

[LEGAL NOTICE NO. 38]

WAGES COUNCIL

[Part 6 Division 2 of the Employment Relations Promulgation 2007]

NOTICE

THE Minister for Labour, Industrial Relations and Employment having made the Wages Regulations (Wholesale and Retail Trades) Order 2011 and pursuant to section 54 (5) of the Employment Relations Promulgation 2007 hereby publishes the said Order.

Dated this 21st day of April, 2011.

S. LESI
Secretary
Wholesale and Retail Trades Wages Council

It is provided by section 56 (1) of the Employment Relations Promulgation 2007 as follows—

“An employer shall display a written notice in the workplace for the purpose of informing the workers of any proposed Wages Regulation Order or any Wages Regulation Order affecting them”.

It is provided further by section 56 (2) of the Employment Relations Promulgation 2007 as follows—

“An employer that fails to comply with subsection (1) commits an offence.”

The penalty for non-compliance is a fixed penalty of \$100. In the event of non-payment of the fixed penalty, the offender is liable on conviction—

- (a) for an individual, to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both;
- (b) for a company or corporation, to a fine not exceeding \$50,000.00.

WAGES REGULATION
(WHOLESALE AND RETAIL TRADES) ORDER 2011

IN exercise of the powers conferred upon me by section 54 (5) of the Employment Relations Promulgation 2007, having received wages regulation proposals from the Wholesale and Retail Trades Wages Council, and the provisions of the said section having been otherwise complied with, have made the following Order—

Citation and commencement

1. This Order may be cited as the Wages Regulation (Wholesale and Retail Trades) Order, 2011 and is deemed to have come into force on 1st May, 2011.

Application

2. This Order shall apply to such workers whose minimum rate of remuneration, without taking into consideration any allowance, bonus, overtime payment additional benefit whatsoever, whether in money or otherwise, does not exceed \$250.00 per week and who are employed in Fiji and Rotuma in any undertaking, any part of the business of which is wholesale trade or retail trade or wholesale and retail trade as come into any of the following categories, and their employers—

- (a) Workers employed in or about a shop on operations carried on for the purpose of selling goods or the preparation of goods for sale;
- (b) Workers employed in warehouses and stores in connection with warehousing or storing of goods which are to be sold;
- (c) Workers employed in transporting goods in connection with their sale, warehousing or storing;
- (d) Watchman employed in or about shops, warehouses or stores; and
- (e) Clerical workers

Interpretation

3. In this Order unless the context otherwise requires—

“cashier” means a worker who is engaged wholly or mainly in receiving cash for sales affected in his employer’s trade;

“casual worker” means a worker whose terms of engagement provide for the worker’s payment at the end of each day’s work and who is not re-engaged within the 24 hour period immediately following the payment;

“clerk” means a worker who is employed wholly or mainly in performing one or more of the following classes of work; sorting of incoming mails, preparation of out-going correspondences, filing correspondences or other documents, receiving or interviewing callers, arranging appointments, attendance of telephones and the receiving and recording of messages by telephone, making entries in books showing receipts to, or payment from petty cash, shorthand writing, typing of correspondence, book keeping, operating of machine equipment for accounting, calculating, addressing, franking, copying and reproducing documents and drawings, preparing stencil, duplication or composing of office correspondences;

“driver” means a worker who is employed wholly or mainly in driving a mechanically propelled vehicle for the transport of goods in connection with their sale, warehousing or sorting;

“driver/trailer” means a worker who is employed wholly or mainly in driving a mechanically propelled vehicle with a trailer for the transport of goods or persons or driven for any purpose connected with the business of his employer;

“fork-lift operator” means a worker who is employed wholly or mainly in operating a power driven fork-lift for any purpose connected with the business of his employer;

“other worker” means a worker engaged to perform tasks not described in the schedule, but a worker who possesses necessary skills for carrying out work associated with the wholesale and retail trades;

“packer” means a worker who is employed wholly or mainly in packing goods;

“public holiday” means any of the days specified in section 64 of the Promulgation or any day appointed by notification into the *Gazette* under section 66 of the Promulgation;

“Promulgation” means the Employment Relations Promulgation of 2007;

“salesman” means a worker who is wholly or mainly engaged in selling, canvassing or otherwise soliciting for sales either in a store or outside from place to place;

“sewing machinist” means a worker who is employed wholly or mainly in operating a sewing machine for any purpose connected with the business of his/her employer;

“shop assistant” means a worker who is employed wholly or mainly in a shop serving customers and performing duties incidental thereto;

“storeman” means a worker who is employed wholly or mainly in a store in checking stock in or out, issuing stock, or caring for stock;

“unskilled worker” means a worker who is employed wholly or mainly on any of the following duties that is to say, the opening, closing, sweeping and cleaning of premises and the lifting, carrying and opening of goods, or on manual work of a similar nature, or on any duty not otherwise specified in this Order in any establishment to which the provisions of the Wages Regulation (Wholesale and Retail Trades) Order 2011 applies;

“watchman” means a worker who is employed wholly or mainly on the watching or guarding of premises or stock;

“week” means a period of 7 consecutive days;

“weekday” means any day of the week other than a Sunday or public holiday

Rates of remuneration

4.—(1) The minimum hourly rates of remuneration to be paid to the classes of workers specified in the first column of the Schedule hereto, whether such workers to be paid hourly, daily, weekly or for any other periods, shall be those contained in the second column of the Schedule.

(2) The minimum rates of remuneration to be paid to casual workers of the classes specified in the first column of the Schedule shall be twenty-five per centum more than the minimum rates specified in the second column of the Schedule.

Public Holidays

5. Every worker shall be paid in respect of each public holiday for the number of hours worked (exclusive of overtime) which he/she would normally have worked on that day had it not been a public holiday.

Provided that this paragraph does not apply to any worker unless—

- (a) the worker worked for the employer throughout the last working day preceding the public holiday; and
- (b) he/she present himself/herself for employment on the first working day after such public holiday.

And provided further that sub-paragraphs (a) and (b) is deemed to have been complied with where the worker is excused from presenting himself/herself for employment by his/her employer or is prevented from presenting himself/herself for employment by illness or injury covered by a medical certificate or is prevented from presenting himself/herself for employment by any other reason which the employer considers satisfactory.

Hours of Work

6.—(1) Subject to subsections (2) and (3), an employment contract must fix at not more than 45 or 48 the maximum number of hours (exclusive of overtime) to be worked in a week by a worker bound by that contract.

(2) If the number of hours (exclusive of overtime) fixed by an employment contract to be worked by a worker in a week is 45 hours and more but less than 48 hours as mentioned in subsection (1), the parties must fix the daily working hours so that those hours are worked on not more than 5 days.

(3) If the maximum number of hours (exclusive of overtime) fixed by an employment contract to be worked by a worker in a week is 48 hours and more as mentioned in subsection (1), the parties must fix the daily working hours so that those hours are worked on not more than 6 days.

7.—(1) The normal hours of work for a watchman shall be eight hours a day for six days a week, and may be worked during any six days or any week beginning from midnight on Saturday to midnight on succeeding Saturday.

(2) In each week a watchman is entitled to one rest day hereinafter referred to as the “rostered day-off” which shall be determined by the employer and notified to the watchman no less than one week in advance of the week within which it falls.

Overtime

8.—(1) Overtime remunerations shall be paid to—

- (a) every worker employed for five days or less per working week for all time worked in excess of 9 hours on any working day during such week;
- (b) every worker employed on a six-day working week for all time worked in excess of 8 hours on any working day during such week, public holidays; and
- (c) every watchman employed on a six-day week for all time worked in excess of 8 hours on any working day and for all time worked on the rostered day-off.

(2) The remuneration payable under the provisions of sub-paragraph (1) shall in the case of paid public holidays be in addition to that payable under paragraph 5.

(3) The rate of remuneration payable for overtime worked by workers in sub-paragraphs (1) (a) and (b) shall be—

- (a) on weekdays, one and one-half times the worker's normal hourly rate of pay for the first two hours and thereafter at twice the worker's normal hourly rate of pay; or
- (b) on public holidays twice the worker's normal hourly rate of pay.

(4) At least four hours overtime pay at the rate specified in sub-paragraph 3(b) shall be paid in respect of any overtime on public holidays.

Provided that in the case of emergency which could not have been controlled or foreseen, and which is not of a regular periodical nature, where no notice has been given by the employer on a day previous to the said emergency, at least two hours overtime pay shall be paid.

Sick leave

9.—(1) Where a worker who has completed more than 3 months continuous service with the same employer and who is incapable of work because of sickness or injury, the worker is entitled to paid sick leave of not less than 10 working days during each year of service.

(2) Sick leave entitlements must not be accumulated and unused sick leave for each year automatically lapses.

(3) For a worker to be entitled to sick leave, the worker must—

- (a) as soon as reasonably practicable, notify the employer of his or her absence and the reason for it; and
- (b) produce, if requested by the employer, a written certificate signed by a registered medical practitioner, certifying the worker's incapacity for work.

Meal allowance

10. Every worker who is required to work overtime in excess of two hours on any normal working day shall be entitled to a meal allowance of \$5.50 or a decent hot meal.

Subsistence allowance

11. Every worker shall in respect of each night during the whole of which he is required by his employer to work in a location (or workplace) different from the worker's usual workplace or place of engagement for employment, be paid a subsistence allowance of not less than—

- (a) \$21.00 per day, if accommodation without meals, is provided by the employer; or
- (b) \$30.00 per day, if neither the accommodation nor meals, is provided by the employer.

Provided in the event where a worker is supplied with accommodation and meals by his employer, he/she shall not be entitled to any allowance.

Bereavement leave

12. A worker who has completed more than 3 months continuous service with the same employer is entitled to 3 days paid bereavement leave in a year, in addition to any other leave entitlement.

Occupational Health and Safety Compliance

13. The employer has a “duty of care” responsibility under section 9 of the Health and Safety at Work Act 1996 to ensure, as far as possible the workers health, safety and welfare while at work. The Health and Safety at Work (General Workplace Conditions) Regulations 2003 specifies the conditions which must be followed by all employers in any workplace to ensure that the workers are protected according to the requirements of the Act. Some of these requirements in these Regulations include the provisions of personal protective equipments, which must be provided by the employer without any cost to the workers.

Grievance Procedure

14. In the case of a grievance in the workplace, the parties shall resort to grievance procedure in the employment contract or in the absence of such contract, shall use the procedure stipulated in Schedule 4 of the Promulgation.

Labour- Management, Consultation and Cooperation Committee (LMCCC)

15. All employers with more than 20 workers are required by Sections 9(1)(d) and 9(3) of the Promulgation to have a Labour-Management Consultation and Cooperation Committee to assist them to review and develop work practices in order to promote good faith employment relations and increase productivity. Employers are to complete LMCCC forms as a general obligation to ensure the attaining of quality control.

Sexual Harassment

16. All employers are required to develop and maintain a policy to prevent sexual harassment in the workplace.

Revocation

17. The Wages Regulation (Wholesale and Retail Trades) Order, 2009 is hereby revoked with effect from 1st May, 2011.

Dated at Suva this 25th day of April, 2011.

F. N. BOLE
Minister for Labour,
Industrial Relations and Employment

SCHEDULE
(Paragraph 4)

<i>Class of Workers [First Column]</i>	<i>Minimum Hourly Remuneration No age discrimination [Second Column]</i>
Cashier	\$2.75
Clerk	\$2.75
Driver L/Goods & Group 2	\$2.75
Driver H/Goods	\$3.19
Fork Lift Operator	\$2.92
Packer	\$2.64
Salesman	\$2.75
Sewing Machinist	\$2.75
Sales Assistant	\$2.75
Storeman	\$2.75
Unskilled Worker	\$2.59
Watchman	\$2.53
Other Worker	\$2.75