



*Below is a courtesy translation of the '2018 Leave and Holiday Rules' - regulations promulgated by the Ministry of Labour, Immigration and Population. These regulations have been translated by SMART Myanmar, an EU funded project.\**

## Republic of the Union of Myanmar

### Ministry of Labour, Immigration and Population

Notification No. 69/2018

The 12<sup>th</sup> Waxing Day of Kasone, 1380

(April 26, 2018)

The Ministry of Labour, Immigration and Population enacts the following rules by means of using the authority provided by The Leave and Holiday Act, Section 18 (a) and upon the agreement of the State Government.

### **Chapter (I)**

#### **Title and Definition**

1. These Rules shall be known as the **Leave and Holiday Rules**.
2. Terms included in these Rules have the same meaning as described in The Leave and Holiday Act (1951). Moreover, the following terms have meanings described as follows:
  - (a) **Law** means The Leave and Holiday Act (1951).
  - (b) **Inspector** means the assigned officer set up in accordance with Section 12.
  - (c) **Chief Inspector** means Director General, Workshops and the Department of Labor Inspection.
  - (d) **Department** means Workshops and the Department of Labor Inspections.
  - (e) **Week** means the duration of the consecutive seven days starting from Saturday midnight.
  - (f) **Respective Year** means the year of leave and holiday entitled to this.
  - (g) **Casual Leave** means entitlement leave for unexpected occurrences.

- (h) **Medical Leave** means entitlement leave for when one is sick.
- (i) **Maternity leave** means entitlement leave during pregnancy and also after giving birth. This also includes having a miscarriage, which is not a legally restricted abortion, the intentional ending of a pregnancy.
- (j) **Weekly Day Off** means one day off per week as minimum.
- (k) **Gazette Holidays** means public holidays notifications, annually announced by the State Government.
- (l) **Leave Record** means the record set up according to the types of entitled leave.
- (m) **Working Hours** means approved/allowed number of hours per day or per week depending on the type of business/work, in accordance with the respective Labour Law.
- (n) **Basic Salary** means monthly the salary entitlement for performance of duties and responsibilities within a calendar month. Overtime fees, cost of living allowances and bonuses are not included in this.
- (o) **Respective Wages** means hourly wages agreed between owner and labour (or) daily wages for fixed working hours (or) wages depending on number of products and the extent of performance. Overtime fees, cost of living allowances and bonuses are not included in this.
- (p) **Daily Wages Worker** means a worker who works for fixed daily working hours and entitlement to wages for that day as agreed with the business owner.
- (q) **Monthly Wages Worker** means a worker with a fixed salary for a calendar month.
- (r) **Piece-work Worker** means a worker who works on a preconditioned wage-rate based on the number of products or the extent of performance.
- (s) **Security Staff** means a person who safeguards the factory, workshop, shop, workstation and workplace. Policeman/policewoman, in service and watchmen are not included in this.
- (t) **Form** means designated form included in these rules.

## Chapter (2)

### Weekly Day Off and Gazette Holiday

#### Weekly Day Off

3. A worker is entitled to a weekly day off with respective/related wages or with basic salary after he/she has fully performed his/her fixed weekly working hours.
4. In order to calculate the weekly fixed working hours, one must calculate entitled/paid leave days and paid holidays as working days. Moreover, one must include days off due to lack of work assigned by the business owner. One must consider fixed working hours for entitled leave (or) for a holiday.
5. If the day after the end of leave is a weekly day off, or if the worker takes any kind of leave starting right after the weekly day off, that weekly day off shall not be concerned with or counted as leave. But, if leave is taken starting before the weekly day off until the next day after the weekly day off, that weekly day off shall be counted as leave. One is not allowed to ask that weekly day off to shift to the other day.
6. If a worker takes leave from the day after weekly day off up until the next weekly day off, that next weekly day off shall be counted as leave.
7. If a workers has to work on a weekly day off, one must compensate with one day off on within one of three adjoining days (these must not be gazette holidays) before or after the weekly day off. The worker is not entitled to claim overtime for this substitution.
8. It is not allowed to substitute a working day which will cause a worker to work for more than 10 days continuously without any day off in between / during that period.
9. If circumstance demands/causes work on the weekly day off, one must receive the worker's prior consent first. Also, this must be reported to the Department before that day and ask for [Department] permission. You have to instruct solely upon the Department's approval.
10. One is required to inform the Inspector at least 24 hours in advance that one intends to instruct/ask for work on the weekly day off, mentioning which new day off will be substituted. This must be posted on the workplace notice board so that others can see.
11. If he/she works on a weekly day off and receives a day off as compensation on any one of the three days before or after, the working hours on that weekly day off shall be counted/applied within the respective week when calculating the total working hours per week.

12. Security staff and workers with assigned shifts shall be entitled for alternate days off as agreed with the employer.
13. When the weekly day off coincides with a gazette holiday, it must be considered as a gazette holiday.
14. One must calculate the respective wages for weekly days off as follows. For daily wage workers, it shall be calculated based on the daily wages agreed with the employer. For piece-work workers, it shall be calculated based on the average wage (total amount of wages within seven days before the weekly day off divided by number of working days).
15. As an employer, one must document the wages for the weekly day off. And, one must send a monthly report with Form (4) to the Department.

### **Gazette Holiday**

16. For a Daily Wages Worker and Piece-Work Worker who has fully performed their duties for the weekly working hours (including gazette holiday) fixed by the law, that worker must receive the gazette holiday off with respective wages.
17. If the circumstances demand work on a gazette holiday, you have to first get the worker's consent. Also, this must be reported to the Department before the day the worker has to work and permission must be sought. One must proceed based solely upon the Department's approval.
18. You have to inform the Inspector at least 24 hours in advance that you intend to instruct a worker to perform on a gazette holiday. And, one must also post it on the company notice board.
19. One must calculate the basic salary or the respective wages for gazette holidays as follows. For a monthly salary worker, it shall be calculated based on the monthly salary (the amount equal to 1/30 of monthly wages). For workers on a daily wage, it shall be calculated based on the daily wages agreed with the employer. For piece-work workers, it shall be calculated based on average wages (total amount of wages within seven days before gazette holiday divided by number of actual working days).
20. Even if the employer instructs a worker to work only part-time on a gazette holiday, the employer must still pay double of the respective basic wages or basic salary, according to the law.
21. When the employer instructs a piece-work worker to work full working hours on a gazette holiday, the employer has to pay double of the regular respective wages, calculated based on the number of products or counted based on the extent of the worker's performance.

22. If the day after the end of leave is a gazette holiday or if the worker takes any kind of leave starting right after a gazette holiday, that gazette holiday shall not be counted as leave. However, if the worker takes leave starting before and also after the gazette holiday, that gazette holiday shall be counted as leave. The worker is not entitled to request the gazette holiday be switched to another day.

## **Chapter (3)**

### **Leave**

23. A worker has the right to take leave with respective wages or with respective salary according to the type of leave and designated period set-up by the law. However, workers are entitled to take earned leave with respective average wages or average salary.
24. Workers have the right to take casual leave, medical leave or maternity leave within the probation period.
25. For days in which a worker is not in the workplace after the end of a period of leave, such days shall not be counted as leave.
26. If there are holidays just before or right after one's leave commences, these days cannot be counted as part of the leave period.
27. Subjecting a worker to relocation, suspension of duty, reduction of salary or termination within their leave period is not allowed.

### **Taking the Casual Leave**

28. A worker has the right to take casual leave with respective wages or with full basic salary within the respective year for every two months of service starting from that worker's service. However, if there is a good reason, the employer must allow casual leave, even if the worker has not yet completed two months service.
29. Workers can take a maximum of three days consecutive casual leave. If the worker needs to take additional casual leave, and has a concrete reason, the worker must present to the employer or manager or to an authorized person the concrete reason. If so, the employer can allow casual leave of more than three days.
30. One must request casual leave with the designated form/document. When one is not able to come to work, one must ask via telephone or via telegraph or by other ways. At the end of the leave period, when one is back at work, one must complete the designated form and present it to the employer or manager or authorized person.

31. If the worker asks for other types of leave continuous with casual leave, casual leave shall be void. And, the other type of leave will be counted starting from the day the casual leave begins.
32. For daily wage workers, one must calculate the respective wages for a day of casual leave as per the daily wages agreed with the employer. For the piece-work workers, it shall be calculated based on average wages (total amount of wages within continuous seven days before casual leave divided by number of actual working days).
33. The employer or manager or authorized person must maintain the casual leave record. And, this also must be reported to the Department in the designated format.

### **Taking Earned Leave**

34. One has the right to take earned leave proportionately though the work has a term of less than twelve months.
35. To calculate earned leave, one must include leave with pay and gazetted holidays within calculations, as official working days.
36. Days off and gazetted holidays that fall within ten continuous days of earned leave are counted as earned leave.
37. In order for the workers to be able to take their earned leave, the employer must post the entitled leave calculation sheet, which shall include the respective leave period for each worker, on the company notice board within three months starting from the last day of the previous twelve months period.
38. (a) For earned leave of salary/monthly workers, the “day rate” [amount] of the average salary is an entitlement and shall be calculated as the salary received during 30 consecutive days before starting earned leave, which shall then be divided by the number of actual days of work.  
  
(b) For earned leave of daily wages and piece-work workers, the average salary rate is an entitlement and shall be calculated based on the total wages received during 30 consecutive days which must then be divided by the number of actual days of work.
39. For workers taking earned leave they must receive the respective wages or salary for the period of their leave beforehand. This must also be made clearly aware to the workers.
40. If the worker informs the employer of a desire to resign, the worker has the right to request their respective payment for entitled earned leave.

41. The employer has to pay wages for entitled earned leave to the terminated worker for the earned leave period according to the employment contract or workplace rules established based upon the nature of work.

### **Taking the Medical Leave**

42. If any worker submits evidence of blood donation, the worker is entitled for medical leave for the day of the donation and the following day.

43. A worker with less than six months service, without Social Security Board insurance, has the right to ask for medical leave without pay.

44. For sickness occurring during a long public/gazette holiday, one does not need to request medical leave.

45. When calculating the respective wages for medical leave, it shall be calculated based on daily wages agreed with the employer for the daily wages worker. For the piece-work worker, it shall be calculated based on average wages, total amount of wages within continuous thirty days before medical leave divided by number of actual working days.

### **Maternity Leave**

46. Maternity leave can be requested with a medical recommendation from a registered doctor or from a doctor accredited by the Social Security Board.

47. Workers registered with the Social Security Board have the right to receive [maternity leave] in accordance with the 2012 Social Security Law.

48. In the case of a miscarriage, that is not a kind of legally restricted abortion, and involving a worker who is not registered with the Social Security Board, the employer must allow the worker a maximum six weeks of leave starting from the date of the miscarriage, as per the registered doctor's recommendation.

## **Chapter (4)**

### **Duties and Responsibilities of Worker**

49. The worker...

(a) ...must ask for leave from the employer or the manager or from an authorized person with Form

(1) within the normal working hours.

(b) ...must report to the employer or to the manager or to an authorized person when the worker is back in the workplace after taking leave.

(c) ...must inform employer or manager or authorized person, by phone or any other method, if the worker is unable to return to the workplace from their current location by the end of leave due to natural disaster or unforeseen happenings or accident occurring within the leave period.

## **Chapter (5)**

### **Duties and Responsibilities of an Employer**

50. The employer...

(a) ...must provide the worker casual leave, medical leave and maternity leave with respective wages or salary. Moreover, must allow the worker earned leave with respective average wages or average salary. If the employer normally pays the cost of living then the cost of living must also be included.

(b) ...must provide the worker with earned leave starting from the day of entitlement within 12 months, with respective average wages or with average salary, and also must advance the entitled wage prior to the worker taking leave.

(c) ...must announce the number of entitled earned leave calculations within three months starting from the last day of the 12 month period or entitled earned leave. In this way, workers can take leave by turns (alternatively). Moreover, to fix the eligibility period within which workers can take earned leave.

(d) ...if the worker resigns or is terminated or in case of death, has to pay the respective wages/salary within two business/working days starting from the date of incidence.

(e) ...has to pay the eligible wage/salary for earned leave to his/her official representative (if the worker is deceased).

(f) ...has to pay for the respective earned leave period if there is a temporary or permanent shutdown.

...has to allow eligible earned leave if the nature of work is less than twelve months.

(g) ...is not allowed to suspend, to reduce the salary, to relocate or to terminate a worker due to the worker taking maternity leave or medical leave.

(h) ...has to fill up Form (1), (2), (3), (4), (5) and (6) according to the law. These forms shall be easily accessible from the Inspector. The employer must maintain these documents for up to twelve months period.



(i) ...has to record the leave taken in Form (7) and submit to the Inspector not later than every seventh day of each month.

(j) ...wants the worker to work on a gazette holiday, the employer must receive consent from the worker. The employer must submit Form (8) to the Inspector for approval.

## **Chapter (6)**

### **General**

51. If the employer rents the business to another person or organization, that other person or organization [the one renting the premises] is responsible for the legal entitlements included within these Rules.

52. One must follow the provisions within this Law when settling disputes on matters related to leave and holidays.

Sd/- Thein Swe

Union Minister

Republic of the Union of Myanmar

Ministry of Labour, Immigration and Population

### **Form (I)**

[Leave and Holiday Rule 49 (a) and Rule 50 (h)]

Date: \_\_\_\_ year \_\_\_\_ month \_\_\_\_ day

To

Employer/Manager/Authorized Person

... Factory/Workshop/Company/Store/Department

No. ( ), ...Street

Industrial Zone/Ward ....., .....Township

**Subject: Request for Leave**

I am...worker name and title...working at factory/workshop/company/store/department... located at State/Region, Township, Industrial Zone/Ward, Street No.

I request to take the Casual Leave/Annual Leave/Medical Leave/Maternity Leave from ....starting date... to ....ending date.... due to ...(reason to take leave).

**Individual requesting leave**

Signature

Name

Factory/Workshop/Company/Store/Department

**Employer/Manager/Authorized Person**

Signature

Factory/Workshop/Company/Store/Department

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