

WORKING HOURS AND LEAVE

Rest Days

How many rest days is an employee entitled to under this Act?

An employee is entitled to one whole day of rest day in each week (of seven days).



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- It must be noted here that it is lawful if an employer requires his employee to work on a rest day provided that:
 - The employee is engaged in shift work which by reason of its nature requires continuous attention;
 - There is accident, actual or threatened, in respect to his place of work;
 - The performance of the work is essential to the life of the community;

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- The work is essential for the defence or security of Malaysia;
- It involves urgent work to be done to machinery or plant;
- There is an unforeseen interruption of work; and
- Work to be performed by the employee is essential to the economy of Malaysia or is essential service as defined in the Industrial Relations Act 1967.

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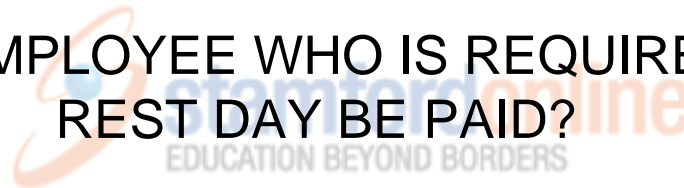
Rest Days

- In the case of *Malayan Commercial Banks Association & Anor. v Association of Bank Officers, Peninsular Malaysia & Anor* [1996] 2 CLJ 31, the issue before the Court of Appeal was whether, bearing in mind Section 60A(2)(f), a bank employee could be required to work on rest day?
- The court held that under Section 60A(2)(f) of the Employment Act 1955, it is plain that an employee may be required to work on a rest day where there is work to be performed by him in any essential service.

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HOW SHOULD AN EMPLOYEE WHO IS REQUIRED TO WORK ON A
REST DAY BE PAID?



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- For a daily or hourly-rated employee, he should be paid;
 - One day's wages at the ordinary rate of pay, for any period of work not more than half his working hours;
 - Two day's wages at the ordinary pay, for any period of work more than half but not more than his normal working hours.

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- For a monthly-rated employee, he should be paid;
 - Half the ordinary rate of pay for work done on that day, for any period of work which does not exceed half his normal hours of work;
 - One day's wage at the ordinary pay, for any period of work more than half but not more than his normal working hours.

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Hours of Work

- Generally, the employee shall not be required under his contract of service to work:
 - More than five consecutive hours without a break of at least 30 minutes (any break of less than 30 minutes in five consecutive hours shall not break the continuity of that five consecutive hours);
 - More than eight hours in one day;
 - In excess of a spread over period of 10 hours in one day; or
 - More than 48 hours in one week.

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Hours of Work

- Where there is an agreement to work less than eight hours on a certain day, the work on another day may be increased to exceed eight hours, but no employee should work more than nine hours a day or 48 hours in one week.

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Annual Leave

- After every 12 months of continuous service with the same employer, an employee is entitled to annual leave, as follows:
 - Less than two years' service – eight days for each year;
 - More than two but less than five years' service – 12 days for each year;
 - Five years and more – 16 days for each year.



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Sick Leave

An employee's entitlement in respect of sick leave is as follows:

Where hospitalisation is not necessary;

- Less than two years' service – 14 days
- Two years' or more but less than five years – 18 days
- Five years' service or more – 22 days

Where hospitalisation is necessary;

- 60 days in aggregate

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Public Holiday

- An employee is entitled to be paid at his ordinary rate of pay on 10 gazetted public holidays, four of which should be;
 - The National Day
 - The Birthday of Yang Di-Pertuan Agong
 - The Birthday of the Ruler or Federal Territory Day
 - The Workers' Day
- Where a holiday falls on a rest day, the following day will be a holiday.

(Section 60D(1), (1A))

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Holiday Pay

How should an employee who is required to work on holidays be paid?



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Holiday Pay

- In addition to the holiday pay, such employee is entitled to payment for that day as follows:
- For a monthly, weekly, daily or hourly rated employee, he shall be paid two days' wages at the ordinary rate of pay (if he carries overtime work, he shall be paid not less than three times the ordinary rate per piece);
- For an employee who is employed on piece rates, he shall be paid not less than three times the ordinary rate per piece.

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Holiday Pay

- In *Union Carbide Singapore Pte. Ltd. v Govindan Nair* [1973] 1 MLJ 144, the Court observed that under Section 41(1) of the Employment Act 1955, every employee is entitled not only to holidays, under the Holidays Act 1966, but is also entitled in respect of such public holidays to be paid at his ordinary rate of pay.
- The Court further held that the respondent was entitled to public holidays which fell on Saturdays at his ordinary rate of pay. His monthly salary did not include payment for Saturdays for which he was under no contractual obligation to work.