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The Employers' Federation of Ceylon

LEAVE, HOLIDAYS AND OVERTIME IN THE PRIVATE SECTOR

by

S. R. DE SILVA

Monograph No. 1
(Third Edition, 1990)

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PREFACE TO THE THIRD EDITION

The Monograph No. 1 has been a 'best seller'. The reason is that Leave, Holidays and Overtime are complicated matters and the publication provides a ready -reckoner.

This is the 3rd Edition and is being edited by me as the original author, Mr. S. R. de Silva, is no longer in a position to update it. It will be recalled that the 2nd Edition was published in 1985.

In this edition we have included material which is valid as at the 31st May 1990. One of the important additions to this edition is coverage of the amendments to the Maternity Benefits Ordinance and the Shop & Office Act in relation to Maternity Benefits. There have also been some changes in some Wages Boards decisions which have been included. An attempt has also been made, based on queries received on the earlier editions, to clarify positions taken in the earlier edition. Some changes have therefore been made to the earlier text.

I must acknowledge the assistance given to me by Mr. J. V. N. de Rosairo, Legal and Industrial Relations Secretary, who read through the draft and made a valuable contribution to the final publication.

E. F. G. AMERASINGHE
Secretary-General
The Employers' Federation of Ceylon

Colombo,
31st May 1990.

PREFACE TO SECOND EDITION

It was decided to print a Second Edition of this Monograph for two reasons. The first is that a few of the legal provisions relative to this Subject have undergone change since this Monograph was published in mid 1982. Therefore, this Second Edition brings the subject up-to-date until 31st December 1984. The second reason is that no copies of the Monograph are available as they have been sold out and the requests by employers for it was felt to justify a second edition. I have taken the opportunity to also improve upon certain paragraphs by making the explanations in some respects clearer than in the earlier one. I would thank Mr. E. F. G. Amerasinghe, Deputy Secretary of this Federation, for his assistance in revising the Monograph.

I have retained in this Monograph the introduction to the First Edition as it is relevant to the circumstances in which we commenced our system of publications on labour law and related subjects.

S. R. DE SILVA
Secretary
The Employers' Federation of Ceylon

Colombo,
January 1985.

INTRODUCTION

The Employers' Federation of Ceylon has over the years extended certain specific and definite services to Employers who are in the membership of the Federation.

In 1982 we, in the Secretariat Staff of the Federation, as a first step towards expanding our activities and services, decided that we should cater for the long felt need for Seminars for personnel in member firms on a variety of labour law and industrial relations subjects. The complicated nature of our industrial relations system which rests heavily on a legal foundation coupled with collective bargaining agreements and practices was, in itself, sufficient justification for inaugurating a system of Seminars. However, we felt that apart from providing personnel in member firms who have to deal with employees or who have to make decisions affecting them an opportunity to acquaint themselves more fully with the labour law and industrial relation system within which they operate, the Seminars would also serve to help us to understand better the practical problems which employers face and such matters, we felt, would be useful inputs in our thinking and advice.

This Monograph represents the revised Background Paper prepared by me for the first Seminar conducted by us and will be followed by other Monographs on other subjects after we have covered them through Seminars.

It was decided to select the subjects of Leave, Holidays and Overtime for our first Seminar in view of its very complicated nature, both from the point of view of legal interpretation and practical implementation. It is necessary to emphasize that there could be, and indeed there are, different interpretations in regard to some of the matters set out in this Monograph and the matter is still more complicated due to conflicting practices in relation to this subject matter. Conflicting views would become all the more apparent when one passes over from the purely legal framework to what is equitable or practical in a given set of circumstances.

I would like to particularly express my thanks to and appreciation of the assistance given to me by Mr. E. F. G. Amerasinghe, Deputy Secretary of this Federation, whose suggestions and inputs helped to

avoid several omissions and mistakes which may have otherwise appeared in the Monograph. I also wish to thank the Assistant Secretaries of this Federation who rendered similar assistance to me. Finally, I wish to thank Mr. G. Weerakoon, Deputy Commissioner of Labour, whose knowledge and experience in the subject covered by this Monograph has, over the years, provided useful inputs and solutions from time to time. I must emphasize, however, that any mistakes and omissions in the Monograph are entirely mine and cannot be attributed either to the Federation or to any of the aforementioned persons.

S. R. DE SILVA
Secretary
Employers' Federation of Ceylon

Colombo,
01st July 1982.

LEAVE, HOLIDAYS AND OVERTIME IN THE PRIVATE SECTOR

by

S. R. de Silva
(*Edited by E. F. G. Amerasinghe*)

A. DEFINITIONS

1. The subjects covered by this Monograph are complicated largely due to two factors. Firstly, different laws apply to different categories of employees and, secondly, the three subjects are inter-connected. It is necessary at the outset to define for present purposes what we mean by leave, holidays and overtime since these terms are often loosely used and, therefore, lead to a considerable amount of confusion. For instance, sometimes the term overtime is used to refer only to work beyond normal working hours whereas at other times it is used to include work on weekly and statutory holidays. Again, the terms leave and holidays are used interchangeably, *e.g.* annual leave and annual holidays. Certain provisions in the Shop & Office Employees' Act make it particularly important to define these terms properly. The Regulations framed under the Act provide that any overtime must be paid for separately, which implies that the $1^1/_2$ times the hourly rate payable as overtime must be paid in addition to an employee's normal remuneration for the day. The Act defines overtime work as employment or work in excess of eight hours a day or 45 hours a week, with the result that work on a statutory holiday or a weekly holiday does not fall within the concept of overtime. The practical consequence of what may appear to be a superficial distinction is that in addition to his normal salary for the day, he would be entitled for each hour of overtime work a payment of $1^1/_2$ times the hourly rate, *e.g.* if the monthly salary of the employee was Rs. 2,400/-, his hourly rate would be

$$\frac{2400}{30 \times 8} = \text{Rs. } 10/-$$

Therefore Overtime Rate ($1^1/_2$) = 1.5 x 10 = Rs. 15/-

N.B. – The division by 30 is for an employee who has a paid weekly holiday only.

On the other hand, double pay for work on a statutory holiday simply means an extra day's pay; if an employee's daily salary is Rs. 50/-, then the extra amount he receives for work on a statutory holiday would be Rs. 50/- in addition to his normal salary for the day. For present purposes, we will assign the following meanings to the following terms —

a) **Leave** may be defined as absence from work which is authorised in accordance with an entitlement which an employee has by law, contract or collective agreement or which has been permitted at the discretion of the Employer. (This would include special leave granted to attend a study course, to represent a National Team, to go overseas or leave for medical purposes over and above one's entitlement). Examples of leave granted by the law are Annual Leave, Casual Leave, Leave to vote at Elections, Leave for Military/Police Duty and Maternity Leave. Examples of leave granted by Collective Agreements are Sick Leave, leave prior to retirement and leave to attend Union meetings.

b) **Holidays.** If given a broad meaning, this term covers such days on which an employee normally need not work by virtue of the fact that such days are Poya Days, Statutory Holidays or weekly holidays. Statutory or public holidays available to employees in the Private Sector are granted either in terms of the Shop & Office Employees' Act (which are gazetted annually) or under the relevant decisions of Wages Boards. Under the Shop & Office Employees' Act if a Statutory holiday falls on a weekly holiday, an additional day should be given. This would be a 'holiday in lieu' of the weekly holiday which the employee would otherwise lose.

c) **Overtime.** This term properly refers to work beyond normal working hours on any particular day or a particular week. However, for convenience, work on any holiday has been dealt with under this heading.

d) **Week.** This term means the period from the midnight of one Saturday to the midnight of the succeeding Saturday.

e) **Year.** This term means a calendar year *i.e.* the period 1st January to 31st December, unless otherwise specified.

2. It is proposed to consider the question of leave in relation to certain standard setting Collective Agreements, laws applicable on the subject and under the categories of annual, casual, sick leave as well as other special categories of leave. The two Collective Agreements which will be considered in this connection will be the EFC/CMU Collective Agreement of 1987 and the Manual Workers' Collective Agreements of 1988.

B. LEAVE – COLLECTIVE AGREEMENTS

3. EFC/CMU Collective Agreement 1987

A) **Annual Leave** — Since no special provisions exist in the Agreement in relation to annual leave modifying the provisions of the Shop & Office Employees' Act, the ordinary law on the subject will apply. Clause 11 of that Agreement states that annual holidays will be as prescribed in the Shop & Office Employees' Act.

The only special feature in this Agreement on annual leave is that an employee who exceeds his sick leave entitlement of 21 days under the Agreement can set off such excess sick leave against his annual leave entitlement. This provision is important as where annual leave is availed of on grounds of sickness the principle of a prior application for annual leave does not apply. It is to be noted that the right to two days' absence at a time without a medical certificate does *not* apply where absence on grounds of sickness is set off against annual leave so that the employer would be entitled to insist on a medical certificate to support such absence.

B) **Casual Leave** — The Agreement provides for seven days casual leave which can be taken on the following basis:

i) For private business or for any other reason including ill health where the employee's sick leave entitlement has been exhausted.

ii) Not more than two days can be taken together at any one time.

iii) No entitlement to casual leave exists on any day preceding or following annual leave.

iv) No reason for casual leave need normally be stated by an employee, but the employer can ask for the reason for the leave where he finds it difficult to grant the leave in order that the employer may decide whether the reason given for the application outweighs the exigencies of business.

v) The Agreement does not prescribe the casual leave entitlement of an employee during his first year of employment. As we will see, under the Shop & Office Employees' Act the 7 days leave, sometimes referred to as casual leave, can be availed of in the first year of employment on the basis of one day for each completed period of two months' service. The question whether this requirement of service would be applicable to the 7 days casual leave under the Agreement does not admit of an easy answer. It is suggested that the same rule as in the Shop & Office Employees' Act (*i.e.* 1 day in respect of each completed period of 2 months' service) be applied to a person who joins service during the course of the year.

C) **Sick Leave** — Under the Agreement an employee is entitled to 21 days sick leave in each year. The provisions in the Agreement relating to sick leave may be summarized as follows —

i) Sick leave must be supported by a Medical Certificate from a Registered Medical Practitioner where :–

(*a*) The period of absence from work exceeds two days, or

(*b*) Where more than 10 days sick leave has been taken without medical certificates *and* the employer has reason to doubt the bona fides of the employee, or

(*c*) Where the absence precedes or follows any period of casual leave, statutory or customary holidays or annual leave.

ii) The mere fact that the number of days without medical certificates in (*b*) above exceeds ten days is insufficient cause for an employer to request the employee to produce a medical certificate. It is also necessary that the employer should, in order to make use of this provision, also have reasonable cause to suspect the bona fides of the employee.

iii) The Agreement provides that an employee who abuses the concession of taking up to two days at a time without a medical certificate is liable to forfeit the concession provided such forfeiture is effected by agreement between the employer and the union. What this means is that where the employer has evidence of abuse it would be necessary to inform the union and seek its approval to withdraw the concession. In most such cases this may involve a discussion with the union in an attempt to persuade it that its member is abusing the concession. If the union refuses to agree to the forfeiture, then it will not be possible for the employer to withdraw the concession.

iv) We have already noted that an employee who has exhausted his 21 days sick leave entitlement can utilize his casual and annual leave to cover absence due to sickness. An employer would be entitled to require a medical certificate to support such absence, irrespective of whether or not the absence exceeds 2 days at a time.

v) In the case of an employee who commences employment during the course of a calendar year, his sick leave entitlement commences from the time his employment commences; that is to say, the employee does not have to qualify for sick leave by serving the employer for any particular period. It follows that even a probationer is entitled to sick leave under the Agreement during his period of probation. What would be the leave entitlement of an employee who joins during the year. **For example,** what would the entitlement be of an employee who joins in October? Does he get his full quota of 21 days? The question has

to be resolved on the basis of whether the 21 days is enjoyed on a calendar year basis or on a 12 month basis. The guidelines would be as follows :–

(*a*) An employer would first have to ascertain what the past interpretation has been, *i.e.* what is the practice followed?

(*b*) If the practice is to treat the sick leave year as a 12 month period, then there is no problem.

(*c*) If the practice is to go on a calendar year, it is recommended that for the balance period of the calendar year a proportionate amount of sick leave be given. This is in line with the manner in which annual leave and casual leave are given. Thus, in the case of the person who joins on the 1st October, he would up to 31st December be entitled to sick leave on the following formula:–

Total leave = 21 days

$$\text{For 1st Oct. to 31st Dec.} = \frac{21}{12} \times 3 = 5^1/_4$$

Since 1/4th of a day is impractical, it could be rounded up to the closest half day.

Therefore entitlement = $5^1/_2$.

vi) The Agreement provides for an employee who has taken less than 21 days sick leave in any one year to accumulate his unavailed of sick leave and to take such accumulated leave on the following basis —

a) Although there is no limit to the number of days sick leave which an employee can **accumulate,** in any one year he can **avail** himself of only 90 days of such accumulated sick leave.

b) Unavailed of sick leave from 1st March 1956 can be accumulated by an employee. The relevance of this date is the Canakaratne Award (ID. 1) which is the origin of accumulated sick leave for white collar categories.

c) Accumulated sick leave can be utilized on account of prolonged illness, hospitalisation, infectious disease or similar circumstances, but cannot be utilised for casual illness. It is not possible to define the circumstances which fall within this condition and each case would have to be judged or considered on its merits where it does not obviously fall within the aforementioned description. For instance, absence on account of influenza for a few days would obviously fall within the description of "casual illness."

d) An employee can first utilize his accumulated sick leave before utilising his 21 days normal sick leave. The purpose of this provision is to ensure that an employee who suffers from, for instance, a prolonged illness or infectious disease, can utilize his accumulated sick leave in the first instance so that he would have his normal 21 days sick leave for illnesses of a casual nature. See also paras 54 – 57 for T.B. & leprosy leave.

e) All accumulated sick leave must be supported by a medical certificate from a Registered Medical Practitioner unless this requirement is dispensed with by the employer.

f) The facility of taking up to two days' sick leave at a time without a medical certificate has no application to accumulated sick leave.

D) **Duty Leave** — The EFC/CMU Collective Agreement provides for duty leave in the following circumstances —

i) Paid leave for not less than 2 office bearers of the branch union to be present at conferences held under the aegis of the employer or the Employers' Federation of Ceylon or the Labour Department in connection with a dispute between the branch union and the employer and to attend inquiries before Industrial Courts, Arbitrators or Labour Tribunals. This right, however, is subject to the right of the employer to refuse to grant such leave if he considers the exigencies of business warrant refusal.

ii) An employer may at his discretion grant **no pay** leave to an employee to attend a trade union course or seminar or conference held in Sri Lanka or abroad. However, an employee who has annual leave may utilize it for this purpose in which event he will receive pay for the period of his annual leave. An employer can refuse to grant leave for the purposes enumerated above if the exigencies of business warrant such refusal.

iii) A person who is allowed to be present at a domestic inquiry as an observer will be entitled to leave for this purpose with full pay.

iv) Subject to an employer's right to refuse to grant leave on grounds of exigencies of the business, the Agreement provides for leave to be granted to a member of the General Council of the union to attend a meeting of the General Council, to leave office not earlier than 3.00 p.m. on not more than one occasion in a month on full pay if an application for leave has been made at least 48 hours before the General Council meeting. The Agreement requires the union to furnish each employer with a list of their General Council members, if any, and changes made from time to time. It must be noted that the concession of duty leave to attend General Council meetings of the C.M.U. is granted to Council Members irrespective of their coverage as a category under the EFC/CMU Collective Agreement. Example – A General Council member in a Company covered by the Agreement is entitled to this duty leave even if he is a manual worker.

4. Manual Workers' Collective Agreements 1988

The above Collective Agreements of 1988 in respect of the Engineering Trade, Tea Export Trade, the Motor Transport Trade, Rubber Export Trade and the Coir Mattress and Bristle Fibre Export Trade, contain a common set of provisions in respect of annual, casual and sick leave.

a) **Annual Leave** — The Agreements contain no special provisions regarding annual leave and merely state that annual holidays shall be allowed to an employee in accordance with

the decisions of the Wages Board for the particular trade. Therefore, the annual holidays for categories covered by these Agreements will be in terms of the respective Wages Board decisions which will be analysed later.

b) **Casual Leave** — The Agreements provide for 7 days casual leave on the following basis —

i) The casual leave is in respect of each year of employment and, as such, is available to an employee in the second year of employment, subject to the proviso that in the first year of employment the casual leave entitlement of an employee will be one day for each completed period of two months' service.

ii) Casual leave may be availed of on account of private business or any other reasonable cause including sickness if the employee's entitlement to sick leave has been exhausted.

iii) Not more than two days at any time can be availed of except on grounds of illness.

iv) An employee will not be entitled to take casual leave on any day immediately preceding or following a period of annual leave.

v) An employee will normally not be required to state the reason for an application for casual leave. However, he may be required to so state the reason when the employer finds it difficult to grant leave so that the employer may be in a position to decide whether the request is a reasonable one having regard to the employer's own needs.

c) **Sick Leave** — An employee is entitled to 21 days sick leave in any one year on the following basis —

i) Unless dispensed with by the employer the illness must be supported by a certificate from a Registered Medical Practitioner.

ii) An employee on probation is not entitled to paid sick leave during his period of probation. This does not imply that an employee who is genuinely ill during his period of probation can be regarded as being guilty of misconduct if he absents himself on grounds of sickness. It only means that in such cases he will not be entitled to payment in respect of such absence.

iii) An employee who is confirmed in employment after six months' probation will be entitled to 10 days sick leave for the balance six months of the year, and if he is confirmed after 9 months' probation he will be entitled to 5 days sick leave for the balance 3 months of the year. A year for the purpose of sick leave strictly means not a calendar year but the period commencing from the date of appointment.

It should be noted that the Manual Workers' Collective Agreements do not provide for accumulated sick leave or for absence up to two days at a time without a medical certificate.

d) **Duty Leave** — The Manual Workers' Collective Agreements contain duty leave provisions similar to the EFC/CMU Collective Agreement and, as such, what has been stated under paragraph 3(D) (i) to (iii) would be equally applicable to employees covered by the Manual Workers' Collective Agreements. However, there is no provision similar to General Council Meetings, in the Manual Workers' Collective Agreements.

C. LEAVE—SHOP & OFFICE EMPLOYEES' ACT

Annual Leave

5. The Act provides that in respect of each year of employment (which means the period January to December) an employee can take in the following year 14 days annual leave with pay, subject to the variation in respect of the first year referred to in paragraph 6.

6. In respect of his first year of employment (1st January to 31st December) an employee is entitled to the following proportionate leave in the following year —

   a) 14 days if employment commenced on or after 1st January but before 1st April.

   b) 10 days if employment commenced on or after 1st April but before 1st July.

   c) 7 days if employment commenced on or after 1st July but before 1st October.

   d) 4 days if employment commenced on or after 1st October.

   The Act requires that 7 out of the 14 days annual leave must be taken on consecutive days. However, although it is not legally permissible some employees have arranged with their employers not to take that leave consecutively. The Department of Labour would not wish to interfere with such an arrangement so long as the employee has voluntarily agreed to it, but if the Department gives a direction to the contrary it must be complied with.

8. Annual leave by its very nature must be applied for in advance. It must also be availed of at times mutually convenient. In this connection it is relevant to note and to comment on the following practices which have developed over the years. —

   a) Some employers arrange with employees not to take their annual leave but to pay them in lieu. This is an unsatisfactory arrangement and should be discouraged since there are good medical reasons why an employee should take his annual holidays. It is a practice which is discouraged by the Department of Labour. Conversely, employees sometimes tend not to take their annual leave and to claim payment in lieu. This should be similarly discouraged and an employer who cannot be shown to have made it impossible for an employee to take his

annual leave is entitled to refuse payment on account of unavailed of annual leave (except for the year preceding and the year of termination of employment). However, rare exceptions could be made. An example would be one where the exigencies of the employer's business preclude an employee from taking his annual leave and the employer, **with the consent of the employee,** can arrange to pay him in lieu. Such exceptional case would not be objectionable if they do not recur and are not widespread in a particular establishment. Another example would be a case where an employee is allowed to accumulate his annual leave for example for the purpose of availing himself of a holiday abroad. Nevertheless, in both examples the practice would be illegal. Many problems relating to employees not availing themselves of annual leave could be overcome by adopting a system of a roster for annual leave where practicable.

b) In some establishments an employer often refuses annual leave during certain rush periods such as the end of the year or the end of the financial year. This is legally permissible since employees have the rest of the year within which to utilise their annual leave. But it is desirable that such a practice should be with due notice to employees so that they would be aware that they would not be entitled to annual leave during a particular period of the year.

c) Some establishments effect an annual closure over a period of several days, e.g. during the Sinhala New Year or during the Christmas season. Such employers usually enter into arrangements with their employees to set off part of their annual leave entitlement against the period of the closure. What is important to bear in mind in this connection is that a set off can in law be effected only by mutual arrangement as, otherwise, it would amount to a direction by the employer that some part of the annual leave of employees should be availed of on certain days specified by the employer thus violating the provisions of the Shop & Office Employees' Act and, indeed, the whole concept of annual leave.

d) Since, annual leave must be applied for in advance, an employee who stays away from work without authority and requests that the absence be set off against his annual leave can be refused such request and he can be placed on no pay absence if the employer so wishes. However, there may be instances where an employee may keep away from work due to unforeseen circumstances such as sickness or some personal emergency and he has no sick or casual leave to his credit. If the employer wishes to permit an employee in such circumstances to set off the absence against his annual leave it should be made clear that such approval is at the employer's sole discretion and that there is no entitlement to such subsequent approval of annual leave.

9. Where employment is terminated the following provisions apply —

a) The employee is entitled to the annual leave earned by him in respect of the previous year plus the leave earned during the year of termination (i.e. one day for every month worked for a period of less than ten months and 14 days if he has worked ten months or more), minus any annual leave already utilized by him during the year of termination.

b) The law requires the employee to take, and the employer to allow, such unavailed of annual leave during the period of notice. The employer is not entitled to insist upon the employee being paid in respect of the annual leave in lieu of actually taking it, while the employee cannot insist on payment instead of taking the leave during the period of notice. However, it is permissible for both parties to mutually agree that the employee will work during the period of notice and be paid in lieu of the annual leave.

c) Where the **employer** terminates the services of an employee without notice or the period of notice given by the **employer** is insufficient for the employee to avail himself of the annual leave in respect of the preceding year and the year of termination, then he is entitled to

payment in lieu. This is the only situation in which the law provides for payment on account of unavailed of annual leave as the law does not contemplate annual leave not being availed of in any other circumstances.

d) The question arises as to whether payment on account of unavailed of annual leave in respect of the preceding year and the year of termination is legally due where the **employee** terminates his employment **without** notice and, thereby, puts it beyond the power of the employer to fulfil his obligation of allowing the annual leave during the period of notice. The Department of Labour has agreed with us that in such circumstances the employer is not obliged to pay in respect of the annual leave.

Sick and Casual leave

10. The Act does not make separate provisions for sick and casual leave, and only provides for 7 days leave in each year (which means the period January to December) on account of "private business, ill health and other reasonable cause." Therefore, this leave can be availed of either on grounds of sickness or for casual purposes.

11. In the first year of employment (the period 1st January to 31st December) an employee is entitled to one day's leave for every two months of completed service.

12. It is a moot point as to whether an employee can be required to give reasons for his application for leave. The better view is that an employer is entitled to ask an employee the reason for his application for the simple reason that leave must be approved by an employer if the employee is to be paid for it and, where the application is for a casual purpose, the employer is entitled to take into account the exigencies of his business in appropriate cases. If the position was otherwise and an employee was entitled to avail himself of casual leave without taking into account the exigencies of the employer's business an employee would be in a position to bring work to a standstill by applying for casual leave when detailed to attend to some important task. Another issue, also connected

with the preceding one as to whether an employee can be required to give reasons for his application, is whether "casual leave" must be applied for in advance or can be availed of and applied for subsequently. Subject to the general principle that all leave must be approved the question whether a prior application must be made would depend on the reasons for the absence. For instance, where the reason for the absence is one that was known to the employee in advance (e.g. a wedding), then he must make a prior application and cannot stay away from work and apply for leave subsequently. On the other hand where the event necessitating absence (e.g. a serious illness in the family) could not have been foreseen he cannot be expected to apply for the leave in advance but can make the application subsequently subject to the proviso that he should, wherever possible, intimate to the employer as soon as possible his inability to report for work. It follows – and this is also relevant to the question of revealing the reason for the application – that where the application is subsequent to the absence the employer is always entitled to know the reason for such absence especially since the employer must be allowed to determine whether the absence was due to an occasion which the employee was aware of prior to his absence. In these circumstance it could be said that —

i) All casual leave must be applied for in advance unless the reason for the absence is one which could not have been foreseen;

ii) In all cases an employee can be required to state the reason for the leave either because the employer is entitled, where relevant, to take into account the exigencies of his business or is entitled to know the reason in the case of a subsequent application to determine whether the reason could have been foreseen. It is also pertinent to note that the Act allows the leave to be taken on grounds of "private business, ill health or other reasonable cause," so that the employer is entitled to know on what basis the leave is applied for and, if it is for a reasonable cause, to decide whether in fact there is reasonable cause for the absence.

Fixed Term Contracts

13. Employees are at times recruited for a fixed period of time not exceeding twelve months. In such instances the employee is entitled to the following leave —

    a) **Casual Leave** — At the rate of one day for each complete period of two months.

    b) **Annual Leave** — On the same basis as for an employee with a normal contract of employment i.e., for the first calendar year on the basis set out on page 9, para 6, and for any part of the second calendar year at the rate of one day for each month of employment.

    Example: If the contract starts on the 1st October 1989 and goes on to 31st August 1990, he would be entitled to Annual Leave on the following basis —

For period 30th Sept. to 31st Dec.	=	4 days
1st Jan. to 31st August	=	8 days
Total	=	12 days

    If the first year of employment is also the year in which termination takes place, then the entitlement would be one day for each period of one month. Therefore if the employment commenced on the 1st January and ended on the 31st August of the same year, his Annual Leave entitlement would be 8 days.

D. LEAVE — WAGES BOARD DECISIONS

Sick and Casual Leave

14. The decisions of the respective Wages Boards make no provision for casual or sick leave.

Annual Leave

15. What is stated below on the subject of annual holidays represents the general principles only. There are variations in regard to matters of detail in the various Wages Board

decisions and these have not been referred to as otherwise this Monograph would be too detailed. Therefore, reference must be made to the particular Wages Board decisions when a problem of annual leave arises in relation to an employee governed by a particular Wages Board.

16. An employee who has been in employment for a year under an employer and has worked for the required number of days as specified by the decisions of the particular Wages Board is entitled, in the succeeding year, to the number of annual holidays as prescribed by the Board. In this context a year means the period January to December unless otherwise specified. Therefore, if an employee joins in the course of a calendar year e.g. in July, he gets no annual holidays in respect of the period July to December of that year. In terms of Wages Board decisions annual leave has to be taken by working a minimum number of days, which includes days deemed to be worked (vide para 17).

17. The computation of annual holidays so decided by the following Wages Boards is as follows —

Trade	*Formula*	*Maximum No. of days allowable*
Baking	$\frac{218—288}{5}$	14
Beedi Manufacturing		ND
Biscuit & Confectionery Manufacturing (including Chocolate Manufacturing)	$\frac{232—288}{4}$	14
Brick & Tile Manufacturing	$\frac{232—288}{4}$	14
Building	1 holiday for each unit of 18 days worked	14

Trade	*Formula*	*Maximum No. of days allowable*
Cigar Manufacturing		ND
Cinema	$\frac{248—332}{4}$	21
Cinnamon		ND
Cocoa, Cardamom & Pepper Growing and Manufacturing	$\frac{288—288}{4}$	15
Coconut Manufacturing Trade		
i) Males – 18 years and above		
a) Time rated workers	$\frac{228—284}{4}$	14
b) Piece rated workers	$\frac{9576\text{lb.}—12{,}096\text{ lb.}}{180}$	14
ii) Females & children—		
a) Time rated workers	$\frac{204—260}{4}$	14
b) Piece rated workers	$\frac{8568\text{ lb.}—11{,}088\text{ lb.}}{180}$	14
Coconut Growing	$\frac{228—284}{4}$	14
Coir Mattress & Bristle Fibre Export Trade (The same formula as in in the Coconut (Manufacturing) Trade	(Same formula as in the Coconut (Manufacturing) Trade	14
Engineering	$\frac{232—288}{4}$	14
Garment Manufacturing	$\frac{218—274}{4}$	14

Trade	*Formula*	*Maximum No. of days allowable*
Hosiery Manufacturing	$\frac{218—274}{4}$	14
Hotel & Catering		ND (Same as Shop & Office Employees)
Ice & Aerated Water Manufacturing	$\frac{232—288}{4}$	14
Liquor & Vinegar	First 180 days 5) $\frac{181—336}{12}$ 13)	18
Match Manufacturing—		
i) Male workers	$\frac{232—288}{4}$	14
ii) Female Workers	$\frac{204—260}{4}$	14
Motor Transport	$\frac{232—288}{4}$	14
Nursing Home Trade	Joined in 1st qr. 21days 2nd qr. 17 days i) for 1st year on pro-rata basis 3rd qr. 14 days 4th qr. 11 days ii) For 2nd year 21days	21
Paddy Hulling	36-71 2 days 72-107 4 days 108-143 6 days 144-179 8 days 180 10 days Beyond 180 days 1 day for each 6 days worked	18

Trade	*Formula*		*Maximum No. of days allowable*
Printing	$\frac{232—288}{4}$		14
Rubber Export	$\frac{218—288}{5}$		14
Rubber Growing			
1) Male workers not under 16 years –	72-143	4 days	17
	144-215	8 days	
	216-287	12 days	
	Over 288	17 days	
2) Female and Children –	66-131	4 days	
	132-197	8 days	
	198-263	12 days	
	Over 264	17 days	
Security Services	During 1st qr.	14 days	14
	During 2nd qr.	10 days	
	During 3rd qr.	7 days	
	During 4th qr.	4 days	
Tanning, Footwear & Leather Manufacturing	$\frac{218—274}{4}$		14
Tea Export	$\frac{218—288}{5}$		14
Tea Growing & Manufacturing			
1) Males not Under 16 years	72-143	4 days	17
	144-215	8 days	
	216-287	12 days	
	Over 288	17 days	
2) Females and Children	66-131	4 days	
	132-197	8 days	
	198-263	12 days	
	Over 264	17 days	

Trade	*Formula*	*Maximum No. of days allowable*
Textile Manufacturing	$\frac{218—260}{3}$	14
Tobacco Trade		ND
Tyre & Tube, Plastic & Rubber Goods	$\frac{232—288}{4}$	14

ND – Signifies no decision.
In the case of Hotel & Catering Staff though ND appears, it is necessary to bear in mind that the Shop & Office Employees Act also applies to them and therefore Annual Leave has to be in accordance with that Act.

Note

1. The first figure in the formula indicates the minimum number of days that a worker should work to qualify for his annual holidays.

2. The next figure indicates the maximum number of days beyond which it is not obligatory on any employer to grant holidays.

3. The figure below indicates the unit of days required to qualify for one holiday.

18. In determining whether an employee has worked the requisite number of days for the purpose of qualifying for annual holidays, the following are to be regarded as days on which an employee has worked —

    i) Days on which an employee has actually worked.

    ii) In the case of a permanent employee days on which the employer fails to provide work. This presupposes that the employee reported for work but was not provided with work.

iii) Every holiday allowed to an employee, but most Wages Boards exclude the day fixed as the weekly holiday.

iv) All absence, whether paid or unpaid, on grounds approved by the employer.

v) Absence on account of injury suffered by the employee in the course of his employment or on account of any occupational disease.

vi) Absence due to a strike which is not illegal but the total on this account not to exceed 30 days.

19. Most Wages Boards require that a certain minimum number of holidays, varying from 6 to 7 days, should be taken on consecutive days. However, as in the case of the Shop & Office Employees' Act there is no objection to a mutual agreement between the employer and the employee to the contrary.

20. The annual holidays should be taken on days mutually, convenient. As in the case of the Shop and Office Employees' Act, an employee cannot stay away from work without authority and request that the absence be set off against his annual leave—vide paragraph 8.

21. The Wages Board decisions make no provision for accumulation of annual holidays. What has been stated in paragraph 8 in relation to the Shop & Office Employees' Act would be equally applicable here.

22. The Wages Board decisions provide that on termination of employment an employee shall take before the date of termination the annual holidays he is entitled to in respect of the preceding year not already taken and any annual holidays due to him in respect of the year of termination which he would normally have taken in the succeeding year. Although the decisions make no provisions for payment on account of such annual holidays, it is suggested that what is stated in paragraph 9 (*c*) and (*d*) would be applicable to a situation where the employer or the employee terminates employment without notice or insufficient notice. In the Engineering Trade the maximum amount of Annual Leave which can be taken prior to termination of services is 21 days.

E. LEAVE — SHORT

23. Neither the labour laws nor the Collective Agreements mentioned at 'B' above provide for short leave, which is really a category of leave sometimes allowed by employers as a concession at the employer's discretion and not on the basis of an entitlement. However, in many cases employers have operated a system of short leave on the basis of certain rules as a result of which employees have come to perceive short leave as an entitlement in particular establishments.

24. Short leave, therefore, is largely a matter of practice which varies from employer to employer. Very broadly speaking the practices would appear to include the following —

    a) the maximum period of short leave usually allowed at any one time is one and a half hours.

    b) it is also usual to fix a maximum number of hours short leave per month.

    c) Generally employers allow short leave only at the beginning of the day, before a meal interval, or at the end of the meal interval of the working day.

25. Where in a particular establishment short leave is granted an employer is entitled on any specific occasion to refuse to grant short leave on the ground that the employee's presence is required.

F. LEAVE — ACCIDENT

26. Neither the labour laws nor Collective Agreements mentioned at 'B' above provide for a special category of accident leave where an employee suffers an accident arising out of and in the course of his employment. Many practices have developed in particular establishments in relation to absence on account of accidents arising out of and in the course of employment. Before referring to these practices it is first necessary to refer to the correct legal position in a situation where the Workmen's Compensation Ordinance applies —

    a) Where an accident covered by the Ordinance results in less than three days absence it does not qualify for Workmen's Compensation and there is no legal

obligation on the employer to grant paid leave to the employee apart from his normal sick leave entitlement, if he is eligible for such.

b) Where the absence exceeds three days, then the absence is covered by Workmen's Compensation but not by any other special category of leave.

27. However, various practices apply in different establishments depending also on the facts of each case, such as —

a) Some employers operate a special category of accident leave in respect of accidents arising out of and in the course of employment.

b) Some employers grant full pay for absence resulting from an accident where the absence does not qualify for Workmen's Compensation (earlier seven days now three) or where it qualifies, for the period which is not covered by Workmen's Compensation payments only.

c) Some employers allow only the normal sick leave to be utilised for absence which does not qualify for Workmen's Compensation payments or for the period not covered by the Workmen's Compensation payments.

G. LEAVE — MATERNITY

28. The entitlement of female employees to maternity leave is to be found in the Shop & Office Employees' Act and the Maternity Benefits Ordinance. Females covered by the Shop & Office Employees' Act are entitled to maternity benefits in terms of that Act, while other females are governed for this purpose by the Maternity Benefits Ordinance.

29. In terms of the Shop & Office Employees' Act —

a) a female employee is entitled to full pay maternity leave of a total of 84 days for the first two children. In the computation of the 84 days, holidays and non-working days are excluded, so that in effect it amounts to 84

working days. For subsequent children the entitlement is 42 working days. The rule regarding two children must be interpreted on the basis of two surviving children. Thus, if a child dies, the third confinement could qualify for 84 working days.

b) Since the leave is available in respect of a 'confinement' that term has been defined to mean labour resulting in the issue of a child, whether alive or dead, or the issue of a viable foetus.

c) The term "viable foetus" has been defined as a foetus of at least 28 weeks gestation and, in the event of a doubt, one of the following conditions should be satisfied for the foetus to be considered 28 weeks old —

i) the length of the foetus should be at least 12 inches; or

ii) the weight of the foetus should be at least 2 lbs.

30. The Maternity Benefits Ordinance applies to women workers employed in any trade which is defined as including any industry, business, undertaking, occupation, profession or calling carried out, performed or exercised by an employer or worker and any branch of, or any function or process in any trade. It has no application to a female —

a) covered by the Shop and Office Employees' Act; or

b) whose employment is of a casual nature; or

c) in an industry, business or undertaking which is carried on mainly for the purpose of giving an industrial training to juvenile offenders or orphans or to persons who are destitute, dumb, deaf or blind.

31. A woman worker is defined to mean a woman (other than a woman employed in the exempted categories referred to in paragraph 30) employed on wages in any trade, where such wages are calculated by time or by work done or otherwise

and whether the contract of employment or service was made before or after the commencement of the Ordinance, and whether such is express or implied, oral or in writing.

32. The leave to which an employee is entitled under the Ordinance is twelve weeks for the first two children and six for subsequent births. Unlike in the case of the Shop & Office Employees' Act the twelve or six weeks **includes** all holidays falling within the period of the leave. The definition of 'confinement' and 'viable foetus' are the same as in paragraph 29 (*b*) and (*c*) above. The same comments regarding 'two children' would apply here as well.

33. The Maternity Benefits Ordinance, but not the Shop & Office Employees' Act, requires an employer of a female employee who is nursing a child under one year of age to allow her two nursing intervals within the normal working day at such time as she may require. Where a creche or other suitable place is provided by the employer for the nursing of children each such interval shall be not less than thirty minutes. Where a creche or other suitable place is not provided each interval shall not be less than one hour. The two intervals in question must be granted in addition to the meal interval on full pay and must be regarded as time worked. The Ordinance provides that an employer employing female workers in excess of a number prescribed by Regulation is required to establish and maintain a creche for children under six years of age. The Minister of Labour is also empowered to make Regulations in regard to the health, safety and proper care of children in such creches. However, no Regulations have so far been framed on the subject.

34. Both the Shop and Office Employees' Act as well as the Maternity Benefits Ordinance impose certain restrictions in regard to the employment of pregnant females on certain types of work and in regard to the termination of their services. The employment of a female cannot be terminated by reason only of her pregnancy or confinement or any illness consequent on her pregnancy or confinement, and in a prosecution for contravention of this provision the burden is on the employer to establish that the termination was for a

reason other than the pregnancy or confinement or any illness consequent thereon. No woman worker who has given notice to her employer that she expects to be confined can be employed or be caused or permitted to be employed on any work that may be injurious to her or her child during the period commencing from the date specified in the notice and ending on the date immediately preceding the confinement, such period not to exceed three months. No female can be employed or be caused or permitted to be employed on any such work during the period of three months commencing on the date of her confinement. A female employee who is absent on leave on account of her pregnancy cannot be given notice of dismissal during such absence or in such a way that the notice of dismissal will expire during such absence. This applies to termination on any account.

H. LEAVE — TO ATTEND DOMESTIC INQUIRY OR COURTS

35. Where an employer requires an employee to give evidence at a domestic inquiry, such employee should be granted leave without loss of pay for this purpose. Since an employer should extend to an accused employee all proper facilities to defend himself at a domestic inquiry, it is only fair and proper that the witnesses required by the accused employee to give evidence at a domestic inquiry should also be granted leave with pay, unless in an extreme situation an employer finds that the accused employee is summoning a host of witnesses with a view to disrupting the employer's business.

36. Where an employee is **summoned** by a Court to attend as a witness, his absence should be set off against his leave entitlement or he should be allowed no pay leave if he has no casual or annual leave to his credit or where he refuses to have it set off against his leave entitlement. In this connection several instances have arisen of employees demanding duty leave (i.e. special paid leave) and, on its refusal, informing Court that they were refused leave. The refusal to grant leave arises only where the employer insists on the presence at work of the employee on the day on which he is summoned to attend Court. If an employee is summoned by a Court, the leave to attend must be allowed. The question of payment is a different issue.

37. What has been stated in the preceding paragraph, namely, that an employee summoned by a Court should be granted leave against his own leave entitlement would, or at least should, not apply and duty leave should be granted where the employee is summoned to give evidence on matters arising out of his duties or in his official capacity in proceedings in which the employer has an interest. For instance, if an employee is criminally charged in a Criminal Court on a complaint made by the employer, another employee summoned to give evidence before the Court to support the employer's case should be granted special paid leave at least for purely practical reasons.

I. LEAVE — TO ACT AS JURORS OR ASSESSORS OF QUASI COURTS

38. Where an employee is summoned for jury service —

a) He must be granted special leave with pay over and above his leave entitlement.

b) It is open to the employer to require the employee to report for work on days on which he is not empanelled and on days he is released by Court early enough to enable him to report for work for the rest of the working day. However, an employer should be careful in enforcing this requirement and it should be effected in a way so as not to obstruct the performance by the employee of his statutory duty as a juror. For instance, an enforcement of this requirement in a manner so as to deny the employee reasonable time to travel to work or to take a meal or a rest would be an obstruction of jury service.

c) When an employee is summoned to attend jury service he may or may not be empanelled as a juror. If he is empanelled, he will be required to attend Court until the trial is concluded. If he is not empanelled, he will be required to attend on some other day appointed by the

Court. Therefore, an employee who is summoned for jury service must be present —

i) on the date appointed in the summons.

ii) throughout the duration of the trial at which he is empanelled as a juror.

iii) on any dav appointed by the Court.

39. An Assessor appointed by the Muslim Marriage and Divorce Act and summoned by a Quasi is in the same position as a juror and the same provisions relating to jury service would apply to Assessors.

J. LEAVE — TO VOTE AT ELECTIONS

40. An employee who is qualified to vote at Parliamentary Elections or at the Presidential Elections or Provincial Council Elections is entitled to special paid leave of not less than four hours to enable him to exercise his vote. An employer who contravenes this provision is guilty of a punishable offence. An employer's duty in this regard is not necessarily satisfied by the grant of the minimum four hours leave in all instances. The question of whether the quantum of leave should be four hours or more would depend on the place where the employee is registered to vote. For instance, an employee who is registered in a distant constituency may have to be granted a full day's leave. There is, however, no legal obligation to grant more than a day's leave in any event. However, in such instances, an employee who wishes to take an extra day's leave for purposes of travelling against his leave entitlement should be permitted to do so. (For more information regarding Elections, please refer Act No. 1 of 1981. The Presidential Elections Act No. 15 of 1981 as amended by Act No. 16 of 1988 and the Provincial Council Elections Act No. 2 of 1988.)

41. An employee who is qualified to vote at an election of a **local authority** is entitled to special paid leave of not less than two hours to enable him to exercise his vote. The same duration of

leave should be permitted for voting at Pradeshiya Sabha Elections. The same observations made in paragraph 40 regarding the quantum of leave that should be granted would be equally applicable here.

K. LEAVE — TO ATTEND LOCAL AUTHORITY MEETINGS

42. The Privilege Leave (Private Sector Employees) Law No. 14 of 1976 provides that every private sector employee elected as a member of any local authority is entitled to leave with pay from his employer, in addition to his normal leave entitlement, to enable him to attend a meeting of such Authority whenever notice of such meetings is received by such employee. For this purpose "Local Authority" means any Municipal Council, Urban Council, Town Council or Village Council. Pradeshiya Sabhas have been set up under Act No. 15 of 1987 and any reference in any written law to a Town Council or Village Council or local authority is deemed to be a reference to, and to include, a Pradeshiya Sabha. Therefore, by implication, the law requires the employer to grant leave for members of Pradeshiya Sabhas in those areas in terms of the Privilege Leave (Private Sector Employees) Law, No. 14 of 1979. The recommendation of the Federation is that any Pradeshiya Sabha member be given leave to attend meetings of the Sabha.

L. LEAVE — MUSLIM EMPLOYEES

43. Muslim employees who wish to attend Jumma prayers on Fridays do not enjoy any statutory right to leave. However, the Employers' Federation of Ceylon has recommended that such Employees be allowed half hour's leave for this purpose if it is applied for, at the discretion of the management. The half hour is generally added on to the lunch interval to provide adequate time for employees to attend prayers.

M. LEAVE — MILITARY AND POLICE DUTY

44. This is a matter which is somewhat complicated due to the existence of certain legal provisions as well as practices. The basic obligations of an Employer are set out in the Army Act, the Navy Act and the Air Force Act. These Acts provide that —

"1. It shall be the duty of every employer to give all proper facilities for enabling persons in his employ to become or to be a member of the Volunteer Reserve and any such

person who is a member of that force or reserve to undergo and render such military training and military service as he may be required to undergo and render by virtue of this Act.

2. Any employer who —

a) fails to give the facilities referred to sub-section (i) of this Sections, or

b) by dismissing an employee or by reducing his wages or in any other manner penalizes him for undergoing or rendering any training or service referred to in that sub-section, shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to simple or rigorous imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred rupees, or to both imprisonment and fine."

45. It would be noted that the obligations of employers enshrined in the above provisions include the duty not to prevent an employee from joining the Volunteer Force or Reserve on pain of dismissal or otherwise. The provisions also require the employer to grant paid leave to an employee who is a member of the Volunteer Force or Reserve to undergo and render —

a) Military Training; or

b) Military Service.

46. Though the law implies that full pay should be granted for the duration of the service or training, as the case may be, the Federation has followed the government practice where government servants are called up for military training or duty, of —

a) paying their full salary in addition to their military pay for a maximum of two months, and

b) thereafter making up their military pay to be level with their salary from the employer, only if the military pay is less than his civilian pay.

In other words, except for the first two months of service of training, an employee will not receive both his military and civilian pay but will only receive the difference from his employer if the military pay is less.

47. Since military service would arise during a period of emergency, the two months' full pay an employee would receive from his employer applies only to one mobilisation during one period of emergency. That is to say, if during one period of emergency an employee is mobilised for a period of two months or more he should be paid his full salary for two months by the employer; if he is demobilised and thereafter mobilised again during the same period of emergency, he will not receive his full pay from his employer for the first two months again but only the difference, if any, between his military and civilian pay.

48. The question of deductions (advances or loans, income tax, provident fund etc.) will arise from the third month of mobilisation. If the salary to be paid by the employer is only a part of the employee's substantive civilian salary (i.e. where the civilian salary is more than the military salary) the employer must recover from the amount payable to the employee the total normal monthly deductions on account of provident fund, loans, advances, income tax etc. In the case of provident fund the amount recoverable is his monthly contribution on his **full** substantive civilian salary. If the amount payable to the employee is insufficient to meet all such recoveries, any balance recoveries will be made from his military salary, and the employer should notify the authority concerned the details of the recoveries to be made from his military salary.

49. The Police Ordinance which, *inter alia,* provides for the establishment of a Police Reserve Force to assist the Police in the exercise of their powers and the performance of their duties, contain provisions relative to leave that is to be granted to Police Reservists. The main provisions in this regard are as follows —

a) The law empowers the Inspector General of Police to give directions for the mobilisation of Police reservists to assist the Police Force in the exercise of its powers and

the performance of its duties. No such officer can be mobilised except on the directions of the Inspector General of Police. Any person so mobilised is liable to a penalty if he fails without reasonable cause to report for service.

b) Every employer is required to give all proper facilities for enabling any person in his employment to become or to be a member of the Police Reserve and any such person who is a member of that Reserve to undergo and render such training and service as he may be required to undergo and render by or under the Police Ordinance. It is to be noted that the employer's obligation in this regard arises quite irrespective of the existence of an Emergency declared under the Public Security Ordinance.

c) Any employer who —

i) fails to give the facilites referred to in sub-section (*b*) of this section; or

ii) by dismissing an employee or by reducing his wages or in any other manner penalizes him for undergoing or rendering any training or service referred to in that sub-section shall be guilty of an offence and shall, on conviction after trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to simple or rigorous imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

d) An employer is required to give duty leave with pay to those employees mobilised in terms of this Law. Unlike in the case of military service, the employer is bound to pay full wages to such employees for the entire period of mobilisation. However, the Commandant of the Police Reserve has indicated to the Employers' Federation of Ceylon that they would endeavour to restrict the period of mobilisation to one month, although in exceptional cases the period may be longer.

N. MOBILISATION & SUPPLEMENTARY FORCES ACT NO. 40 OF 1985

50. This Act provides for the setting up of the National Armed Reserve and the Supplementary Forces. The National Armed Reserve is called up when the President deems it necessary. In such case the employer is required to pay an employee his salary and allowances, but the State is obliged to refund any payment to the employer. In the case of Supplementary Forces the President is empowered to make such regulations as he deems necessary, and in the case of the Home Guards Service, by Emergency Regulations under the Public Security Ordinance. Section 3 makes it necessary for an employer to pay the salary and other benefits due to Home Guards while they are mobilised. In this case there is no obligation for the State to reimburse any such payment.

In the case of mobilisation under this Act, it would be advisable for employers to ascertain whether there are legally binding regulations which makes it necessary for payment to be made, as legally when an Emergency is lifted all Emergency Regulations automatically lapse.

O. LEAVE — RELATIVE TO FAMILY PLANNING

51. Leave relative to the Family Planning Programme is not a statutory obligation or part of Collective Agreements, but forms part of recommendations made by the Employers' Federation of Ceylon. Further, such recommended leave is intended as an incentive, together with certain monetary payments, towards family planning. The following incentives are recommended for employees who undergo sterilization —

	Vasectomy (for men)	*Tubectomy (for women)*
Monetary incentive not exceeding	Rs. 50/-	Rs. 50/-
Paid leave (not against leave entitlement)	03 days	10 days

In addition to the above monetary incentives each employee who undergoes sterilization should be reimbursed taxi fare from the place of sterilization to his home up to a maximum of Rs. 50/-.

It is further recommended that where a male employee has not undergone sterilization but his wife (not being an employee) does so, a sum of Rs. 50/- should be paid to him and the male employee (husband) should be granted three days' paid leave (not against his leave entitlement) to assist him in looking after the family during the period of his wife's recuperation. It should be clearly noted that this particular recommendation does not apply to a situation where the male employee has already been sterilized i.e. it applies only where the sterilization is undergone by the wife of an employee. Members should be satisfied that the woman concerned (*a*) is the wife of the employee (*b*) has undergone sterilization for which purpose a certificate from the Medical Officer who performs the sterilization would suffice.

52. In collaboration with the International Labour Organisation, the Department of Labour organises Workers' Educator courses for employees in private sector establishments. The object of these courses is to train groups of employees to assist in the national effort of the government in making industrial workers aware of the need for family planning and population control. They are trained in skills and techniques that would help them to be effective educators among fellow workers in their effort to promote the acceptance of family planning.

53. It is recommended that workers selected for training as worker educators be released on **no pay** for one month for training. Under the scheme of training each trainee will receive from the project resources a sum equivalent to his salary or wages plus an allowance for out of pocket expenses. On completion of the period of training the trained worker-educator is expected to conduct motivational meetings in establishments other than his own workplace on one day each week.

The recommendation of this Federation is that —

a) Workers selected to undergo training as worker-educators should be released on no pay for one month. Workers so selected should be chosen by the management in consultation with trade unions.

b) Trained worker-educators who are required to conduct motivational meetings in other establishments should be released on full pay for one day each week for a period of one year in the first instance.

P. LEAVE—TUBERCULOSIS AND LEPROSY

54. The Employers' Federation of Ceylon has recommended that members grant the following benefits to all categories of employees who are incapacitated by either tuberculosis or leprosy —

a) an employee with more than a year's service will be entitled to leave on full pay for a period of three months ;

b) after this period, if there is medical advice to show that a cure may be effected within a reasonable time, the employee will be entitled to half pay leave on the basis of a month's leave for each year of service, up to a maximum period of 18 months.

55. These concessions will be granted only where the case has been reported to the Director of Social Services, and the employee has been hospitalized in a recognized institution; or, if the employee is being treated at home, that he produces a medical certificate from a government tuberculosis or leprosy institute to prove that he is suffering from the disease.

56. The special leave recommended above for employees who suffer from tuberculosis or leprosy is inclusive of their sick leave entitlement which must, therefore, be set off against the special leave. In the case of an employee, for instance, covered by the EFC/CMU Collective Agreement, the tuberculosis or leprosy leave is inclusive of both his normal

and accumulated sick leave. If such an employee contracts tuberculosis or leprosy, in the first instance, he should utilize his 21 days sick leave in the current year. Thereafter, he should utilize any accumulated sick leave to his credit but up to a maximum of 90 days. It is only thereafter that the special leave recommended above should be granted to him. As an example, an employee with 10 years' service contracts tuberculosis. He has 21 days' sick leave and 39 days' accumulated sick leave to his credit. He should first be granted 21 **plus** 39 days sick leave amounting to 60 days. Thereafter if he qualifies for special leave he should be granted three months' leave on full pay **less** 60 days already granted. If the employee thereafter qualifies for the one month's leave for each year of service up to a maximum of 18 months on half pay, this should be granted.

57. The special leave recommended for tuberculosis or leprosy does not include privilege and casual leave.

Q. LEAVE—NO PAY

58. Employers sometimes refer to absence over and above an employee's leave entitlement as "no pay leave." While no inflexible rules in this connection can be prescribed as applicable to all circumstances, the following should be noted—

a) Strictly speaking there is no special category of leave known as "no pay leave." This term is usually used to describe leave without pay expressly granted by an employer for any purpose in circumstances where the employee has no paid leave to his credit, e.g. to avail himself of a holiday abroad or to cover genuine illness involving hospitalisation, etc. or where the employee proceeds abroad for training.

b) The mere fact that an employee who has leave to his credit absents himself and receives no pay does not imply that the absence was on no pay leave. This is particularly so where the absence is without prior approval. Therefore, in the generality of cases it is preferable to

describe such absence as "no pay absence" rather than "no pay leave" because the latter implies prior or subsequent approval which may disentitle an employer from taking into account the absence for purposes of disciplinary action. A further reason for making this distinction is that an employee who is on no pay approved by the employer is entitled to treat that period of leave as being time served for the purpose of calculating his annual leave entitlement. Thus an employee who has been granted "no pay leave" for a year is still entitled in the following year to his 14 days annual leave with pay under the Shop & Office Employees' Act which states that for this purpose the continuity of employment is deemed not to be interrupted by absence of a person from work "with the permission or subsequent consent of the employer whether with or without remuneration."

c) Strictly speaking, no pay absence can arise even where an employee has leave to his credit, if he has failed to follow reasonable leave procedures and is, therefore, not granted leave. For instance, the mere fact that an employee has sick leave to his credit does not entitle him to absent himself on grounds of sickness in breach of the sick leave rules applicable to him and thereafter insist on his absence being set off against his sick leave. He could, in appropriate cases, be placed on no pay. The same would apply to annual leave. It follows that the situation or circumstances in which an employee who has leave to his credit can be placed on no pay depends on the facts of each case.

R. LEAVE—COMPUTATION AND PROCEDURES

59. Problems of interpretation sometimes arise in the matter of computing leave. These include the following —

a) A half day's leave refers either to the whole of the morning session or the whole of the afternoon session separated by the lunch interval. The fact that the number of hours of work constituting one session is longer than the number of hours constituting the other session is

irrelevant. However, it must be borne in mind that a 'short' working day is not a half day and leave taken would be for a full day.

b) When a medical certificate recommends a particular number of days leave, all days including holidays must be taken into account to decide when the recommended leave expires and the employee should report for work. However, in setting off the absence against the employee's leave entitlement, only the number of working days covered by the period of leave recommended should be deducted from his sick leave entitlement to ascertain his balance sick leave.

c) Employers sometimes grant a period of leave (e.g. one month) in respect of each year of employment and do not necessarily indicate that any part of it may be availed of for a particular reason such as illness or holiday. Such employers sometimes provide that the one month's leave or four weeks' leave, as the case may be, include all holidays which fall within the period of leave taken such as weekly holidays and statutory holidays. In such cases, one has to remember that, for example, under the Shop & Office Employees Act an employee must receive 14 days annual leave and 7 days casual leave excluding any Statutory holidays and weekly holidays.

60. The problems relative to leave procedures do not admit of answers applicable in all situations since such answers must necessarily depend on the facts of each case. Therefore, generalisations on this subject always run the risk of being inaccurate or inapplicable in a given set of facts. What is stated in the succeeding paragraph must, therefore, be strictly understood subject to this otherwise they would be totally misleading.

61. In considering the question of leave procedures the following matters are also relevant and affect the nature of the answers to be given in particular situations —

a) What laws and collective agreement provisions apply.

b) Some employers have established their own leave procedures. These procedures are sometimes, but not always, intimated to employees through standing orders or circulars, while in other cases they have grown out of customary practices.

62. Broadly speaking we have noted the following matters —

a) Annual leave must be applied for in advance. Therefore, no employee is entitled to commence his absence and seek to cover such absence by an application for annual leave. The only exception to this is a situation under certain collective agreements which allow an employee who has exhausted his sick leave entitlement to set off further sick leave against annual leave.

b) Annual leave cannot be accumulated unless there is agreement between the parties to do so, but may be permitted in exceptional circumstances. It should not in any event be encouraged.

c) Casual leave must usually be applied for in advance. Here again, it is impossible to lay down inflexible guidelines, and a few illustrations would perhaps indicate this fact. An employee who has a sudden illness in his family preventing him from reporting for work cannot be expected to apply for casual leave in advance. But an employee cannot stay away from work and expect casual leave for the purpose of attending a wedding when he had due notice of the event. In short, the general principle here is that whether the employee should or should not apply for leave in advance would depend on whether the event or reason in respect of which he has to be on leave is one that was known beforehand.

c) We have already noted the need for medical certificates to cover absence on grounds of sickness, subject to certain exceptions.

e) There is a common misconception that casual leave must be allowed as a matter of right when applied for. This misconception is particularly so in relation to the

Collective Agreements which state that normally a reason need not be given for the application except where the employer has to weigh the needs of the employee against the exigencies of business. An employer is, as a matter of fact, entitled to refuse casual leave but should do so only after examining the need of the employee and his own requirements in the circumstances.

63. The majority of the problems relating to leave procedures apply to sick leave. One question that often arises is the period within which an employee should submit a medical certificate in respect of his absence. Although employers sometimes have their own rules in this connection it is impossible to indicate any definite guidelines. All that can be stated is that an employee should submit a medical certificate within a reasonable time of the commencement of his absence and what is reasonable depend on the circumstances. For instance, it is not unusual for an employee to be required to submit a medical certificate within three days of the commencement of his absence where such absence exceeds three days. But such a rule, if applied rigorously, can become inequitable in a situation where the employee returns to work on the fourth or fifth day and brings the medical certificate with him. The question whether an employee should forward his medical certificate before returning to work or not must necessarily depend on the length of his absence.

64. Another problem in regard to sick leave is the duty of the employee to inform the employer of his inability to report for work. Here again it is impossible to lay down the time within which such information should be communicated, although as a general rule it is not unreasonable to expect an employee to inform his employer on the same day of his inability to report for work. Here again the reasonableness of enforcing such a rule in all circumstances arises, e.g. it may be difficult for an employee who lives far away and has no access to a telephone etc., to have a message conveyed on the same day.

65. This Monograph does not cover the question of disciplinary action to be taken against employees who do not report for work or inform the employer in time or who do not follow the

leave procedures etc., since the question of disciplinary action must depend on the facts of each case having regard to various considerations like the particular leave rules, length of service, the existence of special circumstances, past record and so on. However, in the light of experience, it is necessary to mention situations where employers regard employees who absent themselves for a period of a week or two without intimation as having vacated their employment. Without going into the legal concepts involved here, it would suffice to note that the concept of vacation of employment would usually apply in such circumstances only in cases of very long absence indicating a factual desertion from employment coupled with an intention not to return. A period of one or two weeks which employers usually rely on to invoke the concept of vacation is in any event too short, unless there is other evidence of vacation such as the employee having obtained employment elsewhere.

S. HOLIDAYS—WEEKLY

Shop & Office Employees' Act

66. For the purpose of ascertaining weekly holidays it is first necessary to define a week, and the Shop & Office Employees' Act defines a week as the period from Saturday midnight to the midnight of the following Saturday. The Act provides that employees covered by the Act shall be granted in respect of each week 1 $^1/_2$ day's paid weekly holidays provided the employee has worked for not less than 28 hours (exclusive of overtime and intervals) in the week in respect of which the holidays have to be granted. Since the Act does not, as we shall see in the succeeding paragraph, prescribe any particular day or days as the weekly holidays, the 28 hours that need to be factually or notionally worked need not necessarily be on week days. It should be noted that in ascertaining whether an employee has worked for not less than 28 hours, any period during which an employee has been on leave or on holiday **with full remuneration** is deemed to be a period worked. For instance, the period where an employee has not worked because a particular day is a statutory holiday or because he has been on annual, casual or sick leave with pay such days will be days on which he

is deemed to have worked for this purpose. If the employee received no pay for any period of absence (including a period of suspension), then he is deemed to have not worked for the purpose of making up the 28 hours in question. The period of 28 hours need to be worked to qualify for paid weekly holidays has been fixed on the basis of an 8 hour working day (exclusive of intervals), making up a minimum of 3 $^1/_2$ days. In some establishments the working hours are less than 8 hours, and in those cases the qualification for paid weekly holidays has by practice been fixed at 3 $^1/_2$ days rather than 28 hours, and this practice can be regarded as an equitable one.

67. The weekly holidays must be allowed —

a) in the same week, or

b) the week following, or

c) where the Commissioner of Labour gives permission one month's weekly holidays (i.e. 6 days) can be given together. The Commissioner would give such permission only where he considers it necessary either due to the nature of the business or due to unforeseen circumstances.

In either of the situations (*b*) or (*c*) above an employee would exceed his normal weekly hours by reason of the fact that the weekly holidays have not been given in that week; as such, he would be entitled to overtime which is a matter which will be referred to under that heading.

68. A "half holiday" under the Act is a day on which a person is not employed for more than 5 hours exclusive of any interval. In other words, the weekly half holiday should involve not more than five working hours exclusive of an interval.

69. Most business establishments have customarily fixed their weekly holidays as the Saturday and Sunday. As such, situations arise when a statutory holiday falls on what is customarily a weekly holiday or half holiday. When that occurs it means that the Saturday or Sunday is in law a

statutory holiday or half holiday as the case may be, and that is why it is incumbent on the employer to grant an alternative weekly holiday or half holiday.

70. **Baking Trade**—In terms of the decisions of this Board —

a) The weekly holiday is not a fixed day but the employer is required to allow one day as the weekly holiday, such day to be agreed upon between the employer and the worker.

b) The weekly holiday is a paid holiday as the workers are monthly rated.

c) An employee who works on the weekly holiday must be granted an alternate paid holiday within the next succeeding six days, must be paid in respect of such work on the weekly holiday 1/25th of the minimum monthly rate and if he works beyond normal working hours on the weekly holiday he must also be paid for such excess at $2^1/_2$ times the minimum hourly rate ascertained by dividing the minimum monthly rate by 200.

71. **Biscuit & Confectionery Manufacturing Trade**—According to the decisions of this Board —

a) Sunday is the weekly holiday and is paid for because the workers are monthly rated.

b) For work performed on the weekly holiday and for work performed in excess of the normal working hours on the weekly holiday the position is the same as in the Baking Trade above.

c) Watchers are excluded from the category of workers entitled to a weekly holiday on Sunday. However, they qualify for overtime payments after 45 $^1/_2$ hours in a week.

72. **Brick & Tile Manufacturing Trade**—According to the decisions of this Board —

a) Sunday is the weekly holiday.

b) The weekly holiday is unpaid.

c) A person working on a weekly holiday must be granted another day as a holiday without pay before the occurrence of the next Sunday and be paid for work within normal working hours at 1 $^1/_2$ times the daily rate and, thereafter at double the minimum hourly rate for each complete hour (not part of an hour) of work beyond normal working hours.

73. **Building Trade**—According to the decisions of this Board—

a) Sunday shall be the weekly holiday.

b) The weekly holiday is unpaid.

c) In respect of work on a weekly holiday, a worker has to be granted another day as a holiday without pay before the occurrence of the next Sunday, and be paid for work within normal working hours at 1 $^1/_2$ times the daily rate and, thereafter, for each subsequent hour of work beyond normal working hours at double the minimum hourly rate.

74. **Cinema Trade**—According to the decisions of this Board —

a) Every employee has to be granted a fixed day between Monday and Friday as a paid weekly holiday.

b) No express provision is made for lieu leave or for payment for work on the weekly holiday. The decisions provide for a minimum number of working days in each month and for overtime remuneration for work on any day in excess of the minimum number. Accordingly an employee who is called upon to work on his weekly holiday would be entitled to an amount equal to 1 $^1/_2$ times the minimum daily rate ascertained by dividing the minimum rate by 25, but there is no requirement to provide an alternative holiday in terms of the decisions.

75. **Cinnamon Trade:**

No decision regarding weekly holiday.

76. **Coconut Growing and Cocoa, Cardamom & Pepper Growing & Manufacturing Trades:**

Sunday is the weekly holiday. For work on Sunday a worker is entitled to his daily rate divided by 8 and increased by 1 $^1/_2$ times per hour up to the first nine hours and double thereafter.

77. **Coconut (Manufacturing) Trade:**

According to the decisions of this Board—

a) Sunday is the weekly holiday.

b) The weekly holiday is unpaid.

c) (i) a worker who has worked for nine hours (inclusive of one hour for a meal), or for any period that falls short of nine hours by reason of the failure of the employer to provide him with work, shall be paid at one and a half times the minimum rate of wages for a normal working day;

(ii) a worker who has worked for less than nine hours (inclusive of one hour for a meal) by reason of his unwillingness to work, shall, for each hour that he has worked, be paid at one and a half times the hourly rate (ascertained by dividing the minimum rate of wages for a normal working day by eight); and

Note—No worker can be employed on such Sunday for more than nine hours (inclusive of one hour for a meal).

78. **Coir Mattress & Bristle Fibre Export Trade:**

According to the decision of this Board —

a) Sunday is the weekly holiday.

b) The weekly holiday is unpaid.

c) For work on the weekly holiday within normal working hours a worker is entitled to an unpaid holiday in lieu before the next Sunday and the daily rate for that day an additional 50%. No work beyond normal working hours on the Sunday is permitted. The daily rate is ascertained by dividing the monthly rate by 26.

79. **Engineering Trade:**

According to the decisions of this Board —

a) Sunday is the weekly holiday.

b) It is unpaid.

c) For work on the Sunday a worker is entitled to (i) alternate unpaid holiday before the next Sunday and (ii) the normal daily rate and an additional 50% and (iii) double the minimum hourly rate for each complete hour (not part of an hour) for work in excess of the normal working hours is payable. The hourly rate is ascertained by dividing the monthly rate by 200 and the daily rate by dividing the monthly rate by 26.

d) Workers engaged on work outside the business premises of the employer for periods exceeding 12 days at a time, are not entitled to the benefits of the weekly holiday provisions; in the case of workers engaged on work outside this exemption applies for each period exceeding 12 days.

e) Watchers are excluded from the category of workers entitled to a weekly holiday on Sunday. However, they qualify for overtime payments after 45 $^1/_2$ hours in a week.

80. **Garment Manufacturing Trade:**

According to the decisions of this Board —

a) Each employee is entitled to Sunday which is a paid holiday.

b) For work on such weekly holiday the worker is entitled to (i) a paid holiday in lieu within the next six days and (ii) the normal daily rate and an additional 50% within the normal working hours (iii) if any work in excess of normal working hours is performed he would receive double the minimum hourly rate for each such hour of work. The hourly rate is ascertained by dividing the monthly rate by 200 and the daily rate by dividing the monthly rate by 26.

81. **Hosiery Manufacturing Trade:**

Same as Garment Manufacturing Trade.

82. **Ice & Aerated Waters Manufacturing Trade:**

According to the decisions of this Board —

a) Any one day in the week should be allowed as a paid weekly holiday.

b) For work on the weekly holiday a worker is entitled to another paid holiday in lieu within the next six days plus 1 $^1/_2$ times the normal daily rate for work within normal working hours, the daily rate being 1/30th of the minimum monthly rate. For work in excess of the normal working hours he would receive double the hourly rate ascertained by dividing the minimum monthly rate by 240 for each hour of work in excess.

83. **Liquor & Vinegar Trade:**

No provision has been made for a weekly holiday.

84. **Match Manufacturing Trade:**

According to the decisions of this Board —

a) Sunday is the weekly unpaid holiday.

b) a worker who has worked for nine hours (inclusive of one hour for a meal), or for any period that falls short of nine hours by reason of the failure of the employer to provide him with work, shall be paid at one and a half times the minimum rate of wages for a normal working day;

c) a worker who has worked for less than nine hours (inclusive of one hour for a meal) by reason of his unwillingness to work, shall, for each hour that he has worked, be paid at one and a half times the hourly rate (ascertained by dividing the minimum rate of wages for a normal working day by eight.

85. **Motor Transport Trade:**

This Wages Board has not fixed weekly holidays but have fixed a minimum number of working days for each month. If, however, an employee is employed on any days in excess of this minimum number he is entitled to 1 $^1/_2$ times the minimum daily rate for work on each such day, ascertained by dividing the minimum monthly rate by 25.

86. **Nursing Home Trade:**

According to the decisions of this Board —

a) Every employee is entitled to one day in the week as a paid weekly holiday and such day should be a day agreed between the employer and the employee.

b) for work on the weekly holiday within normal working hours an employee is entitled to a holiday in lieu within the next six days and 1/25th of the minimum monthly rate. For each hour of work in excess of normal working hours on that day he is entitled to twice the minimum hourly rate ascertained by dividing the minimum rate by 200.

87. **Paddy Hulling Trade:**

a) Sunday is an unpaid weekly holiday.

b) For work on a Sunday a day within the next six days should be granted as an unpaid holiday.

c) In addition the worker shall receive a normal day's pay, increased by 50%, for the day's work for normal working hours.

d) Beyond normal working hours, he is entitled to double the hourly rate.

88. **Printing Trade:**

According to the decisions of this Board —

a) Sunday is the paid weekly holiday as the workers are monthly rated.

b) For work on a Sunday a worker is entitled to a paid holiday in lieu before the succeeding Sunday plus 1/30th of the minimum monthly rate for any work within normal working hours. For work beyond normal working hours he is entitled in respect of each such complete hour (not part of an hour) to the minimum monthly rate divided by 120.

89. **Rubber Growing and Manufacturing and Tea Growing and Manufacturing Trade:**

Any day in the week could be granted as the weekly holiday. The rate is the same as in the Coconut Growing and Cocoa, Cardamom & Pepper Growing & Manufacturing Trades above.

90. **Rubber & Tea Export Trades:**

According to the decisions of these Boards —

a) Sunday is the weekly holiday.

b) For work within normal working hours on the Sunday the worker is entitled to a holiday in lieu before the succeeding Sunday plus 1 $^1/_2$ times the daily rate of wages.

c) The decisions do not make provision for work in excess of normal working hours on the weekly holiday.

91. **Security Service Trade:**

According to the decisions of this Board —

a) No weekly holiday has been fixed, but, instead, a minimum number of working days for each month.

b) For work in excess of the minimum number of working days in the month an employee is entitled to payment at the minimum daily rate (ascertained by dividing the minimum monthly rate by 250) and an additional 50%.

92. **Tanning, Footwear & Leather Goods Manufacturing Trade:**

a) Sunday is a fixed unpaid weekly holiday.

b) For work on a Sunday a day within the six days succeeding should be granted as an unpaid holiday.

c) That he should be paid a normal day's wage, increased by 50%, for the normal hours.

d) For work beyond normal hours he should be paid double the hourly rate.

93. **Textile Manufacturing Trade:**

According to the decisions of this Board —

a) Sunday is the unpaid weekly holiday.

b) For work on the Sunday a worker is entitled to—

i) an alternative unpaid holiday before the succeeding Sunday ;

ii) for work within normal working hours a day's wage and an additional 50% for the first nine hours and 100% per hour in excess ;

iii) the hourly rate is ascertained by dividing the minimum monthly rate by 26 and hourly rate by dividing the monthly rate by 200.

94. **Tobacco Trade:**

The position here for work on a weekly holiday is the same as for the Textile Trade.

95. **Tyre & Tube Manufacturing, Tyre Rebuilding:**

Rubber & Plastic Goods Manufacturing Trade:

According to the decisions of this Board—

a) Sunday is the paid weekly holiday ;

b) For work on the Sunday an alternative paid holiday within the next six days must be allowed.

c) Payment for work within the normal working hours at $1^1/_2$ times the daily rate of wages ascertained by dividing the monthly rate by 30.

d) For work in excess of normal working hours double the hourly rate ascertained by dividing the daily rate by 8, or the monthly rate by 240 for each hour of such excess.

96. It is to be noted that the Wages Board decisions do not provide for a weekly half holiday but only for what is called a short working day, (in some instances, it has been fixed as the Saturday) on which day the maximum number of hours inclusive of one hour for a meal is either six or six and a half hours depending on the particular trade. The importance of this distinction between a half day and a short working day is

that an employee who is on leave on the short working day should strictly have such leave set off against one day's leave and not half day's leave.

97. A matter that has given rise to some confusion is the question whether where a particular Wages Board provides for a monthly rate of wages and prescribes a weekly holiday, the alternative weekly holiday which has to be given where a workman is employed on the weekly holiday is paid or not. The Wages Board decisions which provide for a daily rate and which prescribe Sunday as the weekly holiday state that the latter is an unpaid holiday so that the alternative weekly holiday is also unpaid. When converting to a monthly rate many of the Wages Boards multiplied the daily rate by 25 or 26 on the basis that the weekly holiday was unpaid. But once a monthly rate of wages has been fixed a workman receives his monthly wages without any deduction where he does not work on the weekly holiday. Therefore, if an employee receives his monthly remuneration even if he does not work on the weekly holiday, then he should not be paid less than his normal monthly remuneration where he works on a weekly holiday and has been granted an alternative holiday. If a wage deduction is effected in respect of the alternative weekly holiday, then the workman has received hardly anything for working on the weekly holiday. Therefore, an employee on a monthly rate who is employed on a weekly holiday that has been prescribed should be treated as follows:

i) He should be paid the enhanced rate for that day's work ;

ii) He should be given an alternative holiday ;

iii) He should receive the normal monthly remuneration without deduction for the alternative holiday.

98. It should be noted that an employer is not entitled in law to withhold the alternative weekly holiday which needs to be granted where an employee is employed on his normal weekly holiday by the payment of a day's wages in lieu of the alternative weekly holiday.

EFC/CMU Collective Agreement 1987

99. Except in relation to remuneration for work on weekly holidays, the question of lieu leave and the weekly holidays for Supervisory Staff, the provisions in the Agreement relative to weekly holidays are not different to those in the Shop and Office Employees' Act.

100. In so far as Supervisory Staff are concerned, they would receive the same weekly holidays as the labour they supervise and their number of working hours on the weekly half holiday will be the same as the number of hours worked by the labour they supervise. Differences in their remuneration for work on the weekly half holiday will be dealt with under overtime.

Manual Workers' Collective Agreement 1981

101. Unlike in the case of a few Wages Board decisions in terms of which Sunday is fixed as an unpaid weekly holiday, under these Agreements the weekly holiday is a paid holiday. The following represent the position on weekly holidays (other than remuneration for work on such a day) under the Agreements —

a) Sunday is the paid weekly holiday.

b) If an employee does not work for a minimum of 28 hours in the week (which is the period between midnight on a Saturday and midnight of the succeeding Saturday) exclusive of intervals and overtime, he will not be entitled to payment for the Sunday and will suffer a wage deduction of one day's wage in respect of that week.

c) In calculating the 28 hours an employee is entitled to credit for any period of absence or leave for which he is paid as well as holidays.

T. HOLIDAYS — STATUTORY AND POYA

EFC/CMU Collective Agreement

102. Clause 9 of the Collective Agreement sets out a list of holidays which consist of statutory holidays and customary holidays. The statutory holidays are those which are declared

as such under the Shop & Office Employees' Act, whereas the customary holidays are special holidays granted in terms of the Agreement and consist of New Year's Day, Good Friday, Holy Saturday (half day), Christmas Eve (half day) and Boxing Day.

103. Where any of the statutory holidays in the aforementioned list fall on the weekly full or half holiday, then an additional weekly holiday or half holiday, as the case may be, must be granted. If the statutory holiday falls on the weekly half holiday, the additional half holiday must be granted on the working day immediately preceding the statutory holiday. If the statutory holiday falls on the weekly holiday, then the additional full holiday can be given on any working day during the six days preceding or succeeding the statutory holiday.

104. It is important to note that no alternative holiday or half holiday need be granted if a **customary** holiday or half holiday falls on the weekly holiday or half holiday.

105. The Agreement provides for the following special holidays for Muslim and Hindu employees—

a) Muslim employees shall normally on application be granted leave on the day following the end of Ramazan and on the Hadji Festival day.

b) Hindu employees shall normally on application be granted leave on the Deepavali Festival day.

Such leave must be set off against an employee's paid leave entitlement of casual or annual leave and, if he has no paid leave to his credit, the leave must be granted as an unpaid holiday.

106. In the case of Supervisory Staff they are not entitled *ipso facto* to the statutory and customary holidays applicable to other staff but the following provisions apply in their case—

a) They are entitled to the same statutory and customary holidays as they enjoyed prior to the Agreement.

b) They will enjoy, subject to (*a*) above, the same holidays enjoyed by the manual employees supervised by them provided that the total of such holidays are not less than the total they enjoyed as at the date of the Agreement.

Manual Workers' Collective Agreements 1988

107. The Agreements provide that the statutory holidays allowed to an employee shall be in accordance with the decisions of the Wages Boards.

108. If the statutory holiday in question—

a) falls on a Sunday, then an alternative weekly holiday shall be granted on any day in the six days immediately preceding or succeeding the statutory holiday ;

b) falls on a Saturday, a short working day shall be granted on the day immediately preceding the statutory holiday.

Wages Board Decisions

109. Each Wages Board prescribes the statutory holidays to which employees governed by the decisions are entitled to.

110. Where a statutory holiday falls on the weekly holiday, then the only consequence is that such holiday will be paid for but no alternative holiday need be granted, except in the following Wages Boards :–

i) Textile Manufacturing Trade,

ii) Biscuit, Confectionery and Chocolate Manufacturing Trade,

iii) Coconut Growing Trade,

iv) Rubber Growing & Manufacturing Trade,

v) Paddy Hulling Trade,

vi) Tea Growing & Manufacturing Trade.

Shop & Office Employees' Act

111. The Act entitles the Minister to declare in each year a total of 9 statutory holidays. Where a statutory holiday falls on what is customarily a weekly holiday or half holiday, then an alternative holiday or half holiday must be allowed as the weekly holiday or half holiday as the case may be. Such alternative day or half day must be treated as the weekly holiday or half holiday for all purposes.

Poya Day

112. The Poya Day stands on a different footing to statutory holidays and, therefore, requires separate treatment. It would be convenient to deal with the question of remuneration for work on that day as well in this Section.

113. All employees, whether white collar or manual categories, are entitled to a holiday on the Full Moon Poya Day falling in each month.

114. In the case of **monthly rated** employees, they will be entitled to their wage for that day which would be included in their monthly salary. If any such employee works on this day, he should be paid an extra half day's remuneration in addition to his normal monthly salary irrespective of the number of hours worked during the normal working hours.

115. The full Moon Poya Day will be an unpaid holiday for all **daily rated** employees. If any such employee is required to work on this day he would be remunerated at $1^1/_2$ times his normal daily wage, irrespective of the number of hours worked during the normal working hours.

116. Where a **monthly rated** employee is employed on a Full Moon Poya Day which falls on a Saturday, and such employee is employed on that day up to the normal time of closing on a Saturday, he will be entitled to an extra half day's wage as remuneration but no alternative half holiday in lieu need be allowed. If he is employed on this day beyond the normal closing time on a Saturday, he will in addition, be

entitled to the benefits normally available to him for work beyond the normal closing time on a Saturday. In the case of five day week employees, they will be entitled to the normal benefits for work on a Saturday if they are employed on that day.

117. Where a **daily rated** employee for whom the Full Moon Poya Day is an unpaid holiday is employed on the Full Moon Poya Day which falls on a Saturday beyond the hours normally worked on a Saturday, he should be remunerated for such work at the normal overtime rates i.e. $1^1/_2$ times the normal hourly rate. But no alternative half holiday need be given.

118. Where the Full Moon Poya Day falls on a weekly holiday or half holiday or statutory or customary holiday, no alternative holiday or half holiday need be allowed.

119. It should be noted that due to the difficulty of obtaining the consent of employees to work on a Poya Day and the fact that the legal entitlement of an employee to remuneration for work on that day hardly constitutes an incentive for employees to work on a Poya Day, many employers have agreed with their employees to pay for work on a Poya Day at rates higher than that prescribed by the law. The payment which employers have usually agreed upon is an extra full day's wage for work on the Poya Day, but some employers have even agreed to higher payments.

U. FIVE DAY WEEK EMPLOYERS

120. The consequences outlined earlier in situations where a statutory holiday falls on a Saturday or where overtime work is performed on a Saturday are somewhat different in the case of employers who operate a five day week. The differences become even more complicated due to the fact that—

a) some employers operate a five day week in terms of the law ;

b) others operate a five day week by virtue of special agreements or arrangements ;

c) in either of the above events the position differs as between white collar and manual categories in several respects.

121. In these circumstances it is considered convenient to treat the various consequences following from holidays on Saturday or overtime work on Saturday in relation to five day week employers as a separate issue in order to avoid confusion.

122. In considering the question it is necessary to divide employers operating a five day week into those employers who do so in consequence of the operation of the law and those who have done so voluntarily in terms of special agreements or arrangements.

Five Day Week in Terms of the Law

123. Those who operate a five day week in terms of the law do so in consequence of the Five Day Week Regulations framed under the Public Security Ordinance prior to 1977 declaring a five day week and which were given statutory force by the Fuel Conservation Five Day Week Law No. 11 of 1978. The provisions of the Regulation are not relevant at this stage but it is important to note that any employer who comes into existence after the date of the Fuel Conservation Five Day Week Law No. 11 of 1978 is not bound to operate a Five Day Week since the law and the preceding Regulations applied only to legal entities which were in existence prior to the Fuel Conservation Five Day Week Law No. 11 of 1978. The relevant date is the 1st February 1977.

124. So far as employees covered by the **Shop & Office Employees' Act** are concerned, the obligation of an employer operating a five day week in terms of the Five Day Week Law are as follows—

a) If a statutory holiday falls on the Saturday and the Saturday had been customarily treated as the weekly half holiday, then the employer must grant only a half day in lieu. No alternative half holiday arises where it is a **Poya holiday** that falls on the Saturday.

b) Where an employee works on the Saturday morning only he is not entitled to any lieu leave but only to overtime remuneration at $1^1/_2$ times the normal hourly rate. If he works on the Saturday afternoon which is customarily the weekly half holiday, then he is entitled to $1^1/_2$ times the normal hourly rate for such work plus a half holiday in lieu.

125. In so far as manual work categories covered by the **Manual Workers' Collective Agreements** are concerned—

a) If a statutory holiday falls on a Saturday, only a short working day should be allowed as an additional holiday. This consequence does not follow if it is a Poya Day that falls on the Saturday.

b) An employee who is called upon to work on the Saturday would be entitled to $1^1/_2$ times the normal hourly rate without any lieu leave.

126. In so far as the **EFC/CMU Collective Agreement of** 1987 is concerned the position is the same as in paragraph 124 subject to the following qualifications—

a) If it is a customary holiday that falls on the Saturday no lieu leave is due ;

b) For work on the Saturday afternoon an employee would be entitled to the enhanced rate of remuneration payable for work on the weekly half holiday.

127. In the case of manual work categories covered by the **decisions of the Wages Boards**—

a) Where a statutory holiday falls on Saturday no alternative short working day or holiday is due. The same applies where a Poya Day falls on a Saturday.

b) Where an employee is employed on the Saturday he is entitled to one and a half times the normal hourly rate but no lieu leave is due on account of having worked on that day.

128. In establishments where the Saturday, although a non-working day, is only a weekly half holiday or short working day, as the case may be, the question arises as to whether an employee receives a half day's pay for Saturday even if he loses his $1^1/_2$ days' weekly holiday pay as a result of not working the requisite number of hours in the week. The only logical solution is to pay an employee proportionately for Saturday depending on the number of days he has worked in the week, e.g. if he has worked on only two days he will forfeit 3/5th of his Saturday pay and if he has worked only one day he will forfeit 4/5th of his Saturday pay and if he has not worked at all in the week he will receive no pay for Saturday.

Normal Five Day Week Employers

129. The second category of employers who operate a five day week are those who do so outside the provisions of the law in consequence of some special arrangements or agreements with their unions or employees. This category of employers are commonly referred to as the normal five day week employers. It is essential to bear in mind that their obligations would primarily be governed by whatever agreements or arrangements exist in respect of the five day week and that, where there is no specific written agreement, whatever arrangements have been entered into would be best reflected in the practice adopted from the time that the five day week came into operation. Therefore, what is stated below would be subject to the agreements that may have been entered into in each establishment relative to the five day week. Another basic position regarding this category of employer to bear in mind is that, subject to special arrangement, the Saturday is deemed to be a full weekly holiday (and not a half holiday), especially where the working hours on the Saturday have been wholly or largely distributed over the week days. It is, therefore, from this concept of Saturday being a full weekly holiday that many of the consequences noted below flow.

130. In the case of employees covered by the **Shop & Office Employees' Act** the obligations of an employer operating a five day week are as follows—

a) If a statutory holiday falls on the Saturday a full holiday in lieu should be granted. This consequence does not arise where it is a Poya Day that falls on the Saturday.

b) Where an employee works on the Saturday he is entitled to $1^1/_2$ times the normal hourly rate plus a full paid holiday in lieu irrespective of the number of hours he worked on the Saturday.

131. In the case of employees covered by the **EFC/CMU Collective Agreement of** 1987 the position is as follows—

a) If a statutory holiday falls on Saturday a full holiday in lieu should be granted. This consequence does not arise where it is a Poya Day or a customary holiday that falls on the Saturday.

b) Where an employee works on the Saturday in as much as it is deemed to be a full weekly holiday he would be entitled to payment as on a weekly holiday, unless there is a special understanding on that matter.

132. In so far as manual work categories covered by the **Manual Workers' Collective Agreements of** 1988 are concerned—

a) If a statutory holiday falls on a Saturday a full alternative holiday in lieu should be granted. This consequence does not flow if it is a Poya holiday which falls on the Saturday.

b) An employee who is called upon to work on the Saturday will be entitled to $1^1/_2$ times the normal hourly rate plus a full holiday in lieu.

133. In the case of manual categories covered by the **Decisions of Wages Board only**—

a) Where a statutory holiday falls on a Saturday a full alternative paid holiday in lieu is due for the reason that if the Saturday had been a working day it is paid for but has been treated or deemed to be a paid full weekly holiday. This consequence does not flow where it is a Poya Day that falls on a Saturday.

b) Where an employee is employed on the Saturday he is entitled to $1^1/_2$ times the normal hourly rate plus a full paid holiday in lieu by virtue of the fact that he has worked on what is deemed to be a full weekly holiday.

134. Employers who deem the Saturday also as a full weekly holiday and grant a full holiday in lieu where a statutory holiday falls on Saturday would be entitled to deduct two days' salary in respect of each week in which an employee does not earn his weekly holiday pay.

V. LEAVE AND HOLIDAYS FALLING WITHIN PERIOD OF STRIKE

135. Special problems arise in regard to leave and holidays during the period of a strike.

Annual Leave

136. The problem of annual leave falling during the period of a strike admits of a variety of situations and answers. The following represent the position that an employer should adopt in these varying situations—

a) An employee may apply for annual leave and have it approved, **after which** he participates in a strike. In that event he must be deemed to have been on leave in respect of the approved period and be paid accordingly **unless** the annual leave **was** cancelled by the employer by means of a communication to the employee. Therefore, when a strike occurs it is advisable for an employer to inform employees who have been granted annual leave, or who are already on annual leave that their leave is cancelled and that they are required to report for work. If they do not respond then they can be regarded as being on strike.

b) Employers sometimes arrange leave rosters in the early part of the year and such rosters are forward leave indications of employees. The arrangements reflected in a roster become operative only when a formal application for leave is made and allowed. Therefore, where an employee's leave as indicated in a roster falls within the period of a strike he is **not** entitled to consider himself as being on annual leave during that period in the absence of a formal application and its approval.

Sick Leave

137. Here again a variety of situations arise and should be dealt with on the following basis—

a) If an employee commences a period of sick leave before a strike, then he should be treated as being on sick leave even if such absence covers a period of strike unless, of course, the employer has proveable grounds to dispute the employee's position that he was sick.

b) If the period of sick leave terminated during the course of the strike, then any absence thereafter which is not supported by a medical certificate should be treated as a period of absence on account of the strike.

c) Where a strike occurs and an employee absents himself from the date of the strike and applies for sick leave on a date after the commencement of the strike, no sick leave should be normally allowed or paid for. Exceptional situations could be considered e.g. where there is proof of hospitalisation.

Statutory Holidays

138. The position where statutory holidays fall during the period of a strike does not admit of a definite answer except in relation to a few Wages Boards which have made specific provision in this regard. The following Wages Boards provide that employees covered by their decisions will not be entitled to remuneration for a statutory holiday falling within the period of a strike—

Brick and Tile Manufacturing Trade
Building Trade
Coconut Manufacturing Trade
Coir Mattress & Bristle Fibre Export Trade
Ice and Aerated Waters Manufacturing Trade
Motor Transport Trade
Printing Trade
Liquor & Vinegar Trade
Garment Manufacturing Trade
Tanning Footware & Leather Goods Manufacturing Trade

139. On the other hand, there was a view that employees covered by the Shop & Office Employees' Act are entitled to payment on account of statutory holidays falling within the period of a strike and that, since the following Wages Boards make no express provisions in this regard, workers covered by those decisions would also be entitled to payment for statutory holidays during the period of a strike—

Baking Trade
Engineering Trade
Rubber Export Trade
Cinema Trade
Match Manufacturing Trade
Tea Export Trade

140. There is another view that no employee whether governed by the decisions of a Wages Board or covered by the Shop & Office Employees' Act is entitled to statutory holidays falling within the period of a strike. A strike, where no special legislation operates, can only have one of the following consequences on the contract of employment—

i) it suspends the contract of employment ;

ii) it terminates the contract of employment ;

iii) it is a breach of contract not putting an end to the contract.

141. Each of the above views presents difficulties but, since a strike is a notion alien to the common law, industrial relations concepts should be relevant in determining the effect of a strike on the contract of employment. From an industrial relations point of view it would be unrealistic, to say the least, to contend that a strike terminates the contract or that it amounts to a breach of contract which by itself and without more entitled the employer to terminate the contract. The better view, therefore, would appear to be that a strike suspends the contract of employment subject to the employer's right in certain cases (not relevant here) to terminate the

contract. On this basis the employer is under no obligation to extend to his employees those rights that the latter would enjoy had the contract of employment not been suspended. If, as in this case, no wages are legally due during the period of a strike, it must follow that no payment on account of statutory holidays is legally due for the same reason. In these circumstances, in law no wage or salary is payable on account of statutory holidays falling within the period of a strike.

Weekly Holidays

142. The position relating to weekly holidays falling within the period of a strike are as follows—

a) **Employees governed by the Shop & Office Employees' Act** are required to work for $3^1/_2$ days in a week to be entitled to the weekly holidays with pay. An employee who has been on strike and has therefore, not worked for the requisite number of days during the week will not qualify to be paid for the weekly holiday in that particular week.

b) **Employees in establishments which operate a five day week** have, according to practices in some establishments, to work for only three days during the week to qualify for payment for the weekly holidays. The reason is that in many cases the Saturday working hours were not spread over the week days or at least the entirety of the Saturday working hours were not spread over. This procedure of requiring three days of work to qualify for paid weekly holidays would in all the circumstances be equitable. Thus, in the case of Five Day Week Employers if an employee has not worked the requisite number of days as a result of being on strike he forfeits his pay for the weekly holiday.

c) **In the case of workers covered by the Collective Agreements of** 1988 applicable to labour categories, the position is as set out in (*a*) above.

W. OVERTIME — GENERAL AND SHOP & OFFICE EMPLOYEES' ACT

143. As we have noted earlier, overtime properly refers to work beyond the normal period of working hours either per day or per week. However, in this section we will also cover the remuneration payable for work on holidays except to the extent that it has already been covered in any of the earlier sections.

144. In considering the question of overtime we will not deal with matters such as the right to call upon an employee to work overtime as such questions are relevant to other aspects of the contract of employment such as disciplinary action. However, certain aspects of working hours and certain restrictions on overtime will be dealt with because overtime is directly related to the working hours of a particular individual category.

Beyond Normal Working Hours

145. The Act provides that the normal period during which a person may be employed in or about the business of any shop or office—

a) On any one day shall not exceed 8 hours, and

b) In any one week shall not exceed 45 hours.

The above number of hours **exclude** the periods covered by intervals.

146. Overtime is defined in the Act in relation to any employment or work as employment or work in excess of the normal maximum period referred to in paragraph 145. Therefore, an employee becomes entitled to overtime payments if he works for more than 8 hours a day or for more than 45 hours in a week. However, in some establishments the daily, and therefore, the weekly, hours are less than what the law allows. For instance, in some establishments the daily working hours are 7 or $7^1/_2$ hours. In such cases an employee should nevertheless be paid at overtime rates for work beyond his normal working hours even though such normal working hours are less than the 8 hours permitted by the Act.

147. The question of paying overtime rates for working in excess of 45 hours a week, as distinct from work in excess of 8 hours a day, would arise only in a situation where an employee does not receive his weekly holidays in a particular week but only in the succeeding week and, thereby, exceeds the weekly hours of work. For example, in a particular establishment the working hours are 8 hours on week days and 5 hours on Saturday, making a total of 45 hours in the week. If he works overtime during the period Monday to Friday he will receive overtime payments for work in excess of his normal working hours **during the day,** and not on the basis that he has exceeded the 45 hours **in the week.** If, in the same example an employee worked 8 hours each day between Monday and Friday, works the whole of the Saturday and Sunday and receives his weekly holidays only in the next week, then by working on the Saturday afternoon and on Sunday, he has exceeded the **weekly hours** of work and will receive overtime for that reason.

148. The period of any leave or holidays during the week will be deemed to be time worked for the purpose of ascertaining the number of hours he has worked in that week.

149. Since the Act does not prescribe particular days in the week as the weekly holidays, the question of any special rates of overtime for work on weekly holidays does not arise. As already noted, if an employee does not enjoy his weekly holidays in a particular week then he receives overtime payments for having exceeded his normal weekly hours.

150. For any overtime work an employee is entitled to be paid at $1^1/_2$ times the normal hourly rate. For example, if the hourly rate of an employee is Rs. 1/-, then for each hour of overtime he is entitled to Rs. 1/50 in addition to his normal remuneration. The reason for this has been explained in paragraph (1) of this Monograph.

151. For the purpose of computing overtime remuneration, the hourly rate of remuneration shall—

a) where remuneration is payable at a daily rate, be 1/8th of the daily rate ;

b) where the remuneration is payable on a monthly rate, be 1/8th of the monthly rate divided by 30 ;

c) where remuneration is payable at a fortnightly rate, be 1/8th of the fortnightly rate divided by 14 ;

d) where remuneration is payable at a weekly rate, be 1/8th of the weekly rate divided by 7.

On Statutory Holidays

152. Where an employee is employed on a statutory holiday he is entitled to one extra day's salary **or** to a paid holiday in lieu before 31st December of that year.

153. Strictly speaking the Act requires the Commissioner of Labour's approval to work an employee on a statutory holiday.

154. It should be noted that employment beyond normal working hours on a statutory holiday is prohibited and, as a matter of fact, the permission given by the Commissioner of Labour to work on a statutory holiday usually states that such permission extends only to employment for a period constituting the normal working hours.

Prohibitions and Restrictions on Overtime (See also Section 191)

155. The Act prohibits the employment of any male under 18 years and female for any period (including overtime and an interval for rest or for a meal) exceeding 9 hours a day. Thus, where the working hours of a male under 18 years or a female is 9 hours including intervals, then such a person cannot be employed on overtime. However, this restriction of a total of 9 hours in the case of males under 18 years and females does not apply in the following case—

In residential hotels, clubs, theatres and other places of entertainment **or** in any shop situated at an airport **or** in any office maintained by an airline at an airport, the 8 hour working day can be spread over 12 hours provided that

there is one break not exceeding 4 hours inclusive of the one hour meal interval. For instance, an employee in such circumstances who starts work at 7 a.m. can be given a 4 hour interval at 10 a.m., resume work at 2 p.m. and terminate work at 6 p.m. (subject to the grant of a half hour interval between 4 p.m. and 6 p.m. if the employee insists on it, in which event work will cease at 6.30 p.m.). In these exceptional situations where a spread over of working hours is allowed, the prohibition against employing a male under 18 years or a female for a number of hours in excess of 9 hours (inclusive of the meal interval) does not apply.

156. The number of hours that any employee can be required to work overtime cannot exceed 12 hours in any week.

157. In view of the fact that where the hours of work include the hours 4 p.m. to 6 p.m. a half hour's interval for rest or a meal (for which no payment is made) has been prescribed by the Act, where overtime is likely to exceed 6 p.m., then an unpaid interval of a half hour has to be given before the commencement of overtime unless the employee is prepared to forego it. As a matter of fact most employees would perhaps prefer to forfeit the interval since it is not paid for and would in any event postpone the time at which he can leave work.

X. OVERTIME—EFC/CMU COLLECTIVE AGREEMENT 1987

Beyond Normal Working Hours

158. In considering the question of overtime under the EFC/CMU Collective Agreement it is necessary to note that Clause 5 of the Agreement prescribes that the normal working hours are those hours which are customarily worked in the establishment. As such, overtime is payable for any work in excess of the total number of normal working hours. By normal working hours for purposes of overtime is meant the actual number of hours which an employee works rather than the commencing and closing time of work although in most cases the two would be the same. The reason for noting this fact is that an employer may change the commencing and closing time

without paying overtime so long as the total number of hours of work remains the same. However, the right to change the commencing and closing hours of work is dependent on factors other than overtime such as whether it is a unilateral variation of the contract of employment.

159. Any work which is performed in excess of normal working hours must be paid for at one and a half times the normal hourly rate, for which purpose, where an employee is monthly paid, the normal hourly rate is the gross monthly salary divided by 240.

160. Where an employee called upon to work overtime, other than on a weekly holiday, is likely to work overtime for a period more than two hours after the normal working hours, he is entitled to an interval of at least thirty minutes at the end of the normal working hours before commencing overtime. This interval is not paid for. If the employee does not wish to avail himself of the interval, then it need not be allowed.

For Work on Weekly Holidays

161. Work performed on not more than two weekly holidays (which means two full holidays or any combination of half or full holidays which does not exceed two full holidays) in any one calendar month may, at the instance of the employer and with the consent of the employee (which in fact means that there must be mutual agreement for this procedure) be paid for in the following manner and on such payment the employee will **not** be entitled to a half holiday or full holiday as the case may be in lieu—

a) For any work performed after the normal closing time up to 5 p.m. on the **weekly half holiday,** the employee shall be paid overtime remuneration at double the normal hourly rate for each hour or proportionately for any fraction of an hour.

b) For any work after 5 p.m. on the weekly half holiday the employee shall be paid overtime remuneration at treble the normal hourly rate for each hour or proportionately for any fraction of an hour.

c) In addition to the remuneration payable under paragraph (*a*) above or paragraphs (*a*) and (*b*) above, the employee shall be paid the equivalent of the employee's salary for one half day.

d) For any work performed under and up to 4 hours before 1 p.m. on the **weekly full holiday** the overtime remuneration payable to the employee shall be one thirtieth (1/30th) of the employee's monthly salary, i.e. one additional day's salary. This is payable irrespective of whether or not the employee works the full 4 hours before 1 p.m. or for only half an hour.

e) For any work performed in excess of four (4) hours and up to eight (8) hours before 5 p.m. on the **weekly full holiday** the overtime remuneration payable to the employee shall be one thirtieth (1/30th) of the employee's monthly salary in respect of the excess hours, i.e. another one day's salary. This is payable irrespective of the number of hours he works between 4 and 8 hours.

f) For any work performed in excess of eight (8) hours if continuing after 5 p.m. on the **weekly full holiday,** the employee shall be paid overtime remuneration at treble the normal hourly rate for each hour or proportionately for any fraction of an hour of such excess.

g) In addition to the remuneration payable under paragraph (*d*) or paragraphs (*d*) and (*e*), or paragraphs (*d*), (*e*) and (*f*) above, the employee shall be paid the equivalent of the employee's salary for one day.

Subject to past practice, any intervals granted prior to commencement of overtime need not be paid for.

162. Where an employee has performed work on not more than two weekly holidays in any one calendar month and has been paid for such work in the manner set out in the preceding paragraph, or where the employer is prepared to give a holiday or half holiday in lieu (as opposed to the position in

the preceding paragraph), then in respect of work performed on any further weekly holidays in the same calendar month the employee is entitled to the following—

a) The payments referred to in paragraph 161 sub-clause (*a*), (*b*), (*d*), (*e*) and (*f*) depending on whether it is a weekly half holiday or full holiday and depending on the number of hours worked. (The point to note here is that the payments referred to in 161 (*c*) and (*g*) do not arise in these circumstances, as the payments on (*c*) and (*g*) are made only where lieu leave is not given).

b) The employee shall be granted in lieu a half holiday or full holiday as the case may be.

163. Certain matters of interpretation regarding the remuneration payable for work on the weekly half or full holiday set out in paragraphs 161 and 162 should be noted —

a) If on the weekly holiday an employee commences work at 9 a.m. then it follows that for any work up to 1 p.m. he would be entitled to one day's salary as overtime remuneration.

b) If he commences work on the weekly full holiday at 8 a.m. then he would be entitled to one day's salary for work under and up to 4 hours (8 a.m. to 12 noon) and a further one day's salary for work from 12 noon to 1 p.m. (because that is work performed in excess of 4 hours and up to 8 hours before 5 p.m.).

c) If, in the same example, the employee who commences work at 8 a.m. continues work till 5 p.m. with the one hour lunch interval, then he still receives two days' salary for this work, i.e. one day's salary for work from 8 a.m. till 12 noon (because that is work under and up to 4 hours before 1 p.m.) and another day's salary for work from 12 noon to 5 p.m. (because that is work in excess of 4 hours and up to 8 hours before 5 p.m.).

d) If, for example, on the weekly holiday the employee works from 10 a.m. to 2 p.m. he will receive one day's salary for the period 10 a.m. to 1 p.m. (because it is work performed under and up to 4 hours before 1 p.m.).

However, for work from 1 p.m. to 2 p.m. he will only receive $1^1/_2$ times the normal hourly rate and will not receive an extra day's salary for this because he has not performed work in excess of 4 hours. But in the same example if he works till 3 p.m. he will receive two day's salary, i.e. one day's salary for work under and up to 4 hours before 1 p.m. and a further day's salary for work performed in excess of 4 hours and up to 8 hours before 5 p.m.

e) If an employee is required to commence work on the weekly holiday at 1 p.m. or thereafter, then he is entitled to one day's salary for any work up to 5 p.m. and at 3 times the normal hourly rate for work after 5 p.m. for each hour or proportionately for any fraction of an hour in excess of 5 p.m. e.g. an employee required to commence work at 3 p.m. will receive one day's salary for work between 3 p.m. and 5 p.m. and 3 times the normal hourly rate for work after 5 p.m.

164. What has been stated in the preceding paragraphs in relation to the rate of overtime for work on weekly half and full holidays do not apply to supervisory staff whose work involves the supervision of staff employed in manual work.

165. **Supervisory Staff** employed on a weekly half holiday are entitled to remuneration at $1^1/_2$ times the normal hourly rate for any work in excess of the normal working hours on the weekly half holiday but no half holiday in lieu is due.

166. If a member of the **supervisory staff** is paid on the following basis for work on the weekly full holiday, he will not be entitled to any holiday in lieu—

i) For any work performed under and up to four (4) hours before 1 p.m. on the weekly full holiday, the employee shall be paid overtime remuneration at one thirtieth (1/30th) of the employee's monthly salary.

ii) For any work performed in excess of four (4) hours and up to eight (8) hours before 5 p.m. on the weekly full holiday, the employee shall be paid overtime remuneration at one thirtieth (1/30th) of the employee's monthly salary in respect of the excess hours.

iii) In respect of any work performed in excess of eight (8) hours or continuing after 5 p.m. on the weekly full holiday, the employee shall be paid overtime remuneration at treble the normal hourly rate for each hour or proportionately for any for fraction of an hour of such excess.

iv) In addition to the remuneration payable under paragraph (i) above, or paragraphs (i) and (ii) or (i), (ii) and (iii) above, the employee shall be paid the equivalent of the employee's salary for one (1) day.

167. If a member of the supervisory staff is paid for work on the weekly full holiday on the basis of (i), (ii), and (iii) **but** excluding (iv) of paragraph 166, then he **will be entitled** in addition to a holiday in lieu.

On Statutory and Customary Holidays

168. Where an employee is employed on a statutory or customary holiday the basis of payment etc. is as follows—

a) For the two customary half holidays (Holy Saturday and Christmas Eve) the employee would be entitled to the same benefit as for work on the weekly half holiday referred to in paragraphs 161 and 162.

b) For work on any customary or statutory full holiday the employee will be entitled to the same benefits as for work on the weekly full holiday as set out in paragraphs 161 and 162.

Y. OVERTIME—MANUAL WORKERS' COLLECTIVE AGREEMENTS 1981 AND WAGES BOARDS

Beyond Normal Working Hours (Manual Workers' Collective Agreements)

169. These Collective Agreements prescribe that the normal working hours shall be those hours which are customarily worked at a store, factory, mill or job in the establishment of

each employer. As such, overtime is payable for any work in excess of the total number of normal working hours, by which is meant the actual number of hours which an employee works, as noted in paragraph 158, and commencing and closing time of work is not necessarily the issue in a situation where there is a change in the commencing and closing time. In this connection it is also relevant to note that the Agreements contain the following express provisions relating to overtime—

a) An employee is required to work reasonable overtime which has been required and authorised by the employer. Refusal to so work in the absence of a satisfactory explanation acceptable to the employer makes the employee liable to disciplinary action.

b) Work in excess of the normal working hours shall be remunerated at $1^1/_2$ times the normal hourly rate and the wages for one hour is ascertained by dividing the monthly wages of the employee by 240.

170. The interval referred to in paragraph 160 need not be given to employees covered by these Agreements before commencement of overtime.

For Work on Weekly Holidays (Manual Workers' Collective Agreements)

171. Subject to what has been stated in relation to Five Day Week employers in paragraphs 125 (*a*) and (*b*) work on the short working day after normal working hours should be remunerated at $1^1/_2$ times the normal hourly rate.

172. For work on the weekly holiday the position is as follows—

a) remuneration at $1^1/_2$ times the normal hourly rate for the first eight hours of work.

b) double the normal hourly rate for each subsequent hour of work.

c) in addition an alternative holiday with pay within six days of the weekly holiday on which work was performed. However, with the consent of the employee and on not more than two weekly holidays in one calendar month, the employer can grant the employee an additional day's wage in lieu of the alternative holiday required to be given.

173. In a situation where an employee is not qualified for his weekly holiday in consequence of not having worked the requisite number of hours, then if he is employed on the weekly holiday, —

a) he will suffer no deduction from his wages for not having qualified for the weekly holiday.

b) he will, in addition be paid at $1^1/_2$ times the normal hourly rate for the first eight hours of work and at double the normal hourly rate for each subsequent hour of work.

c) but he will be entitled to an alternative holiday **without pay.** However, with the consent of the employee and in respect of not more than two weekly holidays in any one calendar month, the employer can, without granting the alternative **unpaid** holiday, employ him instead on that day, in which event he will suffer no wage deduction and will merely receive his normal day's wage for work on what would otherwise have been an unpaid alternative weekly holiday.

For Work on Statutory Holidays (Manual Workers' Collective Agreements)

174. The Agreements provide that work on statutory holidays will be governed by the provisions of the relevant decisions of the Wages Board and, therefore, what is stated in paragraph 189 would be applicable here.

Beyond Normal Working Hours (Wages Boards)

175. The following represent the overtime rates in respect of work beyond normal working hours under the various Wages Boards decisions.

176. **Baking Trade**

a) On any five days in the week agreed upon between the employer and employee the number of hours constituting a normal working day is nine (inclusive of the meal interval), except that in the case of certain specified workmen it is twelve hours (inclusive of four hours for meals or rest). On such days the overtime rate for work in excess of normal working hours is $1^1/_2$ times the hourly rate ascertained by dividing the monthly rate by 200.

b) One day in the week must be allowed to all workers as a short working day of six hours inclusive of one hour for a meal. On that day work beyond the normal working hours should be remunerated at $1^3/_4$ times the hourly rate ascertained in the same manner as (*a*) above.

177. **Biscuit & Confectionery Manufacturing Trade**

On 5 days in the week $1^1/_2$ times the normal hourly rate, and on a Saturday $1^3/_4$ times the hourly rate ascertained by dividing the monthly rate by 200.

178. **Brick & Tile Manufacturing Trade, Building Trade, Coconut Manufacturing Trade, Coir Mattress & Bristle Fibre Export Trade; Engineering Trade; Match Manufacturing Trade; Tea and Rubber Export Trades.**

The overtime rate is $1^1/_2$ times the hourly rate for each hour ascertained by dividing the monthly rate by 200 or, in the case of a daily rate by dividing that daily rate by 8. In the case of Watchers covered by the decisions for the Engineering Trade overtime is payable only for work beyond $45^1/_2$ hours in the week.

179. **Cinema Trade**

The overtime rate is $1^1/_2$ times the hourly rate ascertained by dividing the monthly rate by 200.

180. **Garment Manufacturing Trade**

The overtime rate is $1^1/_2$ times the hourly rate ascertained by dividing the daily rate by 8. For part of an hour overtime is payable proportionately.

181. **Ice & Aerated Water Manufacturing Trade**

The overtime rate is $1^1/_2$ times the hourly rate ascertained by dividing the monthly rate by 240 and overtime for part of an hour is payable proportionately.

182. **Liquor & Vinegar Trade**

The overtime rate is $1^1/_4$ times the hourly rate ascertained by dividing the monthly rate by 240 or the daily rate by 8.

183. **Motor Transport Trade**

The overtime rate is $1^1/_2$ times the hourly rate (not part of an hour) ascertained by dividing the monthly rate by 200. Where a worker works overtime on any of the days which are in excess of the minimum number of days of work for the month, the overtime rate is $1^3/_4$ times the hourly rate.

184. **Nursing Home Trade and Security Service Trade**

The overtime rate is $1^1/_2$ times the hourly rate ascertained by dividing the monthly rate by 200.

185. **Printing Trade**

The overtime rate is $1^1/_2$ times the hourly rate for each hour (not part of an hour) ascertained by dividing the minimum monthly rate by 240. Where a worker works overtime on any day in excess of the minimum number of days of work for a month, then he is entitled to three times the hourly rate which, in this instance, is determined by dividing the monthly rate by 200.

186. **Textile Manufacturing Trade**

The overtime rate is $1^1/_2$ times the hourly rate ascertained by dividing the daily rate by 8 and payment is due proportionately for work for part of an hour.

187. **Tobacco Trade**

The overtime rate is $1^1/_4$ times the hourly rate for work in excess of normal working hours between 7 a.m. and 7 p.m.

and $1^1/_2$ times the hourly rate for work beyond normal working hours between 7 p.m. and 7 a.m. The hourly rate is ascertained by dividing the daily rate by 8.

188. **Tyre & Tube Manufacturing, Tyre Rebuilding, Rubber & Plastic Goods Manufacturing Trade**

The overtime rate is $1^1/_2$ times the normal hourly rate ascertained by dividing the monthly rate by 240.

For Work on Statutory Holidays (Wages Boards)

189. (A) Workers may be employed on a statutory holiday without the prior permission of the Commissioner of Labour subject to the following conditions in the following Trades :–

a) Day off with pay
b) Double the daily rate for first 8 hours
c) Treble the hourly rate beyond 8 hours

1. Coconut Growing Trade
2. Cocoa, Cardamom & Pepper Growing & Manufacturing Trade
3. Rubber Growing and Manufacturing Trade
4. Tea Growing & Manufacturing Trade
5. Tobacco Trade
6. Cinema Trade
7. Motor Transport Trade
8. Brick & Tile Manufacturing Trade
9. Building Trade
10. Hosiery Manufacturing Trade
11. Ice & Aerated Water Manufacturing Trade
12. Liquor & Vinegar Trade
13. Paddy Hulling Trade
14. Plumbago Trade
15. Printing Trade

16. Tanning, Footwear & Leather Goods Manufacturing Trade
17. Textile Manufacturing Trade
18. Garment Manufacturing Trade
19. Tea Export Trade
20. Rubber Export Trade
21. Coir Mattress & Bristle Fibre Export Trade
22. Coconut (Manufacturing) Trade
23. Engineering Trade

(B) *a*) Day off with pay or *b*) Double the daily rate for first 8 hours *c*) $1^1/_2$ times hourly rate beyond	Nursing Home Trade	
(C) *a*) Day off with pay or *b*) Double the daily rate first 8 hours and 3 times hourly rate beyond *c*) No work beyond normal time on preceding day	Biscuit, Confectionery & Chocolate Manufacturing Trade	
(D) *a*) Day off preceding holiday or *b*) Extra day's pay in addition to normal wage	Baking Trade	
(E) *a*) Day off with pay or *b*) Double pay for 8 hours	1. Match Manufacturing Trade 2. Tyre & Tube, Plastic & Rubber Goods Manufacturing Trade	

For Work on Weekly Holidays (Wages Boards)

190. This matter has been already covered in paragraphs 70 to 95.

Z. RESTRICTIONS ON OVERTIME

191. The following restrictions on overtime work, some of which have already been referred to, should be noted—

a) The Shop & Office Employees' Act prohibits the employment of any male under 18 and any female in the circumstances set out in paragraph 155.

b) Under the Shop & Office Employees' Act the maximum number of hours of overtime permissible in any week is 12 hours.

c) The interval required under the Shop & Office Employees' Act to be given prior to overtime is referred to in paragraph 157.

d) We have already noted the prohibition against employment beyond normal working hours on statutory holidays under the Shop & Office Employees' Act.

e) Any person whether male or female under the age of 18 years cannot be employed at anytime during the night in a public or private industrial undertaking or in a factory. "Night or night work" means employment between the hours of 10 p.m. and 5 a.m.

f) During the night, employment of females over 18 years is subject to the conditions imposed on night work by virtue of the Employment of Women, Young Persons and Children, the Factories and the Shop & Office Employees' (Regulations of Employment and Remuneration) (Amendment) Act No. 32 of 1984.

g) No female can be employed beyond 8 p.m. in a shop or office. A female of 18 years or more however can be employed in the business of a Hotel or Restaurant

between 6 p.m. and 10 p.m. or even beyond that time in a residential hotel on the work, of a receptionist, ladies cloak room attendant, ladies linen room attendant or ladies lavatory attendant and also in an office maintained by an airline at an airport on the work of a ground hostess.

h) We have already noted the prohibition of certain Wages Boards against the employment of a person beyond normal working hours on a statutory holiday as well as certain other conditions to be satisfied in the case of certain Wages Boards where a person is to be employed on a statutory holiday, see paragraph 189.

i) In terms of the **Factories' Ordinance** the following restrictions have been imposed on overtime work in respect of certain employees employed in a factory—

i) A female or a person under 18 years of age cannot be employed after 1 p.m. on a Saturday or at any time on the weekly holiday.

ii) Overtime work by a woman or by a person under the age of 18 years cannot exceed six hours a week or 100 hours in any calendar year and further, such persons cannot be required to work overtime in more than 25 weeks in any calendar year.

iii) Overtime employment of a woman or person under 18 years on any particular day must be such that the total hours worked exclusive of intervals does exceed 10 hours on that day.

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