

Subsidiary Legislation made under s. 36.

Employment (Retail Distributive Trade) Order

LN.1980/142

Commencement **5.1.1980**

Amending enactments	Relevant current provisions	Commencement date
LN. 1982/047	Sch.	
1983/045	Sch.	
1984/037	Para. 4(1)-(3), Sch.	7.5.1984
1985/066	Paras. 2, 4(1)	10.6.1985
1985/110	Para. 4(1)	28.10.1985
1987/094	Para. 4(1)	6.4.1987
1988/159	Para. 4(1)	26.12.1988
1990/083	Paras. 2, 4(1), (6), 9	28.6.1990
1991/108	Para. 4(1)	24.6.1991
1992/072	Para. 9(1)(c)-(d)	1.6.1992
1992/115	Para. 4(1)	31.8.1992
1995/108	Para. 4(1)	7.8.1995
1996/052	Para. 4(1)	15.4.1996
1997/133	Para. 4(1)	10.11.1997
1998/115	Para. 4(1)	21.12.1998
2003/116	Para. 4(1)	23.10.2003
2005/171	Para. 4(1), Sch.	1.7.2005
2008/106	Paras. 4(1)-(2), 5(3), 6(1), Sch.	1.1.2009

1932-16

Employment

1980/142

Employment (Retail Distributive Trade) Order

ARRANGEMENT OF PARAGRAPHS

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Title.

1. This Order may be cited as the Employment (Retail Distributive Trade) Order.

Interpretation.

2. In this Order, unless the context otherwise requires,—

“cashier” means a person employed in a shop, mainly for receiving cash and giving change;

“half holiday” has the same meaning as it has in section 4(2) of the Shop Hours Act;

“public holiday” has the same meaning as it has in paragraph 2 of the Employment (Annual and Public Holidays) Order;

“rest day” means one day in each week (not being a public holiday) which has been notified to the employee before the commencement of that week as a rest day or, failing such notification, Sunday in that week;

“retail distributive trade” means the sale by retail of any class of goods; and also means the business of receiving articles for dry cleaning and dyeing and their return (but does not mean the process of dry cleaning or dyeing); and also means the business of a hairdresser and barber; and also means the business of hiring out pre-recorded video cassettes;

“sales assistant” means a person mainly employed in the serving of customers or in the receipt of orders or the despatch of goods; and also means an employee wholly or mainly engaged in calling on customers or prospective customers for the purpose of opening accounts, collecting payments or selling goods;

“time and a fifth”, “time and a half” and “double time” mean respectively one and one fifth times, one and a half times and twice the hourly rates of pay obtained by dividing the employee’s agreed weekly wage by the agreed number of working hours in a normal week;

“warehouseman” means a person employed in a shop and mainly engaged in the receiving, checking and reissuing of goods, together with the keeping of records in connection therewith.

Application.

3. This Order applies to all employees in Gibraltar in any undertaking or any branch or department of an undertaking engaged in the retail distributive trade, except—

- (a) employees employed in any ship;
- (b) roundsmen employed wholly or mainly on a commission basis;
- (c) transport workers;
- (d) catering workers employed in any bar, cafe, restaurant, hotel or club; and
- (e) pump attendants employed at petrol filling stations.

Minimum remuneration.

4.(1) Subject to the provisions of paragraphs 5 and 6, the minimum weekly remuneration payable to employees to whom this Order applies shall be as set out in the Conditions of Employment (Standard Minimum Wage) Order, 2001 as amended or replaced from time to time.

(2) In addition to the minimum remuneration set out in subparagraph (1), an increment of 26p for any week of not less than 39 hours, up to a maximum of eight such increments, shall be payable to an employee for each complete year of service after the age of 20 with the same employer (being the employer by whom he was employed on the 21st day of June 1982 between the 1st day of January, 1968, and the 5th day of January, 1981.

(3) The remuneration specified in subparagraph (1) relates to a week of 39 hours exclusive of overtime and except in the case of guaranteed weekly remuneration under paragraph 6, is subject to a proportionate reduction accordingly where the number of hours worked is less than 39.

(4) In calculating the remuneration for the purpose of this Order recognized breaks for meal times aggregating up to a maximum of 2 hours on any day shall be excluded.

(5) Where an employee, under his contract of service, becomes entitled to food, a dwelling place or other allowances or privileges, in addition to cash wages as a remuneration for his services, the value ascribed to them shall not exceed 35 per cent of the minimum remuneration set out in subparagraph (1).

(6) Where any of the 39 conditioned weekly hours is worked on a Saturday, any such hour shall be paid at the rate of time and one fifth.

Minimum overtime rates.

5.(1) Overtime rates of pay shall be—

- (a) Time and a half for overtime on normal working days including Saturdays;
- (b) Time and a half for overtime on Wednesday afternoons in the case of hairdressers and barbers and sugar confectionery shops which have opted to have the weekly early closing day on Wednesdays under paragraph 9(2) of the Shops (Days and Times of Opening) Order;
- (c) For all time worked on Sundays in the case of bakers, confectioners for the sale of bread and flour confectionery, newsagents for the sale of newspapers and periodicals, bars and restaurants for the sale of food and drink for consumption on the premises only, and pharmacies the proprietors of which maintain a dispensing service for the public by agreement with the Medical and Health Department, where such undertakings are by virtue of paragraph 4 or paragraph 10(3) of the Shops (Days and Times of Opening) Order, exempt from the closing requirements contained in section 5 of the Shop Hours Act; One-quarter-time with a minimum of 4 hours plus normal payment for the hours worked;
- (d) For all time worked on Christmas Day, Good Friday or a rest day in all undertakings, and for all time worked on Sundays in undertakings other than those included under subparagraph (c) of this paragraph: Double time with a minimum of 4 hours, that is, 8 hours payment, in addition in the case of Good Friday and Christmas Day to being given one day's holiday in lieu or payment in compensation therefor in accordance with paragraph 9(2) of the Employment (Annual and Public Holidays) Order.

(2) The number of hours worked in a week shall not exceed 60 unless approved by the Director under section 41 of the Act. Double time shall be payable for the period in excess of 60 hours.

(3) Where an employee is allowed time off in lieu of overtime worked or a day off during any week as piecemeal apportionment of a statutory holiday period or in lieu of a public holiday such time off or day off shall count in full towards the 39 hours to be worked in a week under paragraph 4(3).

Guaranteed minimum remuneration.

6.(1) Although in a week an employee may work less than 39 hours at his normal duties, he shall still receive the minimum remuneration in paragraph 4, provided that the hours so worked are at least 34 and provided that he is willing, available and capable of performing other reasonable duties as required by his employer.

(2) Where in any week an employee at his request and with the consent of his employer is absent from work, the amount of the guaranteed minimum weekly remuneration shall be reduced proportionately.

(3) Overtime worked on a rest day or a half holiday shall not be taken into account for the purpose of the guaranteed weekly remuneration.

Records.

7.(1) For the purpose of showing that the provisions of this Order have been complied with, every employer shall maintain and retain for a period of 12 months weekly records showing clearly the hours of commencing and of ceasing work, the meal or other breaks included, the number of hours worked daily, the wages paid and the holidays allowed in relation to every employee.

(2) Where the Commissioner of Police gives permission for the opening or the extra opening of any shops or class of shops in accordance with the provisions of section 6(2) of the Shop Hours Act, it shall be the duty of the owner of the shop concerned to make and retain to the satisfaction of the Director of Labour and Social Security a written record of the number of hours during which the shop was so opened and of the names of employees who worked in the shop during those hours.

Minimum nature of conditions prescribed.

8. The provisions of this Order shall not prevent agreements for wages and or conditions more favourable than those prescribed herein.

Redundancy payments.

9. (1) Where an employee's employment is terminated by reason of redundancy, he shall be paid by his employer by way of compensation—

- (a) for each of the first five completed years of service, two weeks pay;
- (b) for each of the next five completed years of service, three weeks pay;
- (c) for each additional completed year thereafter, four weeks pay;
- (d) in respect of an employee aged 41 years and over, for each completed year of service after the age of 40 years, two week's pay;

Provided that the total amount of the redundancy payment shall not exceed the amount of one years' pay and that no payment will be made to the employee who has not completed one year's service.

- (2) For the purposes of this paragraph—
 - (a) “redundancy” has the meaning given to it in section 74(1) of the Employment Act;
 - (b) “week’s pay” means the average of the gross weekly payments made to that employee in the thirteen weeks immediately prior to the termination of the employment.