

## UNOFFICIAL CONSOLIDATION OF LAWS ON LEAVE

Consolidated laws, which contain updated laws showing amendments, are not regularly published in Vanuatu. The last consolidation was in 2006. This tool puts together the changes to laws on leave that occurred in 2008 and 2009. It is *unofficial*, and any reference to laws in legal proceedings should use the Employment (Amendment) Act 2008 and the Employment (Amendment) Act 2009.

### PART 7 – ANNUAL LEAVE AND SICK LEAVE

#### 29. Annual leave

- (1) Every employer shall grant an employee who has been in continuous employment with the same employer for;
  - (a) a period of 1 to 6 years annual leave on full pay at a rate of 1.25 working days per month for each year of employment; or
  - (b) a period of 7 to 19 years annual leave on full pay at a rate of 1.75 working days per month for each year of employment; or

(2) The rate of the annual leave provided for in subsection (1) shall be increased to 3 working days after 20 years, 4 working days after 25 years and to 6 working days after 30 years service in the same undertaking, whether continuous or not:

Provided that this subsection shall not apply in relation to employees in agricultural undertakings.

(3) For the purpose of this section there shall be included in the period of continuous employment any periods of absence from work caused by –

- (a) an accident at work duly certified by a recognised medical practitioner;
- (b) illness arising from employment duly certified by a recognised medical practitioner;
- (c) maternity leave up to a period of 12 weeks;
- (d) illness duly certified by a medical practitioner up to a period of 3 months.

#### 30. Manner in which annual leave to be taken

(1) The annual leave shall be taken in one period or if the employer and the employee so agree, in not more than 2 separate periods.

(2) If the employer and the employee so agree, the annual leave or either of its parts, may be taken wholly or partly in advance before the employee has acquired entitlement thereto.

(3) The date of the annual leave shall be fixed by the employer, who shall in so far as it shall be practicable in the circumstances of the undertaking, comply with the employee's request in this respect.

### **31. Remuneration during annual leave**

The employer shall pay to the employee during the annual leave remuneration at least equal to the employee's average remuneration for the 12 months preceding the commencement of the leave:

Provided that such remuneration unless the parties otherwise agree need not include any bonuses, overtime pay, expatriation allowances or reimbursement of expenses.

### **32. Entitlement when contract terminated**

If a contract of employment terminates before the employee has acquired entitlement to annual leave, an allowance calculated on the basis of the entitlement provided for in section 29 shall be paid in the place of leave:

Provided that if the contract has been broken by the employee such allowance shall only be payable on condition that the employee has completed at least 6 months service, and, that in the case of hourly or daily paid employees 1 month service shall mean not less than 22 days' work carried out within the month.

### **33. Duration of entitlement**

After leaving the service of his employer any employee may avail himself of his annual leave and travel, if any, within 6 months counting from the date on which he ceased to work for that employer:

Provided that travel shall only be paid for by the employer if the employee actually makes the journey.

### **34. Sick leave**

(1) Subject to subsection (2), every employee who has been in continuous employment with the same employer for more than 6 months shall be entitled in every year to 21 working days' leave on full pay on grounds of illness.

(2) An employee who absents himself from work on grounds of illness shall, except where the employer is aware of the nature of the illness, as soon as practicable notify the employer of the illness and if he remains ill –

(a) within the municipal boundaries of Port Vila or Luganville for more than 2 days;

(b) in any other area for more than 4 days,

shall forward to the employer a medical certificate of illness.

(3) A medical certificate issued for the purpose of showing good and sufficient cause for absence from work shall not be valid in respect of any period in excess of 4 days before the day on which the employee had been examined by the medical practitioner issuing the certificate.

(3A) In addition to subsection (3) if an employer doubts the medical certificate being provided to him or her by the Employee, the employer may refer the employee to a certified medical practitioner of the employer's choice for a second consultation at his cost.

(4) The employer may, at his own expense, cause an employee who is absent from work on grounds of illness to be examined by a medical practitioner.

## **PART 8 – EMPLOYMENT OF WOMEN AND YOUNG PERSONS**

### **35. Prohibition of employment of women at night**

NOT INCLUDED

### **36. Maternity leave**

(1) An employer must allow a woman employee to go on maternity leave upon production by her of a medical certificate stating that her confinement is likely to take place within 6 weeks, and must not permit her to work for a period of 6 weeks before her confinement and six weeks after her confinement.

(2) While absent from work in pursuance of subsection (1) a woman employee shall be entitled to be paid 66% of the remuneration she would have earned had she not been so absent.

(2A) If a woman continues to work during the pre-confinement period, she must produce to her employer, a medical certificate certifying that she is fit to work during that period.

(2B) If there is more than one employer from whom a woman employee would be entitled to claim wages under this subsection, the Commissioner of labour, a labour officer or labour inspector must determine the amount of wages that must be paid by each employer according to the number of hours on which the woman employee has worked for the relevant employer.

(3) An employer shall allow a woman employee who is nursing a child 1 hour twice a day during her working hours for this purpose until the child reaches the age of 24 months; such interruptions of work shall be counted as working hours and shall be remunerated accordingly.

(4) A woman who returns to her employment after maternity leave:

(a) must return to the same or equivalent position held prior to proceeding on maternity leave, without any loss of salary, wages, benefits or seniority; or

(c) may be appointed to a higher position.

### **37. Restriction on dismissal of women employees**

No employer shall give notice of dismissal to a woman employee who is absent in pursuance of section 36 or who remains absent as a result of illness certified by a medical practitioner to arise out of pregnancy or confinement and rendering her unfit for work:

Provided that such additional absence from work shall not exceed 3 weeks.