

General Election of Vidhan Sabha -2009
Most Immediate / Date Bound

No.4/36/2009-1Election
Government of Haryana
Chief Secretary Office
(Election Branch)

Dated Chandigarh, the 8th October, 2009

To



The Joint Secretary to Government Haryana,
General Administration Department (in General Services-II Branch).

Subject: - Grant of paid holiday to employees on the day of poll - reg.

Sir,

I am directed to refer to the subject noted above and to enclose a copy of letter No.78/2009/EPS/701, dated 06.10.2009 received from the Election Commission of India for immediate necessary action. It is requested that suitable instructions may be issued to all concerned and a copy thereof be endorsed to the Election Commission of India for information and record under intimation to this Department.

Yours faithfully,

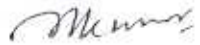


(Naresh Kumar)
Superintendent Election.


Endst.No.4/36/2009-1Election

Dated Chandigarh, the 8th October, 2009.

A copy is forwarding to the following for information and compliance :-

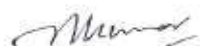

1. Financial Commissioner & Principal Secretary to Government Haryana, Labour Department.
2. Labour Commissioner, Haryana.
3. All the Deputy Commissioners in Haryana.


(Naresh Kumar)
Superintendent Election.


Endst.No.4/36/2009-1Election

Dated Chandigarh, the 8th October, 2009.

A copy is forwarded to the Chief Electoral Officer, Haryana, for information.


(Naresh Kumar)
Superintendent Election.


CC: -

- 1 PS/CS
- 2 PS/PSCM
- ✓ 3 Director, NIC

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001.

No.78/2009/EPS / 701

Dated: 6th October, 2009

To,

- ✓ 1. The Chief Secretaries to Govt. of.
Arunachal Pradesh, Haryana and Maharashtra.
2. The Chief Electoral Officers of
Arunachal Pradesh, Haryana and Maharashtra.
3. The Secretary to the Govt. of India, M/o P.P.P. Department
of Personnel and Training New Delhi.

Subject: - Grant of paid holiday to employees on the day of poll - reg.

I am directed to invite your attention to Commission's letter No.78/99-PI.N-I dated, 06.04.1999 and to state that The Goa MRF Employees Union (Trade Union) had filed a writ Petition in the High Court of Bombay at Panaji (Goa) challenging the legality of contents of para 4 of above said letter and the Hon'ble High Court has struck down para 4 of the above said letter and directed concerned authorities to take appropriate action regarding declaration of holiday(s) on the poll day(s) by the Central/State Governments in connection with General Elections and Bye-elections to the House of the People and State Legislative Assemblies.

2. The Representation of the People Act. 1951 amended in August, 1996 added a new Section 135B to the Act. The Section 135B is reproduced below:-

"135B. Grant of paid holiday to employees on the day of poll.

(1) Every person employed in any business trade, industrial undertaking or any other establishment and entitled to vote at election to the House of the People or the legislative assembly of a State shall, on the day of poll, be granted a holiday.

(2) No deduction or abatement of the wages of any such person shall be made on account of a holiday having been granted in accordance with sub-section (1) and if such person is employed on the basis that he would not

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ordinarily receive wages for such a day, he shall nonetheless be paid for such day the wages he would have drawn had not a holiday been granted to him on that day.

- (3) If an employer contravenes the provisions of sub-section (1) or sub-section (2), then such employer shall be punishable with fine which may extend to five hundred rupees.
- (4) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged."

3. The above provisions require that all establishment and shops shall be closed on the day of poll in the Constituency where a General/bye-election is to be held. However, there may be cases where a person is ordinarily resident of the Constituency and registered as an elector, may be serving/employed in an industrial undertaking or an establishment located outside the Constituency having a general/bye-election. It is clarified that in such a situation, even those electors including casual workers working outside the constituency concerned would be entitled to the benefit of a paid holiday extended under the Section 135B(1) of the R.P. Act, 1951.

4. The daily wage/casual workers are also entitled for a holiday and wages on poll day as provided in Section 135B of the R.P. Act, 1951.

5. The Commission desired that suitable instructions should be issued to all concerns and a copy thereof be endorsed to the Commission for its information and record.

6. The receipt of this letter may please be acknowledged.

Yours faithfully



SUMIT MUKHERJEE
(UNDER SECRETARY)

ITEM NO. 202

Letter No. 78/99/PLN-I Dated 6th April, 1999 addressed to Chief Secretaries and CEOs of all States and UTs, The Secretary to the Govt. of India, Ministry of P.P.&P, Deptt of Personnel & Training, New Delhi.

Subject: Grant of Paid holiday to employees on the day of poll-regarding

I am directed to invite your attention to Commission's letters No. 78/84, dated 9.11.84 and No. 78/87 dated 31.3.1987 as reproduced in Compendium of Instructions on Conduct of Elections-1 998 on items No.85 & 86 regarding declaration of holiday(s) on the poll day(s) by the Central/State Governments in connection with General Elections and Bye Elections to the House of the People and State Legislative Assemblies.

2. The Representation of the People Act, 1951 has been amended in August, 1996 and a new Section 135B has been added to the Act. The Section 135B is reproduced below:

"135B. Grant of paid holiday to employees on the day of poll-(1) Every person employed in any business trade, Industrial undertaking or any other establishment and entitled to vote at election to the House of the People or the Legislative Assembly of a State shall on the day of poll be granted a holiday.

(2) No deduction or abatement of the wages of any such person shall be made on account of a holiday having been granted in accordance with sub-section (1) and if such person is employed on the basis that he would not ordinarily receive wages for such a day, he shall nonetheless be paid for such day the wages he would have drawn had not a holiday been granted to him on that day.

(3) If an employer contravenes the provisions of sub-section (1) or sub-section (2), then such employer shall be punishable with fine which may extend to five hundred rupees.

(4) This section shall not apply to any elector whose absence may cause danger or substantial loss in respect of the employment in which he is engaged"

3. The above provisions require that all establishments and shops shall be closed on the day of poll in the Constituency where a General Election/bye-election is to be held. However, there may be cases where a person is ordinarily resident of the Constituency and registered as an elector, may be serving/employed in an industrial undertaking or an establishment located outside the Constituency having a general/bye- election. It is clarified that in such a situation, even those electors including casual workers working outside the Constituency concerned would be entitled to the benefit of a paid holiday extended under the Section 135B(1) of R.P. Act, 1951.

4. Further, there are industrial undertakings/establishments which are working on shift basis. A doubt has been raised whether paid holiday is to be declared only for the period/shift during which a poll is to be taken and not for other shifts which may commence after the conclusion of the poll. It is clarified that a holiday may be declared only for the shift during which a poll is to be taken. However, it should be ensured that there should be sufficient time gap between the close of poll and commencement of the shift duty.

The daily wage/casual workers are also entitled for a holiday and wages on poll day as provided in Section 135B of R.P.Act, 1951.

6. The Commission desires that suitable instructions should be issued to all concerned and a copy thereof be endorsed to the Commission for its information and record.

The receipt of this letter may please be acknowledged.