



SAMOA

PUBLIC HOLIDAYS ACT 2008

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PUBLIC HOLIDAYS ACT 2008

2008

No. 3

AN ACT to amend and set up the law relating to public holidays.

[Assent date: 25 January 2008]

[Commencement date: 1 January 2008]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Public Holidays Act 2008.

(2) This Act comes into force on 1 January 2008.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“emergency” means emergency as defined in section 2 of the Fire and Emergency Service Act 2007;

“Minister” means the Minister responsible for employment and labour in Samoa;

“pharmacy” means pharmacy as defined in section 2 of the Pharmacy Act 2007;

“place of employment” means place of employment as defined in section 2 of the Labour and Employment Relations Act 2013;

“public holiday” means:

(a) Christmas Day;

(b) Boxing Day;

(c) New Year’s Day;

(d) the day after New Year’s Day;

(e) Good Friday;

(f) the Saturday after Good Friday;

(g) Easter Monday;

(h) Mothers’ Day being the Monday after the second Sunday in May;

(i) Independence Day;

(j) Fathers’ Day being the Monday after the second Sunday in August;

(k) Lotu a Tamaiti Holiday being the Monday after the second Sunday in October (White Sunday);

(l) the Monday after the days referred to in paragraphs (a), (b), (c), (d) and (h) where that day falls on a Sunday;

(m) the Tuesday after:

(i) Christmas Day where Christmas Day falls on a Sunday; and

(ii) New Year’s Day where New Year’s Day falls on a Sunday; and

- (n) polling day and the day immediately before polling day in any general elections; and
 - (o) any day declared to be a public holiday by the Head of State in accordance with this Act;
- “shop” means any premises or part of any premises licensed under the Business Licences Act 1998 where goods or services are sold.

PART 2 PUBLIC HOLIDAYS

3. Shop may open – A shop may open for operations during a public holiday.

4. School and place of employment to be closed – Except as provided for in this Act, a school or a place of employment shall be closed for all operations during a public holiday.

5. Exempted services and places of employment – Section 4 does not apply to the following services and places of employment:

- (a) morgue or funeral services;
- (b) hospital;
- (c) pharmacy;
- (d) fire and emergency services;
- (e) search and rescue services;
- (f) police services;
- (g) security services;
- (h) waste management services;
- (i) public transport services;
- (j) shipping services;
- (k) civil aviation services;
- (l) hotel and hospitality services;
- (m) communication services;
- (n) the Electoral Commissioner, his or her staff and such assistants working under his or her direction on public holidays during elections;
- (o) an international bank licensed under the International Banking Act 2005;
- (p) a trustee company registered under the Trustee Companies Act 1988;

- (q) an international company or foreign company incorporated or registered under the International Companies Act 1988.

6. Minister's powers – Despite the provisions of this Act or any other Act, the Minister may by order, authorise:

- (a) a school or a place of employment to be open during a public holiday; or
- (b) a shop to be closed during a public holiday.

7. Other public holidays – (1) The Head of State may, acting on the advice of Cabinet, declare any day to be a public holiday.

(2) When a state of emergency is declared or proclaimed under any enactment, the Head of State may, acting on the advice of Cabinet, declare any day within the period of state of emergency as an emergency holiday for the whole or part of Samoa.

(3) When advising the Head of State to declare an emergency holiday, Cabinet must take into account the following:

- (a) the actual effect of the emergency on the public;
- (b) the actual damages to the infrastructure; and
- (c) any other government policy relating to emergencies.

(4) When an emergency holiday is declared under subsection (2), the emergency holiday is treated as a public holiday for the purpose of this Act and any other enactment.

(5) A declaration for an emergency holiday must include:

- (a) the authority for employees to work during the emergency holiday;
- (b) the rate of pay for employees who work during the emergency holiday; and
- (c) any other requirements for the purpose of the emergency holiday.

(6) The rate of pay under subsection (5)(b) may be a special rate between the ordinary rate of wages for the day's work and the doubling of the ordinary rate if an employee is required by the employer to work on an emergency holiday.

(7) The power to declare a public holiday under subsection (2), includes the power to revoke any emergency holiday that

has not been taken or to impose other requirements pursuant to subsection (5).

7A. Employer’s holiday – (1) The Minister, may upon application (“application”) by an employer to the Minister, declare any day as an employer’s holiday in respect of the employer and employees of the employer.

(2) The employer’s holiday is treated as a public holiday for the purpose of this Act and any other enactment.

(3) The application must:

(a) be in a form approved by the Minister; and

(b) be accompanied by the prescribed fee.

(4) An application may be made by a group of employers or the employers of an industry.

(5) The power under subsection (1) includes the following powers:

(a) to refuse the application;

(b) to impose conditions (including approval of employees who may be required to work during the employer’s holiday and the rate of pay to be payable);

(c) to suspend the taking of the holiday to another day;

(d) to revoke the declaration before the holiday is taken.

(6) This section does not apply to the Government.

PART 3 AMENDMENTS

8. *Shops Ordinance 1961 repealed by the Public Holidays Amendment Act 2015 .*

9. Repeal – Sections 10, 11, 12, 13, 14 and 16(2) of the Shops Ordinance 1961 are repealed.

10. Labour and Employment Act 1972 – Section 2 of the Labour and Employment Act 1972, at the definition of “public holiday” is amended by substituting “Shops Ordinance 1961” with “Public Holidays Act 2008”.

PART 4 MISCELLANEOUS

11. Offence and penalty – A person who breaches a provision of this Act commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or 12 months imprisonment, or both.

12. Regulations – The Head of State, acting on the advice of Cabinet, may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

REVISION NOTES 2008 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2008 to 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;
- (b) Amendments have been made to up-date references to offices, officers and statutes;
- (c) Insertion of the commencement date;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
 - (i) “Every” and “any” changed to “a”;
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”;
 - (iii) “shall have” changed to “has”;
 - (iv) “shall be guilty” changed to “commits”;
 - (v) “notwithstanding” changed to “despite”;
 - (vi) “pursuant to” changed to “under”;
 - (vii) “it shall be lawful” changed to “may”;
 - (viii) “it shall be the duty” changed to “shall”;
 - (ix) Numbers in words changed to figures;
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed;
 - (xi) “under the hand of” changed to “signed by”;
 - (xii) “any” changed to “a” or “an” where appropriate.

(xiii) Section 8 deleted as the Shop Ordinance has been repealed.

The following amendments were made to this Act since its enactment:

By the *Electoral Amendment Act 2009, No. 21* (commenced 27 October 2009)

- Section 2** - Inserted a new paragraph (n) after paragraph (m) and renumbering the current paragraph (n) as paragraph(o) by section 22;
- Section 5** - Inserted a new paragraph (n) after paragraph (m) by section 22;

By the *Public Holidays Amendment Act 2015, No. 8* (commenced 27 March 2015):

- Section 2** - Definition for the word “shop” deleted and substituted with a new definition,;
- Section 5** - Inserted new paragraphs (o), (p) and (q) after paragraph (n);
- Section 7** - deleted and substituted with new section 7 and inserted new section 7A in relation to Employer’s holiday.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Commerce, Industry and Labour*
