

**The Holiday Act<sup>1</sup>**

This Act consolidates the Holiday Act No. 396 of 31 May 2000 with the amendments following from Act No. 133 of 20 March 2002, Act No. 1039 of 17 December 2002, Act No. 1200 of 27 December 2003 and Act No. 1202 of 27 December 2003.

PART 1

*Scope of the Act*

1. - (1) An employee shall be entitled to holiday and holiday allowance or holiday with pay and holiday supplement under the provisions laid down in this Act.
- (2) For the purpose of this Act an employee shall be taken to mean a person receiving remuneration for personal work in an employment relationship.
2. - (1) This Act shall not apply to:
- (i) employees in the service of the state authorities or the national church who are employed as public servants,
  - (ii) employees whose pension is guaranteed through membership of a pension scheme, the obligations of which are guaranteed by the State, and who are entitled to holiday with pay under the same provisions as those applying to the public servants referred to in (i), and
  - (iii) employees who have concluded an agreement on other holiday rules under the Act on certain employment relationships in agriculture, etc.
- (2) Employees under subsection (1) (i) and (ii) who resign without starting to receive pension payments in this connection shall be entitled to a holiday allowance under section 23 (6). In- and out-payments of holiday allowance shall take place under the rules laid down in Part 5 of this Act.
3. - (1) As regards seafarers, the Minister for Economic and Business Affairs shall exercise the powers conferred upon the Minister for Employment or the Director of the National Directorate of Labour under this Act.
- (2) The Minister for Economic and Business Affairs may, after consultation of the relevant employee and employer organisation lay down other holiday rules for seafarers.
- (3) The Minister of Defence may lay down holiday rules for conscripts in the National Defence and may, after consultation of the relevant employee organisations also lay

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<sup>1</sup> This Act contains provisions which implement parts of Council Directive 93/104/EC of 23 November 1993 on certain aspects in connection with the organisation of the working time (OJ, L 307/18).

down other holiday rules for women employed in the National Defence under terms similar to those applying to conscripts, privates first class and staff of the reserve.

(4) The Minister of Defence may enter into agreements with the relevant employee organisations on the rules on taking of holiday for military staff groups.

(5) The Minister of Defence may lay down holiday rules for conscripts in the state live-saving service and may, after consultation of the relevant employee organisations, also lay down other holiday rules for women employed under terms similar to those applying to conscripts in the state life-saving service.

4 - (1) An employee may not waive his right to holiday, holiday with pay, holiday supplement or holiday allowance under this Act and no deviations from the provisions laid down in this Act may take place to the detriment of the employee, unless otherwise provided in this Act. Agreements concerning transfer of holiday cards and holiday account certificates shall be invalid and holiday cards and holiday account certificates may not be made the subject of legal action.

(2) This Act shall be without prejudice to more favourable rights for an employee under other acts or provisions, collective agreements, individual agreements, custom, etc.

(3) To the extent that the provisions of this Act are included in a collective agreement, this means that interpretation and breaches of these provisions shall be decided under the rules on settlement of industrial disputes, cf. also section 44 (1).

5. In those cases where deviations from the provisions laid down in this Act may take place by collective agreement, the contracting party on the employee side shall, as a minimum, be a local trade union which is a member of a national employee organisation.

### *Deviation*

6. (1) It may be agreed by collective agreement to deviate from the provision laid down in section 2 (2).

## PART 2

### *Holiday entitlement*

7. - (1) An employee shall be entitled to 2.08 days of paid holiday for each month of employment during a calendar year (qualification year). In connection with employment of a shorter duration than one month, the holiday shall be calculated in proportion to the duration of the employment period.

(2) No entitlement to paid holiday shall be earned during the following periods:

(i) Periods of sickness where the employer is not to pay wages - in full or in part - or for which no entitlement to holiday compensation in connection with sickness is earned, cf. section 25.

(ii) Periods of maternity leave or other periods of leave or absence from work where the employer is not to pay wages - in full or in part.

(3) No right to paid holiday is earned during periods where the employee participates in a strike or a lockout.

(4) No right to paid holiday is earned during periods where the employees are temporarily laid off according to a collective agreement or trade custom due, for instance, to bad weather or lack of materials, unless the employer pay wages - in full or in part.

**8. -** (1) An employee shall be entitled to 25 days of holiday each year, irrespective of whether entitlement to holiday has been earned under section 7.

(2) In respect of an employee who is covered by section 23 and who has not earned the right to paid holiday from the employer under section 7 an amount of 4.8 per cent of the monthly wage shall be deducted for each day of holiday taken by the employee.

**9. -** (1) Trainees with a training contract under the Vocational Training Act shall have a right to paid holiday for 25 days during the first and second full holiday year after the start of the employment relationship. The employer shall pay the normal wages during the holiday to the extent that the trainee does not qualify for holiday with pay or holiday allowance.

(2) If the employment relationship has started before 1 July in a holiday year, the trainee shall have a similar right to paid holiday for 25 days during this holiday year.

(3) If the employment relationship has started on 1 July or later in a holiday year, the trainee shall have a right to 5 days' paid holiday during this holiday year in connection with the closing down of the enterprise for holiday during the period between 1 October and 30 April.

#### *Deviations and authorisations*

**10. -** (1) It may be agreed - by a collective agreement which deviates from the rules on payment of holiday allowance to FerieKonto, cf. section 28 - that deviation may take place from section 7(1) so that holiday may be earned in the form of hours. An employee who has been employed for a full qualification year shall, however, be entitled to at least 20 days of holiday.

(2) If holiday has been earned in the form of hours, the hours earned shall be converted into days in connection with termination of the employment relationship.

(3) Deviation by collective agreement may take place from section 8 (2).

**11.** (1) The Director of the National Directorate of Labour may lay down rules on the earning of entitlement to holiday in the case of employment for less than 1 month and on entitlement to holiday and deduction in the monthly wage for employees working more than 5 days a week. The Director of the National Directorate of Labour may further lay down rules on entitlement to holiday for employees whose working hours cannot be controlled and on holiday under section 9 for trainees who work more than 5 days per week.

## PART 3

*The taking of the holiday*

- 12. -** (1) The holiday shall be taken during the year going from 1 May to 30 April (the holiday year) following the qualification year.
- (2) The holiday shall be taken with 5 days per week, so that work-free days and shift-days shall be included in the holiday period with a proportionate number. The holiday shall otherwise be held in the same way as the work has been organised time-wise.
- (3) The holiday may not be taken on the weekly rest day, on public holidays, or other holidays fixed by collective agreement or custom or compensatory days if the employee is not able to take holiday, cf. section 38.
- 13. -** (1) The holiday starts at the start of the working time on the first day of holiday and ends on the termination of the working time on the last day of holiday.
- (2) If an employee is sick at the start of the holiday, the employee is not under an obligation to start the holiday.
- (3) If the employee is participating in a strike or lockout at the start of the holiday, the employee may not start on the holiday period.
- 14. -** (1) At least 15 days of the holiday (the main holiday period) shall be given as a consecutive period. If the employee is entitled to less than 15 days of holiday, the entire holiday earned shall constitute the main holiday period.
- (2) An employee employed at out-door work in connection with cultivation of plants shall be entitled to at least 10 days as a consecutive period during the holiday period. In addition, at least 5 days shall be given during the period from 1 May to 31 October.
- (3) Other days of holiday shall also be given as consecutive periods of at least 5 days duration, but may be placed outside the holiday period. If the other days of holiday constitute less than 5 days, these days shall be given as a consecutive period. Where desirable for operational reasons in the enterprise, the other days of holiday may, however, be given as individual days.
- 15. -** (1) The employer shall, after consultation with the employee, fix the time at which the holiday is to be taken. The employer shall with due consideration to the operation of the enterprise to the widest possible extent meet the employee's wish as regards the timing of the holiday, including the employees' wish to take the main holiday during the school holiday of the employee's child.
- (2) The employer shall inform the employee of the time of the holiday as early as possible, and not later than 3 months before the commencement of the main holiday period and not later than 1 month before the start of the holiday for any remaining holiday, unless this is not possible due to special circumstances.
- (3) If required by important, unforeseeable operational considerations, the employer may change previously fixed holiday arrangements. The employee shall receive

compensation for any financial loss suffered as a result of the postponement. Holiday which has already started may not be changed.

**16. -** (1) An employee who has been dismissed may not hold the main holiday during the period of notice, if the period of notice is 3 months or less. This applies irrespective of any previously agreed holiday arrangements. However, this shall not apply if the period of notice has been prolonged with the number of holidays.

(2) If the employee has been made redundant, the holiday shall be considered to have been taken irrespective of whether the holiday has been fixed if the periods mentioned in section 15 (2) and the holiday can be contained within the redundancy period.

**17. -** (1) If an enterprise closes down for the holiday, an employer who is not entitled to earned holiday in respect of all the days for which the enterprise is closed down, shall have no claim in relation to the employer for this reason.

(2) If enterprises are closed down on working days between Christmas and New Year's Eve the employer shall, cf. section 15, lay down that the employee shall take holiday on these days if the employee is entitled to more than 15 days of holiday. If the employer does not fix the holiday, the employer shall pay wages to the employee in respect of the days in question. The wage shall be calculated on the basis of the normal wage of the employee during the last 4 weeks before Christmas.

**18. (1)** Holiday earned under section 7 shall be taken prior to non-earned holiday under section 8. Holiday transferred under section 19 on holiday under section 40 shall be taken prior to any other days of holiday.

#### *Deviations and authorisations*

**19. -** (1) It may be agreed by collective agreement that the employee and employer may enter an agreement to the effect that any holiday earned in addition to 20 day may be transferred to the following holiday year.

(2) The employee and the employer shall conclude a written agreement under subsection 1 before the end of the holiday year.

(3) If holiday allowance has been earned in respect of the days of holiday transferred, the employer shall before the end of the holiday year inform the person to whom the holiday allowance shall be paid of the transfer of the holiday.

(4) If an employee whose holiday has been transferred resigns before the holiday has been taken, the right to hold more than 25 days of holiday during a single holiday year lapses. The holiday allowance for holiday in addition to 25 days shall be paid in accordance with the rules laid down in section 30 (4).

(5) Employees who are not covered by a collective agreement on pay and working conditions may in respect of earned holiday exceeding 20 days enter into an agreement with the employer on transfer of holiday. The provisions laid down in subsections 2-4 likewise apply. The transferred holiday is held according to the rules in this part.

**20. -** (1) It may be agreed by a collective agreement which deviates from the rule on payment of holiday allowance to FerieKonto, cf. section 28, that deviation may take place from 12 (2), so that the holiday may be taken in the form of hours. An employee who has been employed for a full qualification year shall, however, be entitled to hold at least 20 days of paid holiday.

(2) Deviation by collective agreement may take place from section 13 (3), section 15 (3) and section 17 (3), clause 3.

**21. -** (1) Deviation by agreement from section 14 may take place. However, at least 10 days of holiday shall be given as a consecutive period as regards section 14 (1) and (2).

(2) Deviation by agreement may take place from section 15 (2) and section 16 (1).

**22.** The Director of the National Directorate of Labour may lay down rules on the taking of holiday for persons who are not working 5 days per week and employees who do not start on the holiday due to sickness or an industrial dispute, cf. section 13 (2) and (3).

#### PART 4

##### *Holiday with pay, holiday supplement and holiday allowance*

**23. -** (1) Employees who are employed on a monthly basis or for longer periods and who are entitled to full pay in respect of public holidays and days of sickness shall be entitled to paid holiday.

(2) The wage during holiday shall be the ordinary wage accounted with at the time of the holiday. To this amount shall be added the value of any fringe benefits which are not available to the employee during the holiday. An employee paid on the basis of commission shall during the holiday period be entitled to compensation for any commission lost due to the taking of the holiday. Furthermore, the employee shall receive a holiday supplement of 1 per cent of the wage during the qualification year, cf. section 26 (1).

(3) If the employee's average working time or work extent at the time of the holiday deviates by more than 20 per cent from the average working time or work extent in relation to the qualification year, the wage paid during the holiday shall be regulated accordingly.

(4) The holiday supplement shall, at the latest, be paid at the start of the holiday in respect of which the holiday supplement is paid. If the holiday supplement is paid before the holiday starts, no request for repayment can be made.

(5) An employee may, before the start of the qualification year, demand holiday allowance with 12 per cent of the wage during the qualification year instead of wage during holiday and a holiday supplement, cf. section 26.

(6) An employee who resigns will receive holiday allowance, cf. section 24, for the current qualification year and for that part of previous qualification years in respect of which the employee has not yet taken holiday. The holiday allowance shall be payable at the latest on the first day of the month following the date of the resignation, cf. section 28.

**24.** An employee who is not covered by section 23 shall be entitled to holiday allowance at the rate of 12.5 per cent of the wage during the qualification year. The holiday allowance shall be payable on the first day of the month following the end of the quarter, cf. section 28.

**25. -** (1) If an employee, who is not entitled to full pay during sickness, is absent for more than 3 working days due to either sickness or an industrial accident in the enterprise, the employer shall from the first day of absence pay sickness compensation corresponding to 12.5 per cent of a wage calculated on the basis of the employee's ordinary wage during the last 4 weeks preceding the absence, cf. subsection 2.

(2) If an employee, who is covered by subsection 1, is entitled to holiday allowance in respect of other benefits during sickness, the holiday allowance during sickness shall constitute the difference between the sickness holiday allowance under subsection 1 and holiday allowance payable in relation to other benefits.

(3) Entitlement to holiday allowance during absence from work due to sickness shall be conditional upon the employee having been employed by the employer for at least 12 months before the sickness absence. When calculating this period, account shall be taken of any previous periods of employment with the same employer within the past 24 months, provided that the termination of the employment relationship was not due to any matter attributable to the employee himself.

(4) Holiday allowance during sickness shall be granted for a maximum period of 4 months within a calendar year. Sickness holiday allowance due to the same sickness or injury shall, however, as a maximum be paid for a total period of 4 months.

(5) The employer may request the employee to certify that the absence was due to sickness or an injury in the enterprise.

**26. -** (1) The employer shall calculate the holiday allowance and holiday supplement on the basis of any amount of wage liable to income tax and fringe benefits in respect of which no deduction is made in the income and which constitute remuneration for work performed during the employment relationship. The value of fringe benefits shall be calculated on the basis of the rates fixed by the National Tax Assessment Board for the qualification year.

(2) Furthermore, the employer shall calculate holiday allowance and holiday supplement on the basis of the employee's contributions to

(i) pension schemes, etc. covered by Title I of the Act on taxation of pension schemes, etc.,

(ii) the Labour Market Fund under the Act setting up a Labour Market Fund, and

(iii) the special pension savings scheme under Part 5 (c) of the Act on the Labour Market Supplementary Pension Scheme.

(3) The employer shall not calculate holiday allowance and holiday supplement in respect of holiday allowance, paid holiday or holiday supplement.

*Deviations*

**27. -** (1) It may be agreed by collective agreement that an employee shall receive wage during holiday although the conditions laid down in section 23 (1) are not satisfied and that an employee covered by section 23 (1) shall be paid holiday allowance under section 24 instead of paid holiday.

(2) Deviation may take place from the rules laid down in section 23 (2), (3), (4) and (5), section 25 and section 26 by collective agreement.

## Part 5

*Payments of holiday allowance*

**28. -** (1) Holiday allowance under section 23 (5) and (6), section 24 and section 25 shall be paid in to FerieKonto, except in the cases mentioned in sections 30 and 31.

(2) In the case of too late payment of holiday allowance, the employer shall pay interest at the rate of 1.5 per cent from the start of each month after the due date for payment.

**29.** Holiday allowance shall be paid to the employee at the latest at the start of the holiday period to which it relates.

**30. -** (1) Holiday allowance in respect of previous and current qualification years shall be paid to the employee by the employer, FerieKonto or the person administering the holiday allowance according to section 31

(i) if the employee withdraws from the labour market for reasons of age or bad health, or

(ii) if the employee retires in connection with removal abroad or requests to be struck off the Civil Registry.

(2) Holiday Allowance may be paid by the employer to the employee in the case of resignation if the amount is DKK 500 or less after deduction of tax and labour market contributions. The employer may not pay holiday allowance to the employee under this provision to the same employee more than two times within the same qualification year.

(3) Holiday allowance in respect of a qualification year shall be paid to the employee at the start of the holiday year by FerieKonto or the person who administers the holiday allowance under section 31, irrespective of whether the holiday is taken when the amount is DKK 1,000 or less after deduction of tax and labour market contributions.

(4) If the employee resigns before the transferred holiday under section 19 or holiday under section 40 has been taken, the holiday allowance in respect of holiday exceeding 25 days shall be paid in connection with the resignation by the employer, FerieKonto or the person administering the holiday allowance under section 31.

(5) In the event of the death of the employee, the holiday allowance in respect of proceeding and the current qualification years shall be paid to the administrators of the



estate by the employer, FerieKonto or the person administering the holiday allowance under section 31.

*Deviations and authorisations*

**31. -** (1) Deviations from the rules laid down in section 28 may take place by collective agreement. It is a condition that a guarantee is put up for at least 12 months' holiday allowance per employee after deduction of tax and labour market contributions.

(2) A copy of the collective agreement shall be sent to the Director of the National Directorate of Labour.

**32. -** (1) The Director of the National Directorate of Labour shall be in charge of the administration of FerieKonto with technical administrative support from the Labour Market Supplementary Pension Fund.

(2) The administration costs for FerieKonto shall be covered by the interest on the amounts paid into FerieKonto, cf. section 28 (1), and the interest on overdue payments of holiday allowance, cf. 28 (2). Furthermore, an amount of up to DKK 100m of the interest yield of FerieKonto in 2004 will accrue to the Treasury. The Minister for Employment may lay down further rules on transfer of the interest yield to the Treasury. Additional interest yield shall accrue to the Labour Market Holiday Fund.

**33. -** (1) The Director of the National Directorate of Labour shall lay down rules on in-payments of holiday allowance, cf. section 28.

(2) The Director of the National Directorate of Labour shall lay down rules on out- payments of holiday allowance in connection with the taking of the holiday, cf. section 29.

(3) The Director of the National Directorate of Labour shall lay down rules specifying when the employer, FerieKonto or the person administering the holiday allowance by virtue of section 31 may pay out holiday allowance in respect of previous and current qualification years, cf. section 30 (1).

(4) The Director of the National Directorate of Labour may lay down rules on the employer's payment of holiday allowance according to section 30 (2). The Director of the National Directorate of Labour may regulate the amount according to section 30 (2) and (3).

(5) The Director of the National Directorate of Labour may lay down rules on payment of holiday allowance according to section 30 (4) for an employee who works more than 5 days per week.

**34.** (1) The Minister for Employment shall - before 1 December each year - determine the allocation of interest income according to section 32 (2) for the coming calendar year. The allocation shall take place on the basis of a budget for FerieKonto.

*Payment of holiday allowance, holiday with pay or holiday supplement at the end of the holiday year*

**34. (a)** (1) The authority which pursuant to section 31 administers the holiday allowance shall, at the end of the holiday year pay holiday allowance to the employee if the amount constitutes DKK 1,500 or less after deduction of tax and labour market contributions. If the employee has been continuously employed with the same employer from a date during the qualification year to the end of the holiday year, holiday allowance concerning this employment relationship will only be paid if the amount relates to holiday exceeding 20 days.

(2) At the end of the holiday year, FerieKonto shall pay holiday allowance to the employee if the amount is DKK 1,500 or less after deduction of tax and labour market contribution. If the holiday allowance is related to a continuous employment relationship from a date during the qualification year to the end of the holiday year and the amount is not related to holiday exceeding 20 days or holiday which has already been taken, the amount may be recovered, cf. section 37 (2).

(3) At the end of the holiday year, the employer shall pay holiday with pay and any holiday supplement to the employee if the amount is DKK 1,500 or less after deduction of tax and labour market contributions and if the amount relates to holiday exceeding 20 days.

**34. (b)** (1) Holiday allowance for holiday, which has been taken, but where the amount has not been cashed by the employee before the end of the holiday year and where the amount constitutes less than DKK 3,000 after deduction of tax and labour market contribution may on demand be paid to the employee by FerieKonto or the authority which pursuant to section 31 administers the holiday allowance, cf. 34 (a). It is a condition that the employee submits a declaration to the effect that the holiday is taken during a period in which the employee has been in an employment relationship.

(2) Holiday allowance which has not been cashed by the end of the holiday year and which has been earned during an employment relationship which has ended by the end of the holiday year, at the latest, may on demand be paid to the employee by FerieKonto or the authority which pursuant to section 31 administers the holiday allowance, cf. subsection (4). It is a condition that the employee submits a declaration.

(3) Holiday allowance which has not been cashed by the employee before the end of the holiday year, or holiday with pay or holiday supplement which has not been paid to the employee before the end of the holiday year and which is related to holiday earned in connection with a employment relationship of a total period of more than 9½ months during the qualification year and which has not been transferred pursuant to an agreement under sections 19 or 40, may on demand be paid to the employee by the employer, FerieKonto or the authority which pursuant to section 31 administers the holiday allowance, cf. subsection 4. It is a condition that the employee submits a declaration that the amount relates to holiday earned in connection with an employment relationship of more than 9½ month of total duration in a qualification year which is not transferred under sections 19 or 40.

(4) If the employee has received unemployment benefits, benefits under the Act on Childcare Leave or social assistance during the holiday year, payment may pursuant to subsections 2 and 3 only take place with the prior approval of the Director of the National Directorate of Labour. The number of days on which the above-mentioned benefits have been received shall be deducted from the number of days on which the uncashed holiday pay have been received. In case any number of holidays remains the Director of the National Directorate of Labour shall inform the employer, FerieKonto and any authority which pursuant to section 31 administers the holiday allowance about the number of days for which payments may be made to the employee.

(5) The possibility of payment under subsections 1-3 is forfeited if the employee does not by 30 September, at the latest, after the end of the holiday year make a written request for payment according to these rules to the employer, FerieKonto or any authority which in pursuance of section 31 administers the holiday allowance, . The possibility of payment on approval, cf. subsection 4, is forfeited if the employee does not by 30 September, at the latest, after the end of the holiday year, make a written request to the National Directorate of Labour concerning payment pursuant to these rules.

#### *Empowerment*

**34. (c)** (1) The Director of the National Directorate of Labour may lay down rules on information, guidelines and payment of holiday allowance, paid holiday or holiday supplement under section 34 (a) and (b), including for employees who work more than 5 days per week.

(2) The Director of the National Directorate of Labour may regulate the amounts according to section 34 (a) and (b) subsection 1.

### PART 6

#### *Limitation rules and rules on set-off*

**35. -** (1) Any claim for holiday allowance, pay during holiday or holiday supplement shall become statute-barred, if not made to the employer on 30 September, at the latest, after the end of the holiday year.

(2) If the employer fails to meet the claim, it shall become statute-barred unless the employee tries to enforce the claim by taking legal action, by handing over the matter to the trade union for further action, by notifying police or by contacting the Director of the National Directorate of Labour on 30 November, at the latest, after the end of the holiday year.

**36. -** (1) Claims for holiday allowance, pay during holiday or holiday supplement which have become statute-barred under section 35 shall accrue to the Treasury and the Labour Market Holiday Fund.

(2) Holiday allowance which has not been cashed by the employee before the end of the holiday year or holiday with pay and holiday supplements which have not been paid to the employee before the end of the holiday year and which are not paid under section 34 (a) and (b) shall accrue to the Treasury and the Labour Market Holiday Fund, cf. sections 19 and 40.

(3) The Director of the National Directorate of Labour may - in fields where a collective agreement has been concluded, cf. section 31 - permit that any amounts which have not been cashed or paid out and which shall accrue to the Labour Market Holiday Fund under subsection 2 may instead be used for other holiday purposes. The Director of the National Directorate of Labour may lay down guidelines for and supervise the use of such funds.

**37.** (1) If an employee is working for remuneration during the holiday, the Director of the National Directorate of Labour may require that the holiday allowance, wages during holiday or holiday supplement payable in this connection shall be paid to the Labour Market Holiday Fund.

(2) If an employee has unduly been paid holiday allowance, pay during the holiday or a holiday supplement pursuant to section 34 (a) or section 34 (b) the Director of the National Directorate of Labour may require that the corresponding holiday allowance, pay during holiday or holiday supplement shall be paid to the Labour Market Holiday Fund.

**38. -** (1) If an employee is prevented from taking holiday before the end of the holiday year due to special circumstances, the holiday allowance, wages during holiday or holiday supplement shall be paid to the employee.

**39. -** (1) The employer may set up a counterclaim against an employee's claim for wages during holiday, holiday supplement or holiday allowance

- i. if the employee has committed an unlawful act in the employment relationship which has resulted in a counterclaim from the employer if the employer can provide documentation for the amount of such counterclaim, and
- ii. if the employee has admitted the unlawful act or it has been established by a court order.

(2) If an employer has instituted legal proceedings against an employee, has brought the case before an industrial tribunal or has reported the employee to the police or if the employee has been charged with the unlawful act, the employer may withhold an amount corresponding to the amount of the counterclaim until the case has been decided.

#### *Deviation and empowerment*

**40.** It may be agreed by collective agreement that holiday covered by section 38 (1) shall instead be taken during the following holiday year. The rules laid down in section 19 (2) to (4) shall be correspondingly applicable.

**41. -** (1) The Director of the National Directorate of Labour shall lay down rules specifying when an employee is prevented from taking holiday due to special circumstance, cf. section 38 (1).

(2) The Director of the National Directorate of Labour shall lay down rules on the payment of holiday allowance, wages during holiday or holiday supplement covered by sections 36 and 38. The possibility for payment is forfeited if the employee does not make an application to the Director of the National Directorate of Labour within 3 years after the end of the holiday year, cf. section 34 (b) subsection 5.

**42. -** (1) The Minister for Employment shall decide before 1 September 2005 and subsequently every third year before 1 September how big a share of the amounts referred to in section 36 above shall accrue to the Treasury.

(2) The Minister for Employment shall lay down rules on in-payment of the Treasury's share of the amounts mentioned in section 36 and on out-payments of the Treasury's share of payments made under section 41(2).

## PART 7

### *Requests for information, documentation and digital communication*

**43. -** (1) The Director of the National Directorate of Labour may request information to be used in connection with the administration of this Act from employees and employers as well as their organisations, other public authorities, the unemployment insurance funds, the Employees' Guarantee Fund, the Labour Market Supplementary Pension Fund, the authority administering amounts covered by section 36 (3) and the Labour Market Holiday Fund, including in an electronic form, on

- (i) the persons who have been employed with an employer,
- (ii) which employers the employee has been employed with,
- (iii) the periods during which a person has taken holiday,
- (iv) the date of termination of an employment relationship with an employer,
- (v) the periods and extent of a person's employment,
- (vi) the wage paid to a person,
- (vii) public benefits paid to a person,
- (viii) holiday allowance which has not been cashed or pay during holiday or holiday supplement which have not been paid out, including payments under section 34 (a) and (b),
- (ix) communications of importance to the collection and control of payment to FerieKonto.
- (x) communications of importance to the control of payments of holiday allowance, pay during holiday and holiday supplements, cf. section 34 (a) or (b), including a person's written declarations and,
- (xi) accounts etc. of importance to the control of the authority which administers amounts covered by section 36 (3).

(2) The information mentioned under subsection 1 may, furthermore, be used with a view to determining the Treasury's share of the amounts under section 36 and with a view to parallel processing of registers for control purposes.

(3) The Director of the National Directorate of Labour shall lay down rules on collection and preservation of information under this provision.

**43. - (a)** The Director of the National Directorate of Labour may lay down rules on the possibility for digital communication between employees, employers, the authorities which pursuant to section 31 administer holiday allowance, FerieKonto, the Labour Market Holiday Fund, the authorities which administer amounts covered by section 36 (3), the National Directorate of Labour and Labour Market Appeal Board.

## PART 8

### *Jurisdiction and appeals*

**44. -** (1) The Director of the National Directorate of Labour shall settle disputes between employers and employees about holiday entitlement, the taking of the holiday and the right to holiday and holiday allowance, wages during holiday and holiday supplements, in-payments and out-payments of holiday allowances etc., including at the end of the holiday year under section 34 (a) or (b) and set-offs under section 39 unless these matters are regulated by collective agreement, cf. subsection 5.

(2) The Director of the National Directorate of Labour shall decide whether an employee who is prevented from taking holiday before the end of the holiday year, cf. section 38, may receive payment of a holiday allowance, wages during holiday or holiday supplement unless these matters are regulated by collective agreement.

(3) The Director of the National Directorate of Labour shall settle disputes concerning interest on overdue payments, cf. section 28 (2).

(4) The Director of the National Directorate of Labour shall settle disputes concerning statute-barred claims and in-payments of amounts which pursuant to section 36 accrue to the Treasury, the Labour Market Holiday Fund or other holiday purposes.

(5) The Director of the National Directorate of Labour shall decide on the payment of amounts pursuant to section 34 (b) (4) or amounts which pursuant to section 36 have accrued the Treasury, the Labour Market Holiday Fund or other holiday purposes.

(6) The Director of the National Directorate of Labour shall decide on in-payments of holiday allowance, pay during holiday or holiday supplement to the Labour Market Holiday Fund, cf. section 37.

(7) The Director of the National Directorate of Labour may decide on the administration of the amount used for other holiday purposes, cf. section 36 subsection 3.

**45. -** (1) The person affected by a decision made by the Director of the National Directorate of Labour may bring an appeal against the decision before the Labour Market Appeal Board within 4 weeks after the parties have been notified of the decision.

(2) The complaint shall be sent to the Director of the National Directorate of Labour who shall re-examine the case. If the Director of the National Directorate of Labour upholds the decision in full or in part, the complaint shall be sent to the Appeal Board and the parties to the case shall at the same time be notified hereof. The decisions of the Appeal Board may not be appealed to any other administrative authority.

(3) The Minister for Employment shall, after consultation with the social partners, lay down more detailed rules about the composition of the Appeal Board and its jurisdiction in connection with its handling of cases under this Act.

## PART 9

### *The Labour Market Holiday Fund*

**46. -** (1) The Labour Market Holiday Fund is an independent institution.

(2) The means of the Fund consist of interest and other yield on capital, as well as other amounts which accrue to the Fund under the provisions of this Act.

(3) The means of the Fund shall be used for holiday purposes for employees, including in particular support to institutions or organisations providing holiday services for employees.

(4) The Minister for Employment shall appoint the board of directors of the Fund, including the chairman of the board. The board of directors shall be appointed for a term of 3 years at a time.

(5) The capital at the disposal of the Fund as of 1 July 1974 shall remain untouched. The Minister for Employment may, however, under special circumstances, authorise that support in the form of loans is paid out of this capital.

(6) The account of the Fund shall be audited by at least 2 auditors of whom at least one shall be a state authorised public accountant. The board of directors shall appoint the auditors for a term of 3 years at a time, but may at any time withdraw the appointment.

(7) The audited annual accounts shall be submitted to the Minister for Employment after having been approved by the board of directors.

(8) The Minister for Employment shall lay down the statutes for the Fund.

## PART 10

### *Penal sanctions*

**47. -** (1) Any employer who, without good cause, fails to pay holiday allowance, wages during holiday, or holiday supplement due at the request of the person entitled shall be liable to a fine.

(2) Penal sanctions under the rules laid down in Part 5 of the Danish Penal Code may be imposed upon companies, etc. (legal persons).

(3) A fine may be imposed in connection with violation of regulations, etc. issued under this Act.

## PART 11

*Commencement and transitional provisions*

**48. -** (1) This Act shall come into operation on 1 January 2001. However, section 45 (3) shall not come into operation until 1 October 2000.

(2) Section 4 (1) and (2) shall have effect for decisions made by the Director of the National Directorate of Labour after 31 December 2000.

(3) The provisions laid down in sections 12, 14, 17 (2), 19, 20 (1), 21 (1) and 23 (4) shall apply to holiday earned after 31 December 2000.

(4) The provision laid down in section 8 shall apply to holiday taken on 1 May 2002 or later. The provision laid down in section 9 shall apply to training agreements concluded on 1 May 2002 or later.

(5) Entitlement to paid holiday on the basis of training agreements concluded before 1 May 2002, cf. section 7 of the Holiday Act, cf. Consolidation Act No. 538 of 25 June 1999, shall be preserved; however, the number of holidays due shall be converted proportionately from a 6-day week to a 5-day week.

**49. -** (1) The Holiday Act, cf. Consolidation Act No. 538 of 25 June 1999, shall be abolished as per 1 January 2001, cf. subsection (2) below.

(2) The provisions laid down in sections 8 (1), 9 (1) to (4) and 17 b shall, however, not be abolished until 30 April 2002 and shall be correspondingly applicable to holiday earned before 1 January 2001. The provisions laid down in section 6 (a) and 7 shall be abolished on 30 April 2002.

(3) Orders issued under the Holiday Act, cf. Consolidation Act No. 538 of 25 June 1999, shall remain in force until they are amended or abolished by order issued under this Act.

(4) Disputes concerning holiday earned before 1 January 2001 shall be decided according to the former rules.

**50.** This Act shall not extend to the Faroe Islands and Greenland.

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Act No. 133 of 20 March 2002 which amends section 32 of the Act includes the following provision on commencement:

**2.** This Act shall come into operation the day after its publication in the Danish Law Gazette<sup>2</sup>. The Bill may receive the Royal Assent immediately upon adoption.

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<sup>2</sup> Act No. 133 of 20 March 2002 was published in the Danish Law Gazette on 21 March 2002.



Act No. 1039 of 17 December 2002 which amends section 32 includes the following provision on commencement:

2. This Act shall come into operation on 1 January 2003.

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Act No. 1200 of 27 December 2003 includes amendments concerning sections 4, 11, 19, 23, 35, 36, 37, 38, 41, 42, 43, 44 and insertion of section 34 (a)-(c) and section 43 (a), includes the following provision on commencement:

2. (1) This Act shall come into operation on 1 January 2004. However, section 1 No. 19 shall not come into operation until 1 January 2005. The provisions laid down in section 1 No. 5, 6, 7, 8, 10, 12, 13 and 24 shall apply to holiday earned after 31 December 2001.

(2) Holiday transferred under section 19 subsection 5 by agreement entered into before 1 January 2004 shall be taken according to the former rules.

(3) Out of the statute-barred claims and uncashed holiday pay, cf. section 36 (1) and (2) of the Act and concerning the qualifying year 2002, 74 per cent shall accrue the Treasury and 26 per cent to the Labour Market Holiday Fund. If permission has been granted under section 36 (3) of the Act to use uncashed holiday pay for other purposes, the 26 per cent shall accrue this other purpose instead of the Labour Market Holiday Fund.

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Act No. 1202 of 27 December 2003 which amends section 32 of the Act includes the following provision on commencement:

2. This Act shall come into operation on 1 January 2004.

*Ministry of Employment, 28 May 2004*

CLAUS HJORT FREDERIKSEN

/E. Edelberg