of 24 hours beginning at midnight;

"family leave" means —

- (a) ordinary adoption leave or additional adoption leave under section 95 or 96 of the Act;

¹ 2006 c. 21

² SD 103/07

³ XVIII p.38

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- (b) ordinary maternity leave or additional maternity leave under section 79 or 81 of the Act;
- (c) parental leave under section 84 or 85 of the Act; or
- (d) paternity leave under section 90 or 91 of the Act;

"fishing vessel" has the same meaning as in the Merchant Shipping Registration Act 1991⁴;

"relevant agreement", in relation to a worker, means —

- (a) any provision of a collective agreement which forms part of a contract between him and his employer, or
- (b) any other agreement in writing which is legally enforceable as between the worker and his employer;

"relevant training" has the same meaning as in the Annual Leave (Agency Workers and Trainees) Order 2007;

"worker" includes the following persons —

- (a) an agency worker, and
- (b) a person receiving relevant training;

and "employer", in relation to such persons, shall be construed in accordance with the Annual Leave (Agency Workers and Trainees) Order 2007;

"worker employed in agriculture" has the same meaning as in the Agricultural Wages Act 1952, and a reference to a worker partly employed in agriculture is to a worker employed in agriculture whose employer also employs him for non-agricultural purposes.

3. Application of Regulations

- (1) Subject to paragraph (2), these Regulations apply to all workers over the compulsory school age.
- (2) These Regulations do not apply to —
 - (a) a member of any of the naval, military and air forces of the Crown;
 - (b) an individual in his capacity as the holder of a judicial office if he is remunerated on a daily fee-paid basis;
 - (c) a person engaged in service as a member of the Isle of Man Constabulary;
 - (d) a worker who is engaged in work wholly or mainly outside the Island; or
 - (e) without prejudice to sub-paragraph (d), a person employed as a skipper of or seafarer on a fishing vessel who is remunerated only by a share in the profits or gross earnings of the vessel.

⁴ 1991 c.15

4. Entitlement to annual leave

- (1) Subject to the following provisions of this regulation, a worker is entitled to 4 weeks' annual leave in each leave year.
- (2) A worker's leave year, for the purposes of this regulation, begins —
- (a) on such date during the calendar year as may be provided for in a relevant agreement; or
 - (b) where there are no provisions of a relevant agreement which apply—
 - (i) if his employment began on or before the 30th September 2007, on that date and each subsequent anniversary of that date; or
 - (ii) if his employment begins after the 30th September 2007, on the date on which that employment begins and each subsequent anniversary of that date.

(3) Where the date on which a worker's employment begins is later than the date on which (by virtue of a relevant agreement) his first leave year begins, the leave to which he is entitled in that leave year is a proportion of the period applicable under paragraph (1) equal to the proportion of that leave year remaining on the date on which his employment begins.

(4) The period of leave to which a worker is entitled in any leave year is not affected by any of the following taken during that year —

- (a) family leave;
- (b) sick leave not exceeding $(26 \times P)$ weeks in total.

(5) Subject to paragraph (6), where in any leave year a worker takes sick leave exceeding $(26 \times P)$ weeks in total, the leave to which he is entitled in that leave year shall be the following number of weeks —

$$\frac{8 \times ((52 \times P) - S)}{52}$$

- (6) Paragraph (5) does not affect the entitlement of the worker to —
- (a) any leave taken in the leave year in question before the end of the first $(26 \times P)$ weeks of sick leave taken in that year, or
 - (b) remuneration under regulation 7 in respect of any leave mentioned in sub-paragraph (a).

(7) In paragraphs (4) to (6) —
P, in relation to any leave year, is —

- (a) the proportion of that leave year referred to in paragraph (3), where that paragraph applies; or
- (b) 1, in any other case;

S is the number of complete weeks of sick leave the worker takes in that leave year.

(8) Leave to which a worker is entitled under this regulation may be taken in instalments, but —

- (a) it may not be taken while the worker is taking family leave or sick leave;
- (b) it may be taken only in the leave year in respect of which it is due; and
- (c) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

(9) Where by virtue of paragraph (3) or (5) the period of leave to which a worker is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

5. Dates on which leave is taken

(1) A worker may take leave to which he is entitled under regulation 4 on such days as he may elect by giving notice to his employer in accordance with paragraph (3), subject to any requirement imposed on him by his employer under paragraph (2).

- (2) A worker's employer may require the worker —
 - (a) to take leave to which he is entitled under regulation 4; or
 - (b) not to take such leave,

on particular days, by giving notice to the worker in accordance with paragraph (3).

- (3) A notice under paragraph (1) or (2)—
 - (a) may relate to all or part of the leave to which a worker is entitled in a leave year;
 - (b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and
 - (c) shall be given to the employer or, as the case may be, the worker before the relevant date.
- (4) The relevant date, for the purposes of paragraph (3), is the date—
 - (a) in the case of a notice under paragraph (1) or (2)(a), twice as many days in advance of the earliest day specified in the notice as the number of days or part-days to which the notice relates, and
 - (b) in the case of a notice under paragraph (2)(b), as many days in advance of the earliest day so specified as the number of days or part-days to which the notice relates.

(5) Any right or obligation under paragraphs (1) to (4) may be varied or excluded by a relevant agreement.

(6) A worker's employer may not under paragraph (2) require a worker to take leave under regulation 4 in contravention of regulation 4(8)(a) or (b).

6. Restrictions on taking leave during first year of employment

(1) During the first year of his employment, the amount of leave a worker may take at any time in exercise of his entitlement under regulation 4 is limited to the amount which is deemed to have accrued in his case at that time under paragraph (2), as modified under paragraph (3) in a case where that paragraph applies, less the amount of leave (if any) that he has already taken during that year.

(2) For the purposes of paragraph (1), leave is deemed to accrue over the course of the worker's first year of employment, at the rate of one-twelfth of the amount specified in regulation 4(1) on the first day of each month of that year.

(3) Where the amount of leave that has accrued in a particular case includes a fraction of a day other than a half-day, the fraction shall be treated as a half-day if it is less than a half-day and as a whole day if it is more than a half-day.

(4) This regulation does not apply to a worker whose employment began on or before the 30th September 2007.

7. Payment in respect of periods of leave

(1) A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 4, at the rate of a week's pay in respect of each week of leave.

(2) Paragraphs 4 to 7 of Schedule 6 to the Act shall apply for the purpose of determining the amount of a week's pay for the purposes of this regulation, subject to the modifications set out in paragraph (3).

(3) The provisions referred to in paragraph (2) shall apply as if —

- (a) references to the employee were references to the worker;
- (b) references to the employee's contract of employment were references to the worker's contract;
- (c) the calculation date were the first day of the period of leave in question;
- (d) the references to 12 weeks in paragraphs 4 to 7 were to such longer period (if any), not exceeding 26 weeks, as may specified for the purpose in a relevant agreement;
- (e) the references to paragraphs 10 and 11 did not apply.

(4) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under his contract ("contractual remuneration").

(5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(6) Contractual remuneration paid to a worker in respect of a period other than a period of annual leave shall not be treated as including any remuneration in respect of a period of annual leave unless —

- (a) a relevant agreement specifies the amount or proportion of the regular remuneration which is in respect of that period of annual leave;
 - (b) that amount or proportion is a genuine addition to the ordinary remuneration for the period in respect of which the latter is paid; and
 - (c) a pay statement in respect of the payment in question specifies the amount of remuneration in respect of that period of annual leave.
- (7) In paragraph (6)(c) "pay statement" means —
- (a) in the case of an employee, a pay statement given to him in accordance with section 14 of the Act;
 - (b) in the case of any other worker, an itemised pay statement in writing containing the particulars specified in that section.

8. Compensation related to entitlement to leave

- (1) This regulation applies where —
- (a) a worker's employment is terminated during the course of his leave year, and
 - (b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 4 differs from the proportion of the leave year which has expired.
- (2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave —
- (a) in accordance with paragraph (3), where the worker has taken sick leave not exceeding $(26 \times A)$ weeks;
 - (b) in accordance with paragraph (4), where the worker has taken sick leave exceeding $(26 \times A)$ weeks.
- (3) The payment due under paragraph (2)(a) shall be a sum equal to the amount that would be due to the worker under regulation 7 in respect of a period of leave determined according to the formula —

$$(4 \times A) - B$$

- (4) The payment due under paragraph (2)(b) shall be a sum equal to the amount that would be due to the worker under regulation 7 in respect of a period of leave determined according to the formula —

$$\frac{8 \times ((52 \times A) - S)}{52} - B$$

- (5) In paragraphs (2) to (4) —

A is the proportion of the worker's leave year which expired before the termination date,

B is the period of leave taken by the worker between the start of the leave year and the termination date, and

S is the number of complete weeks of sick leave taken by the worker between the start of the leave year and the termination date.

(6) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise.

(7) Where a payment in lieu of leave falls to be calculated under paragraph (3) or (4) by reference to the number of days in a period during which the worker worked or would have worked, it shall be calculated by reference only to the days in that period on which the worker normally worked or would have worked (and not to the total number of days in that period).

(8) Paragraph (7) has effect subject to any provision to the contrary contained in a relevant agreement.

9. Entitlements under other provisions

Where during any period a worker is entitled to annual leave both under regulation 4 and under a separate provision (including a provision of his contract), he may not exercise the two rights separately, but may, in taking leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

10. Special provision for agricultural workers

(1) Regulation 4(2) does not apply to a worker employed in agriculture except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

(2) Except where, in the case of a worker partly employed in agriculture, different provision is made by a relevant agreement —

- (a) for the purposes of regulation 4, the leave year of a worker employed in agriculture begins on 6th April each year or such other date as may be specified in an agricultural wages order which applies to him; and
- (b) the dates on which leave is taken by a worker employed in agriculture shall be determined in accordance with an agricultural wages order which applies to him.

(3) Where, in the case of a worker partly employed in agriculture, a relevant agreement makes provision different from paragraph (2)(a) or (b) —

- (a) section 10 of the Agricultural Wages Act 1952 shall not apply to that provision; and
- (b) an employer giving effect to that provision shall not thereby be taken to have failed to comply with the requirements of an agricultural wages order.

(4) Regulation 5 does not apply to a worker employed in agriculture except where, in the case of a worker partly employed in agriculture, a relevant agreement so provides.

11. Remedies

(1) This regulation applies to a complaint by a worker to the Tribunal under section 167(9) of the Act that his employer —

- (a) has refused to permit him to exercise any right he has under regulation 4; or
- (b) has failed to pay him the whole or any part of any amount due to him under regulation 7(1) or 8(2).

(2) The Tribunal shall not consider a complaint to which this regulation applies unless it is presented —

- (a) before the end of the period of 3 months beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
- (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

(3) In the case of a complaint in respect of an employer's failure to pay 2 or more amounts due under regulation 7(1), paragraph (2)(a) shall be read as referring to the payment of the last of those amounts; but no complaint may be brought by virtue of this paragraph in respect of a payment which should have been made more than 12 months before the date on which the complaint is presented.

(4) Where the Tribunal finds a complaint referred to in paragraph (1)(a) well-founded, the Tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the worker.

(5) The amount of the compensation shall be such as the Tribunal considers just and equitable in all the circumstances having regard to —

- (a) the employer's default in refusing to permit the worker to exercise his right, and
- (b) any loss sustained by the worker which is attributable to the matters complained of.

(6) Where on a complaint referred to in paragraph (1)(b) the Tribunal finds that an employer has failed to pay a worker in accordance with regulation 7(1) or 8(2), it shall order the employer to pay to the worker the amount which it finds to be due to him.

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Secretary MTH

Minister for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations give workers a statutory entitlement to annual leave with pay. They apply to all workers over compulsory school age, with certain exceptions (regulation 3). By virtue of the Annual Leave (Agency Workers and Trainees) Order 2007, "worker" for this purpose includes agency workers and certain trainees.

A worker is entitled to 4 weeks' leave in each year, reduced proportionately in certain cases (regulation 4). Generally a worker may decide on the time of leave, but the employer may insist on specific times in certain circumstances (regulation 5). Restrictions apply in the first year of employment (regulation 6). The worker is entitled to be paid at the normal rate during annual leave (regulation 7), and to payment in lieu if the employment is terminated before the end of the leave year (regulation 8). Where the statutory rights overlap with contractual or other rights, the worker may exercise whichever is more favourable (regulation 7). Special provision is made for agricultural workers (regulation 10).

A worker may take proceedings in the Employment Tribunal for compensation in case of the employer's failure to allow him to take annual leave, or to make a payment due under the regulations (regulation 11).

