

LABOUR LAWS IN INDIA

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1. INTRODUCTION

Labour law also known as employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. As such, it mediates many aspects of the relationship between trade unions, employers and employees. In other words, Labour law defines the rights and obligations as workers, union members and employers in the workplace. Generally, labour law covers:

- Industrial relations – certification of unions, labour-management relations, collective bargaining and unfair labour practices;
- Workplace health and safety;
- Employment standards, including general holidays, annual leave, working hours, unfair dismissals, minimum wage, layoff procedures and severance pay.

There are two broad categories of labour law. First, collective labour law relates to the tripartite relationship between employee, employer and union. Second, individual labour law concerns employees' rights at work and through the contract for work.

The labour movement has been instrumental in the enacting of laws protecting labour rights in the 19th and 20th centuries. Labour rights have been integral to the social and economic development since the industrial revolution.

1.1. History of Labour laws

Labour law arose due to the demands of workers for better conditions, the right to organize, and the simultaneous demands of employers to restrict the powers of workers in many organizations and to keep labour costs low. Employers' costs can increase due to workers organizing to win higher wages, or by laws imposing costly requirements, such as health and safety or equal opportunities conditions. Workers' organizations, such as trade unions, can also transcend purely industrial disputes, and gain political power - which some employers may oppose. The state of labour law at any one time is therefore both the product of, and a component of, struggles between different interests in society.

International Labour Organisation (ILO) was one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I. In Great Britain, the Whitley

Commission, a subcommittee of the Reconstruction Commission, recommended in its July 1918 Final Report that "industrial councils" be established throughout the world. The British Labour Party had issued its own reconstruction programme in the document titled *Labour and the New Social Order*. In February 1918, the third Inter-Allied Labour and Socialist Conference (representing delegates from Great Britain, France, Belgium and Italy) issued its report, advocating an international labour rights body, an end to secret diplomacy, and other goals. And in December 1918, the American Federation of Labor (AFL) issued its own distinctively apolitical report, which called for the achievement of numerous incremental improvements via the collective bargaining process.

As the war drew to a close, two competing visions for the post-war world emerged. The first was offered by the International Federation of Trade Unions (IFTU), which called for a meeting in Berne in July 1919. The Berne meeting would consider both the future of the IFTU and the various proposals which had been made in the previous few years. The IFTU also proposed including delegates from the Central Powers as equals. Samuel Gompers, president of the AFL, boycotted the meeting, wanting the Central Powers delegates in a subservient role as an admission of guilt for their countries' role in the bringing about war. Instead, Gompers favored a meeting in Paris which would only consider President Woodrow Wilson's Fourteen Points as a platform. Despite the American boycott, the Berne meeting went ahead as scheduled. In its final report, the Berne Conference demanded an end to wage labour and the establishment of socialism. If these ends could not be immediately achieved, then an international body attached to the League of Nations should enact and enforce legislation to protect workers and trade unions.

The British proposed establishing an international parliament to enact labour laws which each member of the League would be required to implement. Each nation would have two delegates to the parliament, one each from labour and management. An international labour office would collect statistics on labour issues and enforce the new international laws. Philosophically opposed to the concept of an international parliament and convinced that international standards would lower the few protections achieved in the United States, Gompers proposed that the international labour body be authorized only to make recommendations, and that enforcement be left up to the League of Nations. Despite vigorous opposition from the British, the American proposal was adopted.

The Americans made 10 proposals. Three were adopted without change: That labour should not be treated as a commodity; that all workers had the right to a wage sufficient to live on; and that women should receive equal pay for equal work. A proposal protecting the freedom of speech, press, assembly, and association was amended to include only freedom of association. A proposed ban on the international shipment of goods made by children under the age of 16 was amended to

ban goods made by children under the age of 14. A proposal to require an eight-hour work day was amended to require the eight-hour work day *or* the 40-hour work week (an exception was made for countries where productivity was low). Four other American proposals were rejected. Meanwhile, international delegates proposed three additional clauses, which were adopted: One or more days for weekly rest; equality of laws for foreign workers; and regular and frequent inspection of factory conditions.

The Commission issued its final report on 4 March 1919, and the Peace Conference adopted it without amendment on 11 April. The report became Part XIII of the Treaty of Versailles. (The Treaty of Versailles was one of the peace treaties at the end of World War I. It ended the state of war between Germany and the Allied Powers. It was signed on 28 June 1919.)

The first annual conference (referred to as the International Labour Conference, or ILC) began on 29th October 1919 in Washington DC and adopted the first six International Labour Conventions, which dealt with hours of work in industry, unemployment, maternity protection, night work for women, minimum age and night work for young persons in industry. The prominent French socialist Albert Thomas became its first Director General. The ILO became a member of the United Nations system after the demise of the League in 1946.

1.2. Purpose of labour legislation

Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils three crucial roles:

- it establishes a legal system that facilitates productive individual and collective employment relationships, and therefore a productive economy;
- by providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving harmonious industrial relations based on workplace democracy;
- it provides a clear and constant reminder and guarantee of fundamental principles and rights at work which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced.

But experience shows that labour legislation can only fulfill these functions effectively if it is responsive to the conditions on the labour market and the needs of the parties involved. The most efficient way of ensuring that these conditions and needs are taken fully into account is if those concerned are closely involved in the formulation of the legislation through processes of social

dialogue. The involvement of stakeholders in this way is of great importance in developing a broad basis of support for labour legislation and in facilitating its application within and beyond the formal structured sectors of the economy.

1.3. Evolution of Labour law in India

The law relating to labour and employment is also known as Industrial law in India. The history of labour legislation in India is interwoven with the history of British colonialism. The industrial/labour legislations enacted by the British were primarily intended to protect the interests of the British employers. Considerations of British political economy were naturally paramount in shaping some of these early laws. Thus came the Factories Act. It is well known that Indian textile goods offered stiff competition to British textiles in the export market and hence in order to make India labour costlier the Factories Act was first introduced in 1883 because of the pressure brought on the British parliament by the textile magnates of Manchester and Lancashire. Thus India received the first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours. While the impact of this measure was clearly welfarist the real motivation was undoubtedly protectionist.

The earliest Indian statute to regulate the relationship between employer and his workmen was the Trade Dispute Act, 1929 (Act 7 of 1929). Provisions were made in this Act for restraining the rights of strike and lock out but no machinery was provided to take care of disputes.

The original colonial legislation underwent substantial modifications in the post-colonial era because independent India called for a clear partnership between labour and capital. The content of this partnership was unanimously approved in a tripartite conference in December 1947 in which it was agreed that labour would be given a fair wage and fair working conditions and in return capital would receive the fullest co-operation of labour for uninterrupted production and higher productivity as part of the strategy for national economic development and that all concerned would observe a truce period of three years free from strikes and lockouts. Ultimately the Industrial Disputes Act (the Act) brought into force on 01.04.1947 repealing the Trade Disputes Act 1929 has since remained on statute book.

1.4. Constitutional provisions with regard to labour laws

The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and

Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy.

Labour is a concurrent subject in the Constitution of India implying that both the Union and the state governments are competent to legislate on labour matters and administer the same. The bulk of important legislative acts have been enacted by the Parliament.

Constitutional Status

| Union List | Concurrent List |
|--|--|
| Entry No. 55 : Regulation of labour and safety in mines and oil fields | Entry No. 22: Trade Unions; industrial and labour disputes. |
| Entry No. 61: Industrial disputes concerning Union employees | Entry No.23: Social Security and insurance, employment and unemployment. |
| Entry No.65: Union agencies and institutions for "Vocational ...training..." | Entry No. 24: Welfare of about including conditions of work, provident funds, employers 'invalidity and old age pension and maternity benefit. |

The legislations can be categorized as follows:

- 1) Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement.
- 2) Labour laws enacted by Central Government and enforced both by Central and State Governments.
- 3) Labour laws enacted by Central Government and enforced by the State Governments.
- 4) Labour laws enacted and enforced by the various State Governments which apply to respective States.

The Constitution of India provides detailed provisions for the rights of the citizens and also lays down the Directive Principles of State Policy which set an aim to which the activities of the state are to be guided. These Directive Principles provide:

- a. for securing the health and strength of employees, men and women;
- b. that the tender age of children are not abused;
- c. that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- d. just and humane conditions of work and maternity relief are provided; and
- e. that the Government shall take steps, by suitable legislation or in any other way, to secure the participation of employee in the management of undertakings, establishments or other organisations engaged in any industry.

1.5 Labour Policy of India

Labour policy in India has been evolving in response to specific needs of the situation to suit requirements of planned economic development and social justice and has two fold objectives, namely maintaining industrial peace and promoting the welfare of labour.

Labour Policy Highlights

- Creative measures to attract public and private investment.
- Creating new jobs
- New Social security schemes for workers in the unorganized sector.
- Social security cards for workers.
- Unified and beneficial management of funds of Welfare Boards.
- Reprioritization of allocation of funds to benefit vulnerable workers.
- Model employee-employer relationships.
- Long term settlements based on productivity.
- Vital industries and establishments declared as `public utilities`.
- Special conciliation mechanism for projects with investments of Rs.150 crores or more.
- Industrial Relations committees in more sectors.

- Labour Law reforms in tune with the times. Empowered body of experts to suggest required changes.
- Statutory amendments for expediting and streamlining the mechanism of Labour Judiciary.
- Amendments to Industrial Disputes Act in tune with the times.
- Efficient functioning of Labour Department.
- More labour sectors under Minimum Wages Act.
- Child labour act to be aggressively enforced.
- Modern medical facilities for workers.
- Rehabilitation packages for displaced workers.
- Restructuring in functioning of employment exchanges. Computerization and updating of data base.
- Revamping of curriculum and course content in industrial training.
- Joint cell of labour department and industries department to study changes in laws and rules.

2. LABOUR LAWS IN INDIA

The term 'labour' means productive work especially physical work done for wages. Labour law also known as employment law is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations. There are two broad categories of labour law. First, collective labour law relates to the tripartite relationship between employee, employer and union. Second, individual labour law concerns employees' rights at work and through the contract for work.

The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". The prevailing social and economic conditions have been largely influential in shaping the Indian labour legislation, which regulate various aspects of work such as the number of hours of work, wages, social security and facilities provided.

The labour laws of independent India derive their origin, inspiration and strength partly from the views expressed by important nationalist leaders during the days of national freedom struggle, partly from the debates of the Constituent Assembly and partly from the provisions of the Constitution and the International Conventions and Recommendations. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The Labour Laws were also influenced by important human rights and the conventions and standards that have emerged from the United Nations. These include right to work of one's choice, right against discrimination, prohibition of child labour, just and humane conditions of work, social security, protection of wages, redress of grievances, right to organize and form trade unions, collective bargaining and participation in management. The labour laws have also been significantly influenced by the deliberations of the various Sessions of the Indian Labour Conference and the International Labour Conference. Labour legislations have also been shaped and influenced by the recommendations of the various National Committees and Commissions such as First National Commission on Labour (1969) under the Chairmanship of Justice Gajendragadkar, National Commission on Rural Labour (1991), Second National Commission on Labour (2002) under the Chairmanship of Shri Ravindra Varma etc. and judicial pronouncements on labour related matters specifically pertaining to minimum wages, bonded labour, child labour, contract labour etc.

Under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result , a large number of labour laws have been enacted catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc.

The legislations can be categorized as follows:

- 1) Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement.
- 2) Labour laws enacted by Central Government and enforced both by Central and State Governments.
- 3) Labour laws enacted by Central Government and enforced by the State Governments.
- 4) Labour laws enacted and enforced by the various State Governments which apply to respective States.

(a) Labour laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement

1. The Employees' State Insurance Act, 1948
2. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
3. The Dock Workers (Safety, Health and Welfare) Act, 1986
4. The Mines Act, 1952
5. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976
6. The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labor Welfare Fund Act, 1976
7. The Mica Mines Labour Welfare Fund Act, 1946
8. The Beedi Workers Welfare Cess Act, 1976
9. The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
10. The Cine Workers Welfare (Cess) Act, 1981
11. The Beedi Workers Welfare Fund Act, 1976
12. The Cine Workers Welfare Fund Act, 1981

(b) Labour laws enacted by Central Government and enforced both by Central and State Governments

13. The Child Labour (Prohibition and Regulation) Act, 1986.
14. The Building and Other Constructions Workers' (Regulation of Employment and Conditions of Service) Act, 1996.
15. The Contract Labour (Regulation and Abolition) Act, 1970.
16. The Equal Remuneration Act, 1976.
17. The Industrial Disputes Act, 1947.

18. The Industrial Employment (Standing Orders) Act, 1946.
19. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
20. The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988
21. The Maternity Benefit Act, 1961
22. The Minimum Wages Act, 1948
23. The Payment of Bonus Act, 1965
24. The Payment of Gratuity Act, 1972
25. The Payment of Wages Act, 1936
26. The Cine Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
27. The Building and Other Construction Workers Cess Act, 1996
28. The Apprentices Act, 1961
29. Unorganized Workers Social Security Act, 2008
30. Working Journalists (Fixation of Rates of Wages Act, 1958
31. Merchant Shipping Act, 1958
32. Sales Promotion Employees Act, 1976
33. Dangerous Machines (Regulation) Act, 1983
34. Dock Workers (Regulation of Employment) Act, 1948
35. Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997
36. Private Security Agencies (Regulation) Act, 2005

(c) Labour laws enacted by Central Government and enforced by the State Governments

37. The Employers' Liability Act, 1938
38. The Factories Act, 1948
39. The Motor Transport Workers Act, 1961
40. The Personal Injuries (Compensation Insurance) Act, 1963
41. The Personal Injuries (Emergency Provisions) Act, 1962
42. The Plantation Labour Act, 1951
43. The Sales Promotion Employees (Conditions of Service) Act, 1976
44. The Trade Unions Act, 1926
45. The Weekly Holidays Act, 1942

46. The Working Journalists and Other Newspapers Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
47. The Workmen's Compensation Act, 1923
48. The Employment Exchange (Compulsory Notification of Vacancies) Act, 1959
49. The Children (Pledging of Labour) Act 1938
50. The Bonded Labour System (Abolition) Act, 1976
51. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966

State Labour Laws

1. Maharashtra

| Sl.No. | Name of the labour legislation | Central Rules | State Rules |
|---------------|--|---|---|
| 1 | Apprentices Act , 1961 | Apprentices Rules, 1961 | Nil |
| 2 | The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 | | |
| 3 | <u>Beedi Workers Welfare Fund Act, 1976</u> | | |
| 4 | The Beedi Workers Welfare Cess Act, 1976 | The Beedi Worker's Welfare Cess Rules, 1977 | |
| 5 | The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996 | | |
| 6 | Bonded Labour System (Abolition) Act, 1976 | | |
| 7 | Contract Labour (Regulation & Abolition) Act , 1970 | | Maharashtra Contract Labour (Regulation and Abolition) Rules , 1971 |
| 8 | The Child Labour (Prohibition | | |

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| | And Regulation) Act, 1986 | | |
| 9 | Children (Pledging of Labour) Act, 1933 | | |
| 10 | The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 | The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984 | |
| 11 | The Cine Workers' Welfare Fund Act, 1981. | | |
| 12 | The Cine Workers Welfare Cess Act, 1981 | | |
| 13 | The Dock Workers (Regulation of Employment) Act, 1948 | | |
| 14 | The Dock Workers (Safety, Health & Welfare) Act, 1986 | | |
| 15 | The Dock Workers (Regulation of Employment) (inapplicability to Major Ports) Act, 1997 | | |
| 16 | Employee State Insurance Act , 1948 | Employees' State Insurance Rules, 1950 Employees' State Insurance (General) Regulations, 1950 | |
| 17 | Employee's Provident Fund and Miscellaneous Provisions Act , 1952 | Employees' Deposit Linked Insurance Scheme , 1976 | |
| 18 | Employment Exchanges (Compulsory Notification of Vacancies) Act , 1959 | Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 | |

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| 19 | The Employment of Manual Scavengers and Construction of Dry latrines Prohibition Act, 1993 | | |
| 20 | Equal Remuneration Act , 1976 | Equal Remuneration Rules, 1976 | |
| 21 | Factories Act, 1948 | | Maharashtra Factories Rules, 1963 |
| 22 | The Fatal Accidents Act, 1855 | | |
| 23 | Industrial Disputes Act, 1947 | | Industrial disputes (Bombay) rules , 1957 |
| 24 | | | The Bombay Industrial Relations Act, 1946 |
| 25 | Industrial Employment and Standing Orders Act , 1946 | | Bombay Industrial Employment [Standing Orders] Rules, 1959 |
| 26 | The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 | The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 1983 | |
| 27 | The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976 | | |
| 28 | The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Cess Act, 1976 | | |
| 29 | Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain | | |

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| | Establishments) Act, 1988 | | |
| 30 | | | The Bombay Labour Welfare Fund Act, 1953 |
| 31 | Maternity Benefit Act , 1961 | | Maharashtra Maternity Benefit Rules, 1965 |
| 32 | Minimum Wages Act , 1948 | | Maharashtra Minimum Wages Rules 1963 |
| 33 | | | Maharashtra Workmen's Minimum House Rent Allowance Act, 1986, |
| 34 | | | The Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 |
| 35 | The Mica Mines Labour Welfare Fund Act, 1946 | | |
| 36 | The Limestone & Dolomite Mines Labour Welfare Fund Act, 1972 | | |
| 37 | The Motor Transport Workers Act, 1961 | | |
| 38 | Payment of Bonus Act , 1965 | Payment of Bonus Rules, 1975 | |
| 39 | Payment of Gratuity Act , 1972 | | Payment of Gratuity (Maharashtra) Rules, 1972 |
| 40 | Payment of Wages Act , 1936 | | Maharashtra Payment of wages Rules, 1963 |
| 41 | | | Bombay Shops & Establishment Act, 1948 |

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| 42 | The Plantation Labour Act, 1951 | | |
| 43 | The Public Liability Insurance Act, 1991 | | |
| 44 | The Sales Promotion Employees (Conditions of Service) Act, 1976 | The Sales Promotion Employees (Conditions of Service) Rules, 1976 | |
| 45 | Trade Unions Act , 1926 | | Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 |
| 46 | | | Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 |
| 47 | The Unorganized Workers' Social Security Act, 2008 | The Unorganized Workers' Social Security Rules, 2008 | |
| 48 | The War Injuries Ordinance Act, 1943 | | |
| 49 | The War Injuries (Compensation Insurance) Act, 1943 | | |
| 50 | The Weekly Holidays Act, 1942 | | Repealed in Maharashtra by Mah. Act 26 of 1961 |
| 51 | Workmen's Compensation Act, 1923 | | Bombay Workmen's Compensation Rules, 1934 |
| 52 | The Working Journalist (Fixation of Rates of Wages) Act, 1958 | | |
| 53 | The Working Journalists and other Newspaper Employees' | The Working Journalists and other Newspaper | |

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| | (Conditions of Service and Misc. Provisions) Act, 1955 | Employees' (Conditions of Service and Misc. Provisions) Rules, 1957 | |
| 54 | Labour Courts (Practice and Procedure) Rules, 1975 | | |

2. Gujarat

| Sl.No. | Name of the labour legislation | Central Rules | State Rules |
|--------|--|---|---|
| 1 | Apprentices Act , 1961 | Apprentices Rules, 1961 | |
| 2 | The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 | | |
| 3 | <u>Beedi Workers Welfare Fund Act, 1976</u> | | |
| 4 | The Beedi Workers Welfare Cess Act, 1976 | The Beedi Worker's Welfare Cess Rules, 1977 | |
| 5 | The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996 | | |
| 6 | Bonded Labour System (Abolition) Act, 1976 | | |
| 7 | Contract Labour (Regulation & Abolition) Act , 1970 | | Contract Labour (Regulation and Abolition) Gujarat Rules , 1972 |
| 8 | The Child Labour (Prohibition And Regulation) Act, 1986 | | |

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| 9 | Children (Pledging of Labour) Act, 1933 | | |
| 10 | The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981 | The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984 | |
| 11 | The Cine Workers' Welfare Fund Act, 1981. | | |
| 12 | The Cine Workers Welfare Cess Act, 1981 | | |
| 13 | The Dock Workers (Regulation of Employment) Act, 1948 | | |
| 14 | The Dock Workers (Safety, Health & Welfare) Act, 1986 | | |
| 15 | The Dock Workers (Regulation of Employment) (inapplicability to Major Ports) Act, 1997 | | |
| 16 | Employee State Insurance Act , 1948 | Employees' State Insurance Rules, 1950 Employees' State Insurance (General) Regulations, 1950 | |
| 17 | Employee's Provident Fund and Miscellaneous Provisions Act , 1952 | Employees' Deposit Linked Insurance Scheme , 1976 | |
| 18 | Employment Exchanges (Compulsory Notification of Vacancies) Act , 1959 | Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 | |
| 19 | The Employment of Manual Scavengers and Construction of | | |

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| | Dry latrines Prohibition Act, 1993 | | |
| 20 | Equal Remuneration Act , 1976 | Equal Remuneration Rules, 1976 | |
| 21 | Factories Act, 1948 | | Gujarat Factories Rules, 1963 |
| | | | Gujarat Payment of Unemployment Allowance to Workmen in Factories Act, 1981 |
| 22 | The Fatal Accidents Act, 1855 | | |
| 23 | | | Gujarat Physically Handicapped Persons (Employment in Factories) Act and Rules, 1982 |
| 24 | Industrial Disputes Act, 1947 | | Industrial disputes (Gujarat) rules , 1966 |
| 25 | | | The Bombay Industrial Relations Act, 1946 |
| 26 | Industrial Employment and Standing Orders Act , 1946 | | Gujarat Industrial Employment [Standing Orders] Rules, 1982 |
| 27 | The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 | The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 1983 | |
| 28 | The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines | | |

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| | Labour Welfare Fund Act, 1976 | | |
| 29 | The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Cess Act, 1976 | | |
| 30 | Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 | | |
| 31 | | | The Bombay Labour Welfare Fund Act, 1953 |
| 32 | Maternity Benefit Act , 1961 | | Gujarat Maternity Benefit Rules, 1964 |
| 33 | Minimum Wages Act , 1948 | | Gujarat Minimum Wages Rules, 1961 |
| 34 | The Mica Mines Labour Welfare Fund Act, 1946 | | |
| 35 | The Limestone & Dolomite Mines Labour Welfare Fund Act, 1972 | | |
| 36 | The Motor Transport Workers Act, 1961 | | The Motor Transport Workers Gujarat Rules, 1965 |
| 37 | Payment of Bonus Act , 1965 | Payment of Bonus Rules, 1975 | |
| 38 | Payment of Gratuity Act , 1972 | | Payment of Gratuity (Gujarat) Rules, 1976 |
| 39 | Payment of Wages Act , 1936 | | Gujarat Payment of Wages Rules, 1963 |
| 40 | | | Bombay Shops & |

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| | | | Establishment Act, 1948 |
| 41 | The Plantation Labour Act, 1951 | | |
| 42 | The Public Liability Insurance Act, 1991 | | |
| 43 | The Sales Promotion Employees (Conditions of Service) Act, 1976 | The Sales Promotion Employees (Conditions of Service) Rules, 1976 | |
| 44 | Trade Unions Act , 1926 | | |
| 45 | The Unorganized Workers' Social Security Act, 2008 | The Unorganized Workers' Social Security Rules, 2008 | |
| 46 | The War Injuries Ordinance Act, 1943 | | |
| 47 | The War Injuries (Compensation Insurance) Act, 1943 | | |
| 48 | The Weekly Holidays Act, 1942 | | |
| 49 | Workmen's Compensation Act, 1923 | | Gujarat Workmen's Compensation Rules, 1967 |
| 50 | The Working Journalist (Fixation of Rates of Wages) Act, 1958 | | |
| 51 | The Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Act, 1955 | The Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Rules, 1957 | |
| 52 | Labour Courts (Practice and Procedure) Rules, 1975 | | |

3. Madhya Pradesh

| Sl.No. | Name of the labour legislation | Central Rules | State Rules |
|--------|--|--|--|
| 1 | Apprentices Act , 1961 | Apprentices Rules, 1961 | |
| 2 | The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 | | |
| 3 | <u>Beedi Workers Welfare Fund Act, 1976</u> | | |
| 4 | The Beedi Workers Welfare Cess Act, 1976 | The Beedi Worker's Welfare Cess Rules, 1977 | |
| 5 | The Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996 | | |
| 6 | Bonded Labour System (Abolition) Act, 1976 | | |
| 7 | Contract Labour (Regulation & Abolition) Act , 1970 | | Contract Labour (Regulation and Abolition) Madhya Pradesh Rules , 1973 |
| 8 | The Child Labour (Prohibition And Regulation) Act, 1986 | | |
| 9 | Children (Pledging of Labour) Act, 1933 | | |
| 10 | The Cinema Workers and Cinema Theatre Workers (Regulation of Employment) Act, | The Cinema Workers and Cinema Theatre Workers (Regulation of | |

| | | | |
|----|--|--|--------------------------------------|
| | 1981 | Employment) Rules, 1984 | |
| 11 | The Cine Workers' Welfare Fund Act, 1981. | | |
| 12 | The Cine Workers Welfare Cess Act, 1981 | | |
| 13 | The Dock Workers (Regulation of Employment) Act, 1948 | | |
| 14 | The Dock Workers (Safety, Health & Welfare) Act, 1986 | | |
| 15 | The Dock Workers (Regulation of Employment) (inapplicability to Major Ports) Act, 1997 | | |
| 16 | Employee State Insurance Act , 1948 | Employees' State Insurance Rules, 1950 Employees' State Insurance (General) Regulations, 1950 | |
| 17 | Employee's Provident Fund and Miscellaneous Provisions Act , 1952 | Employees' Deposit Linked Insurance Scheme , 1976 | |
| 18 | Employment Exchanges (Compulsory Notification of Vacancies) Act , 1959 | Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 | |
| 19 | The Employment of Manual Scavengers and Construction of Dry latrines Prohibition Act, 1993 | | |
| 20 | Equal Remuneration Act , 1976 | Equal Remuneration Rules, 1976 | |
| 21 | Factories Act, 1948 | | Madhya Pradesh Factories Rules, 1962 |

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| 22 | The Fatal Accidents Act, 1855 | | |
| 24 | Industrial Disputes Act, 1947 | | |
| 25 | | | Madhya Pradesh Industrial Relations Act, 1960 and Madhya Pradesh Industrial Relations Rules, 1961 |
| 26 | Industrial Employment and Standing Orders Act , 1946 | | Madhya Pradesh Industrial Employment (Standing Orders) Act , 1961 |
| 27 | The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 | | Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) M.P. Rule, 1981 |
| 28 | The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976 | | |
| 29 | The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Cess Act, 1976 | | |
| 30 | Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988 | | |
| 31 | | | Labour Welfare Fund Act |
| 32 | Maternity Benefit Act , 1961 | | Maternity Benefit Rules |
| 33 | Minimum Wages Act , 1948 | | Minimum Wages Rules |
| 34 | The Mica Mines Labour Welfare Fund Act, 1946 | | |

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|----|---|---|--|
| 35 | The Limestone & Dolomite Mines Labour Welfare Fund Act, 1972 | | |
| 36 | The Motor Transport Workers Act, 1961 | | |
| 37 | Payment of Bonus Act , 1965 | Payment of Bonus Rules, 1975 | |
| 38 | Payment of Gratuity Act , 1972 | | Payment of Gratuity Rules |
| 39 | Payment of Wages Act , 1936 | | Madhya Pradesh Payment of Wages Rules, 1962 |
| 40 | | | Madhya Pradesh Shops & Establishment Act, 1958 |
| 41 | The Plantation Labour Act, 1951 | | |
| 42 | The Public Liability Insurance Act, 1991 | | |
| 43 | The Sales Promotion Employees (Conditions of Service) Act, 1976 | The Sales Promotion Employees (Conditions of Service) Rules, 1976 | |
| 44 | Trade Unions Act , 1926 | | |
| 45 | The Unorganized Workers' Social Security Act, 2008 | The Unorganized Workers' Social Security Rules, 2008 | |
| 46 | The War Injuries Ordinance Act, 1943 | | |
| 47 | The War Injuries (Compensation Insurance) Act, 1943 | | |
| 48 | The Weekly Holidays Act, 1942 | | |
| 49 | Workmen's Compensation Act, | | Workmen's Compensation (Madhya Pradesh) Rules, |

| | | | |
|----|---|---|---|
| | 1923 | | 1962, Madhya Pradesh Workmen's Compensation (Occupational Diseases) Rules, 1963 |
| 50 | The Working Journalist (Fixation of Rates of Wages) Act, 1958 | | |
| 51 | The Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Act, 1955 | The Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Rules, 1957 | |
| 52 | Labour Courts (Practice and Procedure) Rules, 1975 | | |

3. Classification of LABOUR LAWS in India

Labour Laws may be classified under the following heads:

I. Laws related to Industrial Relations such as:

1. Trade Unions Act, 1926
2. Industrial Employment Standing Order Act, 1946.
3. Industrial Disputes Act, 1947.

II. Laws related to Wages such as:

4. Payment of Wages Act, 1936
5. Minimum Wages Act, 1948
6. Payment of Bonus Act, 1965.
7. Working Journalists (Fixation of Rates of Wages Act, 1958

III. Laws related to Working Hours, Conditions of Service and Employment such as:

8. Factories Act, 1948.
9. Plantation Labour Act, 1951.
10. Mines Act, 1952.
11. Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Act, 1955.
12. Merchant Shipping Act, 1958.
13. Motor Transport Workers Act, 1961.

14. Beedi & Cigar Workers (Conditions of Employment) Act, 1966.
15. Contract Labour (Regulation & Abolition) Act, 1970.
16. Sales Promotion Employees Act, 1976.
17. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
18. Dock Workers (Safety, Health & Welfare) Act, 1986.
19. Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996.
20. Building and Other Construction Workers Welfare Cess Act, 1996
21. Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
22. Dangerous Machines (Regulation) Act, 1983
23. Dock Workers (Regulation of Employment) Act, 1948
24. Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997
25. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
26. Industrial Employment (Standing Orders) Act, 1946
27. Mines and Mineral (Development and Regulation Act, 1957
28. Plantation Labour Act, 1951
29. Private Security Agencies (Regulation) Act, 2005

IV. Laws related to Equality and Empowerment of Women such as:

30. Maternity Benefit Act, 1961
31. Equal Remuneration Act, 1976.

V. Laws related to Deprived and Disadvantaged Sections of the Society such as:

32. Bonded Labour System (Abolition) Act, 1976
33. Child Labour (Prohibition & Regulation) Act, 1986
34. Children (Pledging of Labour) Act, 1933

VI. Laws related to Social Security such as:

35. Workmen's Compensation Act, 1923.
36. Employees' State Insurance Act, 1948.
37. Employees' Provident Fund & Miscellaneous Provisions Act, 1952.
38. Payment of Gratuity Act, 1972.
39. Employers' Liability Act, 1938
40. Beedi Workers Welfare Cess Act, 1976
41. Beedi Workers Welfare Fund Act, 1976
42. Cine workers Welfare Cess Act, 1981
43. Cine Workers Welfare Fund Act, 1981
44. Fatal Accidents Act, 1855
45. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976
46. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976
47. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972
48. Mica Mines Labour Welfare Fund Act, 1946

49. Personal Injuries (Compensation Insurance) Act, 1963
50. Personal Injuries (Emergency Provisions) Act, 1962
51. Unorganised Workers' Social Security Act, 2008

4a. APPRENTICES ACT, 1961

The main purpose of the Act is to provide practical training to technically qualified persons in various trades. The objective is promotion of new skilled manpower. The scheme is also extended to engineers and diploma holders.

The Act applies to areas and industries as notified by Central government. [Section 1(4)].

Scheme of the Act

There are 38 Sections in total and 1 Schedule. This Schedule is about modifications in the Workmen's Compensation Act, 1923 with regard to its application to apprentices under the Apprentices Act, 1961.

Obligation of Employer

- Every employer is under obligation to provide the apprentice with the training in his trade in accordance with the provisions of this Act and the rules made there under.
- If the employer is not himself qualified in the trade, he has to ensure that a person who possesses the prescribed qualification is placed in charge of the training of the apprentice.
- Every employer has to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices; and
- Every employer is under obligation to take apprentices in prescribed ratio of the skilled workers in his employment in different trades. [Section 11].
- In every trade, there will be reserved places for scheduled castes and scheduled tribes. [Section 3A]. Ratio of trade apprentices to workers shall be determined by Central Government.
- Employer can engage more number of apprentices than prescribed minimum. [Section 8(1)].
- The employer has to make arrangements for practical training of apprentice [Section 9(1)].
- Employer will pay stipends to apprentices at prescribed rates. If the employees are less than 250, 50% of cost is shared by Government. If employer is employing more than 250 workers, he has to bear full cost of training.

Obligations of Apprentices

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely:

- To learn his trade conscientiously and diligently and endeavour to qualify himself as a skilled craftsman before the expiry of the period of training;
- To attend practical and instructional classes regularly;
- To carry out all lawful orders of his employer and superiors in the establishments; and
- To carry out his obligations under the contract of apprenticeship.

In case of graduate or technician apprentice or technician (vocational) apprentice, apart from the afore stated obligations, the Act imposes further obligation to learn his subject in Engineering or Technology or Vocational Course. (Section 12)

Who can be an Apprentice - Apprentice should be of minimum age of 14 years and he should satisfy the standard of education and physical fitness as prescribed. [Section 3].

Reservation of training places for scheduled castes

Section 3A provides that in every designated trade, training places shall be reserved by the employer for the Scheduled Castes and Scheduled Tribes (as defined in clauses (24) and (25) of Article 366 of the Constitution) and where there is more than one designated trade in an establishment, such training places shall be reserved on the basis on the total number of apprentices in all the designated trades in such establishment. The reservation shall be such as may be prescribed having regard to the population of the Scheduled Castes and Scheduled Tribes in the State concerned.

Duration of Training - Duration of training period and ratio of apprentices to skilled workers for different trades has been prescribed in Apprenticeship Rules, 1991. Duration of Apprenticeship may be from 6 months to 4 years depending on the trade, as prescribed in Rules. Period of training is determined by National Council for training in Vocational Trades (established by Government of India)-(Section 6).

Contract with Apprentice – Apprentice appointed has to execute a contract of apprenticeship with employer. The contract has to be registered with Apprenticeship Adviser. If apprentice is minor, agreement should be signed by his guardian. [Section 4(1)] Apprentice is entitled to casual leave of 12 days, medical leave of 15 days and extraordinary leave of 10 days in a year.

Date of commencement of apprenticeship training

The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into.

Registration

- The employer shall send the contract to the Apprenticeship adviser for registration within three months of the date on which it was signed (Rule 6).
- The contract shall be registered by the Apprenticeship Adviser on being satisfied that the person described as an apprentice in the said contract is qualified under this Act.
- Registration of contract of apprenticeship under Section 4(4) is not a necessary ingredient of definition of apprentice. (Bhaskaran v. KSEB (1986) 1 LLN 869).

Terms and conditions of contract

The contract may contain such terms and conditions as may be agreed to by the parties to the contract. In case, the Central Government after consulting the Central Apprenticeship Council makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training then the terms and conditions of every contract relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

Novation of contract of apprenticeship:

Where an employer is for any reason unable to fulfill his obligations under the contract and with approval of the Apprenticeship Adviser it is agreed between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as an apprentice under the other employer for the unexpired portion of the period of apprenticeship training, the agreement, on registration with the Apprenticeship Adviser shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and other employer. Such contract on and from the date of such registration shall be terminated with the first employer and no obligation under that contract shall be enforceable (Section 5).

Payment to apprentices

This is a contractual as well as statutory obligation imposed under Section 13 of the Act that an employer pays to every apprentice during the period of training such stipend at a rate not less than the prescribed minimum rate and this rate will be specified in the contract. An employer shall pay such stipend at such intervals and subject to such conditions as may be prescribed. However, an apprentice shall not be paid on the basis of piece-work nor he shall take part in any output bonus or other incentive scheme.

Termination of contract

The contract of apprenticeship training shall terminate on the expiry of the period of apprenticeship training. Either party can make application for termination of contract to the Apprenticeship Adviser and thereafter send a copy of the same to the other party, who on being satisfied that the parties have failed to carry out the terms and conditions of the contract and it is desirable in the interests of the parties or any of them to terminate the contract, shall register the same. However, the employer shall pay the prescribed amount of compensation to the apprentice where the contract is terminated for failure on the part of the employer to honour the contract. Where the contract is terminated for failure on the part of the apprentice, he or his guardian shall refund the cost of the training to the employer. (Section 7)

Legal Position of Apprentices - An apprentice is not a workman during apprentice training. [Section 18] Provisions of labour law like Bonus, PF, ESI.

Act, gratuity, Industrial Disputes Act etc. are not applicable to him. However, provisions of Factories Act regarding health, safety and welfare will apply to him. Apprentice is also entitled to get compensation from employer for employment injury. [Section 16].

An employer is under no obligation to employ the apprentice after completion of apprenticeship. [Section 22(1)]. However, in *UP State Road Transport Corpn v. UP Parivahan Nigam Shishukh Berozgar Sangh* AIR 1995 SC 1114 = (1995) 2 SCC 1 , it was held that other things being equal, a trained apprentice should be given preference over direct recruits. It was also held that he need not be sponsored by the employment exchange. Age bar may also be relaxed, to the extent of training period. The concerned institute should maintain a list of persons already trained and in between trained apprentices, preference should be given to those who are senior. – same view in *UP Rajya Vidyut Parishad v. State of UP* 2000 LLR 869 (SC).

Stipend payable- The minimum rate of stipend payable per month is as follows - (a) Engineering graduates - Rs 1,970 p.m. for post-institutional training (b) Sandwich course students for degree examination - Rs 1,400 p.m. (c) diploma holders - Rs 1,400 p.m. for post-institutional training (d) Sandwich course students for degree examination - Rs 1,140 p.m. (e) Vocational certificate holder - Rs 1,090 p.m. [w.e.f. May 2001]

In case of 4 year training, the stipend is as follows – first year – Rs 820 pm. Second year – Rs 940 pm. Third year – Rs 1,090 pm. Fourth year – Rs 1,230 pm. [From May 2001].

Test and Proficiency certificate - On completion of training, every trade apprentice has to appear for a test conducted by National Council. If he passes, he gets a certificate of proficiency.

Apprenticeship Adviser - Government is empowered to appoint Apprenticeship Adviser, Dy Apprenticeship Adviser etc. to supervise the scheme. Various powers have been conferred on them under the Act.

Disputes under contract and settlement thereof

Section 20 of the Act provides that if out of the terms and conditions of the contract any dispute arises, it will be referred to Apprenticeship Adviser for decision. An appeal can be preferred by the aggrieved party within 30 days of the communication of the Adviser's decision to the Apprenticeship Council and such appeal shall be heard and determined by the Committee of that Council appointed for the purpose, and such decision of the Committee shall be final.

Holding of Test and Grant of Certificate and Conclusion of Training (Section 21) - (1) Every trade apprentice who has completed the period of training shall appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training.

(2) Every trade apprentice who passes the test referred to in sub-Section (1) shall be granted a certificate of proficiency in the trade by the National Council.

(3) The progress in apprenticeship training of every graduate or technician apprentice, technician (vocational) apprentice shall be assessed by the employer from time to time.

(4) Every graduate or technician apprentice or technician (vocational) apprentice, who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

Offer and Acceptance of Employment (Section 22) - (1) It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer.

(2) Notwithstanding anything in sub-Section (1), where there is a condition in a contract of apprenticeship shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract:

Provided that where such period or remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to be the period or remuneration agreed to between the apprentice and the employer.

Offences and Penalties (Section 30)

(1) If any employer - (a) engages as an apprentice a person who is not qualified for being so engaged, or

(b) fails to carry out the terms and conditions of a contract of apprenticeship, or

(c) contravenes the provisions of this Act relating to the number of apprentices which he is required to engage under those provisions, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(2) If any employer or any other person - (a) required to furnish any information or return - (i) refuses or neglects to furnish such information or return, or

(ii) furnishes or causes to be furnished any information or return which is false and which he either knows or believes to be false or does not believe to be true, or

(iii) refuses to answer, or gives a false answer to any question necessary for obtaining any information required to be furnished by him, or

(b) refuses or willfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the Central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or

(c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or

(d) employs an apprentice on any work which is not connected with his training, or

(e) makes payment to an apprentice on the basis of piecework, or

(f) requires an apprentice to take part in any output bonus or incentive scheme, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Penalty where no specific penalty is specified (Section 31) - If any employer or any other person contravenes any provision of this Act for which no punishment is provided in Section 30, he shall be punishable with fine which shall not be less than one thousand rupees but may extend to three thousand rupees.

Offences by Companies (Section 32)

(1) If the person committing an offence under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-Section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-Section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be

deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this Section, - (a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

Cognizance of Offences (Section 33)

No court shall take cognizance of any offence under this Act or the rules made there under except on a complaint thereof in writing made by the Apprenticeship Adviser or the officer of the rank of Deputy Apprenticeship Adviser and above within six months from the date on which the offence is alleged to have been committed.

4b. Employee State Insurance Act, 1948

Introduction

The Employee State Insurance Act, [ESIC] 1948, is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain others matters incidental thereto. The Act in fact tries to attain the goal of socio-economic justice enshrined in the Directive principles of state policy under part 4 of our constitution, in particular articles 41, 42 and 43 which enjoin the state to make effective provision for securing, the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. The act strives to materialize these avowed objects through only to a limited extent. This act becomes a wider spectrum than factory act. In the sense that while the factory act concerns with the health, safety, welfare, leave etc of the workers employed in the factory premises only. But the benefits of this act extend to employees whether working inside the factory or establishment or elsewhere or they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with the factory or establishment.

Related Legislations: ESI (Central) Rules, 1950 and ESI (General) Regulations, 1950

Origin

The Employee State Insurance act was promulgated by the Parliament of India in the year 1948. To begin with the ESIC scheme was initially launched on 2nd February 1952 at just two industrial centers in the country namely Kanpur and Delhi with a total coverage of about 1.20 lakh workers. There after the scheme was implemented in a phased manner across the country with the active involvement of the state governments.

Objectives:

The ESI Act is a social welfare legislation enacted with the object of providing certain benefits to employees in case of sickness, maternity and employment injury. Under the Act, employees will receive medical relief, cash benefits, maternity benefits, pension to dependents of deceased workers and compensation for fatal or other injuries and diseases.

Definitions

According to Section 2 (m) of Factories Act, 1948, **Factory** means any premises including the precincts thereof -

(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on.

but does not include a mine subject to the operation of Mines Act, 1952 or a railway running shed;

According to Section 2 (k) of Factories Act, "**manufacturing process**" means any process for - (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; Ira-6] [Ira-7 or Ira-7]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

(vi) preserving or storing any article in cold storage;

According to Section 2 (h) of The Minimum Wages Act, "**wages**"- means all remuneration capable of being expressed in terms of money which would if the terms of the contract of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include -

(i) the value of -

(a) any house accommodation supply of light water medical attendance or

(b) any other amenity or any service excluded by general or special order of the appropriate government;

(ii) any contribution paid by the employer to any person fund or provident fund or under any scheme of social insurance;

(iii) any traveling allowance or the value of any traveling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge

Applicability:

- The ESI Act extends to the whole of India.
- It applies to all the factories including Government factories (excluding seasonal factories), which employ 10 or more employees and carry on a manufacturing process with the aid of power and 20 employees where manufacturing process is carried out without the aid of power.
- The act also applies to shops and establishments. Generally, shops and establishments employing more than 20 employees are covered by the Act. "**Shop**" according to the Delhi Shops and Establishment Act, 1954 means any premises where goods are sold either by

retail or wholesale or where services are rendered to customers, and includes an office, a store-room, godown, warehouse or workhouse or work place, whether in the same premises or otherwise, used in or in connection with such trade or business but does not include a factory or a commercial establishment. “**Establishment**” means a shop, a commercial establishment, residential hotel, restaurant, eating-house, theatre or other places of public amusement or entertainment to which this Act applies and includes such other establishment as Government may, by notification in the Official Gazette, declare to be an establishment for the purpose of this Act. According to the Delhi Shops and Establishment Act, 1954, “**Commercial Establishment**” means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto is carried on and includes a society registered under the Societies Registration Act, 1860, and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary thereto, journalistic and printing establishments, contractors and auditors establishments, quarries and mines not governed by the Mines Act, 1952, educational or other institutions run for private gain, and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, but does not include a shop or a factory registered under the Factories Act, 1948, or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusements or entertainment. Form 01 – Employers’ Registration Form also requires a copy of the registration certificate or licence obtained under the Shops and Establishment Act to be attached along with this form. From this it is quite evident that ESI Act will be applicable to shops and establishments. Again the definition of shops and establishment will vary from state to state depending on the shops and establishment act of that particular state.

- The act does not apply to any member of Indian Naval, Military or Air Forces.
- All employees including casual, temporary or contract employees drawing wages less than Rs 10,000 per month are covered. The ceiling limit has been raised from Rs.7500 to Rs.10000 with effect from 01.10.06.
- Apprentices covered under the Apprenticeship Act are not covered under this Act. According to Apprenticeship Act 1961, “**apprentice**” means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.
 - The apprentices under any scheme as the name suggests come to learn the tricks of the trade and may not count much so far as the output of the factory is concerned, with that end in view, the apprentices are exempted from the operation of laws

relating to labour unless the State Government thought otherwise.-- *Regional Director ESIC v. M/s Arudyog 1987 (1) LLJ 292.*

- A factory or establishment, to which this Act applies, shall continue to be governed by its provisions even if the number of workers employed falls below the specified limit or the manufacturing process therein ceases to be carried on with the aid of power subsequently.
- Where a workman is covered under the ESI scheme,
 - Compensation under the Workmen's Compensation Act cannot be claimed in respect of employment injury.
 - No benefits can be claimed under the Maternity Benefits Act.

Important Case laws

1. Where by some club not only sporting facilities but a kitchen is also maintained, wherein a big number of members come, it is not necessary that they are participating only in sports activities, they are also entertaining themselves and their guests by partaking beverages and tea served by the club. Activity in the kitchen has a direct connection with the activities carried on in the rest of the club premises. It is necessary that the club be registered under ESI Act as regards all the employees engaged by the club irrespective of the fact in which department they are working. Cricket Club of India satisfies the definition of the term 'factory' under s. 2(12) of the Act hence covered by it.-- *Cricket Club of India v. ESI Corporation 1994 (69) FLR 19.*
2. Where in an establishment activities like that of clearing and forwarding is going on, it would fall within the expression "shop" even though clearing of documents is done in customs house meant for export and import of goods. Person involved in such business is catering to the needs of exporters and importers and others wanting to carry the goods further. -- *AIR 1993 SC 252 .*
3. Anyone having product may approach advertising agency. The advertising agency will prepare an advertising campaign for him utilising the services of the experts it employs in this behalf. It sells the campaign to the client and receives the price thereof. Indubitably, the price will depend upon the nature of the campaign but that does not make any great difference. Essentially, the advertising agency sells its expert services to a client to enable the client to launch an effective campaign of his products without staining the language, the premises of an advertising agency can be said to be a "shop"--*ESI Corporation v. R.K. Swamy 1993 (67) FLR 1145 : 1993 (2) CLR 1068.*
4. Where a laid-off employee after signing the lay-off register was coming out of the factory premises and when crossing the road was hit by a scooter, injuries sustained by him were

taken as covered during the course of employment on the basis of theory of notional extension.-- *Satya Sharma v. ESI Corporation 1991 (63) FLR 339* .

5. If the work by the employee is conducted under the immediate gaze or overseeing of the principal employer or his agent, subject to other conditions as envisaged being fulfilled he would be an employee for the purpose of s. 2(9).-- *CES Corporation Ltd. v. Subash Chandra Bose 1992 (1) LLJ 475*.
6. A work that is conducive to the work of the factory or establishment or that is necessary for the augmentation of the work of the factory or establishment will be incidental or preliminary to or connected with the work of the factory or establishment. The casual employees shall also be brought within it and are entitled to the benefits which the Act grants. The casual labour employed to construct additional buildings for expansion of the factory are the employees under the Act.-- *Regional Director, ESIC v. South India Flour Mills Ltd. 1986 (53) FLR 178*.
7. Employees engaged for repairs, site clearing, construction of buildings, etc. of the principal employer are employees within the meaning of s. 2(9) of the Act. --*Kirloskar Pneumatic Co. Ltd. v. ESI Corporation 1987 (70) FJR 199*.
8. The expression "employed for wages or in connection with the work of a factory or establishment" is of very wide amplitude and its generality is not in any way prejudiced by the expression and includes any person employed for wages or any work connected with the administration of the factory or establishment or in connection with sale or distribution of the products of the factory or establishments. The word "includes" in the statutory definition of a term is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction. In order to determine whether the employees of the company working at its branch sales offices and carrying on acts of sale and distribution of goods manufactured by the company as well as the goods produced by the foreign company are "employees" what is pertinent is not whether they are "principally" and primarily engaged in sale and distribution of the products of the company but whether the business of sale and distribution either "principally" or "marginally" of the products of the foreign company is being done on behalf of the company. If the main business of the company itself at the branch sales offices, is to sell and distribute products of foreign company and the employees working have been employed by the company basically in connection with this work, it would be difficult to hold that the employees at branch sales offices are not "employees" within the meaning of the term defined in s. 2(9) of the Act notwithstanding the fact that the sale and distribution of the products of the company at

such offices are only marginal.-- *Director General, ESI Corporation v. Scientific Instrument Co. Ltd.* 1995 Lab. IC 651 .

9. Where the work of fixing the marble is extended to a contractor by a marble manufacturing company, duty of the contractor is only to complete the work while marble, cement etc., is supplied by the manufacturing company, workers employed by the contractor would be the employees of the factory as under s. 2(9) of the Act.-- 1992 (2) CLR 881.
10. There is no such difference as that of casual or temporary or permanent employee for the expression "employee" as defined under s. 2(9) of the Act. It is so wide as to include even a casual employee who is employed just for a day for wages. The test being whether the person is employed for wages on any work which is connected with the work of a factory or establishment which bears the application of the Act except those exempted by the definition.-- *ESI Corporation v. Suvarna Saw Mills* 1980 (57) FJR 154.
11. Where a department of publication and press run by the university concerned is engaged in the printing of text books, journals, registers, forms, etc., that would amount to manufacturing process.-- *Osmania University v. ESI Corporation* 1986 (1) LLN 72 .
12. Where there was no manufacturing of articles nor the hotel was manufacturing any article with the aid of power except maintaining one refrigerator to preserve milk and curd, and as there was no using of power in the kitchen for making the eatables and the refrigerator had been kept only for preservation of milk and curd, there was no manufacturing process.-- *Ritz Hotel v. ESI Corpn.* 1995 (1) Mah. LJ 63.
13. Wages paid for the holidays are wages as defined.-- *R.D., ESI Corporation v. Raj Keshaw Co.* 1991 Lab. IC 1991 Lab. IC 1989.
14. Overtime wages could not be treated as "wages" for the purpose of contribution under the Act.-- *Hind Art Press v. ESI Corporation* 1990 (1) LLJ 195.
15. The ESI Corporation is conferred with the power to recover arrears of contributions from the employer along with damages/interest on the contribution that remained due. Correspondingly it is under an obligation to pay with interest the arrears of benefits to the insured employees or his dependents.-- *ESI Corporation v. Bhag Singh* 1989 (2) LLJ 126.
16. Section 53 of the ESI Act (Bar against receiving or recovery of compensation or damages under any other law) does not bar the remedy under s. 110A of the Motor Vehicles Act, 1939.-- *Deputy General Manager KSRTC v. Gopal Mudaliar* 1983 (46) FLR 194.

Areas Covered

The ESI Scheme is being implemented area-wise by stages. The Scheme is being implemented in almost all union territories and states except Nagaland, Manipur, Tripura, Sikkim, Arunachal Pradesh and Mizoram.

Administration of the Act

The provisions of the Act are administered by the Employees State Insurance Corporation. It comprises members representing employees, employers, the central and state government, besides, representatives of parliament and medical profession. A standing committee constituted from amongst the members of the corporation, acts as an executive body. The medical benefit council, constituted by the central government, is another statutory body that advises the corporation on matters regarding administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters.

Registration

The employer should get his factory or establishment registered with the ESI Corporation within 15 days after the Act becomes applicable to it and also obtain the employer's code number. Application should be made in Form 01 and after having being satisfied with the application form, the regional office will allot a code number to the employer, which must be quoted in all documents and correspondence.

Identity Card

An employee is required to file a declaration form upon employment in factory or establishment to show that he is covered under the Act.

On registration every insured person is provided with a 'temporary identification certificate' which is valid ordinarily for a period of three months but may be extended, if necessary, for a further period of 3 months. Within this period, the insured person is given a permanent 'family photo identity card' in exchange for the certificate. The identity card serves as a means of identification and has to be produced at the time of claiming medical care at the dispensary / clinic and cash benefit at the local office of the corporation. In the event of change of employment, it should be produced before the new employer as evidence of registration under the scheme to prevent any duplicate registration. The identity card bears the signature/thumb impression of the insured person. Since medical benefit is also available to the families of Insured persons, the particulars of family members entitled to medical benefit are also given in the identity card affixed with a postcard size family photo. If the identity card is lost, a duplicate card is issued on payment as prescribed.

Employers' / Employees' Contribution

Like most of the social security schemes, the world over, ESI scheme is a self-financing health insurance scheme. Contributions are raised from covered employees and their employers as a fixed percentage of wages. Presently covered employees contribute 1.75% of the wages, whereas as the employers contribute 4.75% of the wages, payable to the insured persons. Employees earning less than and up to Rs. 50 per day are exempted from payment of contribution.

The contribution is deposited by the employer in cash or by cheque at the designated branches of some nationalized banks. The responsibility for payment of all contributions is that of the employer with a right to deduct the employees share of contribution from employees' wages relating to the period in respect of which the contribution is payable.

There are two contribution periods each of six months duration and two corresponding benefit periods. Cash benefits under the scheme are generally linked with contribution paid.

Contribution period - 1st April to 30th September, its corresponding Cash Benefit period is 1st January to 30th June of the following year.

Contribution period - 1st October to 31st March, its corresponding Cash Benefit period is 1st July to 31st December of the following year.

Certification of Return of Contribution by Auditor

Regulation 26 of Employees' State Insurance (General) Regulations, 1950 was amended by Notification No.N-12/13/1/2008-P&D to include certain details to be mentioned in the Return of Contribution to be submitted by employers. The salient features of amendments made in the Returns of Contribution are as under:-

1. Self-declaration by Employers regarding maintenance of records and registers, submission of Declaration Forms, employees engaged directly or through immediate employers and wages paid to the workers.
2. All the Employers employing 40 and more employees shall have to append a certificate duly certified by a Chartered Accountant, in the revised format of Returns of Contribution.
3. The Employers employing less than 40 employees will have to provide self- certification without any certification from the Chartered Accountants in Return of Contribution.

The Chartered Accountant should certify that he has verified the return from the records and registers of the company.

This notification has come into force with effect from 01-04-2008.

Benefits under the Scheme

Employees covered under the scheme are entitled to medical facilities for self and dependants. They are also entitled to cash benefits in the event of specified contingencies resulting in loss of wages or earning capacity. The insured women are entitled to maternity benefit for confinement. Where death of an insured employee occurs due to employment injury or occupational disease, the dependants are entitled to family pension. Various benefits that the insured employees and their dependants are entitled to, the duration of benefits and contributory conditions thereof are as under:

- Medical benefits
 - From day one of entering insurable employment for self and dependants such as spouse, parents and children own or adopted.
 - For self and spouse on superannuation subject to having completed five years in insurable employment on superannuation or in case of having suffered permanent physical disablement during the course of insurable employment.
- Sickness benefits
 - Sickness benefit is payable to an insured person in cash, in the event of sickness resulting in absence from work and duly certified by an authorised insurable medical officer/ practitioner.
 - The benefit becomes admissible only after an insured has paid contribution for at least 78 days in a contribution period of 6 months.
 - Sickness benefit is payable for a maximum of 91 days in two consecutive contribution period.
- Extended sickness benefit
 - Extended sickness benefit is payable to insured persons for the period of certified sickness in case of specified 34 long-term diseases that need prolonged treatment and absence from work on medical advice.
 - For entitlement to this benefit an insured person should have been in insurable employment for at least 2 years. He/ she should also have paid contribution for a minimum of 156 days in the preceding 4 contribution periods or say 2 years.
 - ESI is payable for a maximum period of 2 years on the basis of proper medical certification and authentication by the designated authority.

- Amount payable in cash as extended sickness benefit is payable within 7 days following the submission of complete claim papers at the local office concerned.
- Enhanced sickness benefit
 - This cash benefit is payable to insured persons in the productive age group for undergoing sterilization operation, viz., vasectomy/ tubectomy.
 - The contribution is the same as for the normal sickness benefit.
 - Enhanced sickness benefit is payable for 14 days for tubectomy and for seven days in case of vasectomy.
- Maternity benefit
 - Maternity benefit is payable to insured women in case of confinement or miscarriage or sickness related thereto.
 - For claiming this an insured woman should have paid for at least 70 days in 2 consecutive contribution periods i.e. 1 year.
 - The benefit is normally payable for 12 weeks, which can be further extended up to 16 weeks on medical grounds.
 - The rate of payment of the benefit is equal to wage or double the standard sickness benefit rate.
 - The benefit is payable within 14 days of duly authenticated claim papers.
- Disablement benefit
 - Disablement benefit is payable to insured employees suffering from physical disablement due to employment injury or occupation disease.
- Dependants benefit
 - Dependants benefit [family pension] is payable to dependants of a deceased insured person where death occurs due to employment or occupational disease.
 - A widow can receive this benefit on a monthly basis for life or till remarriage.
 - A son or daughter can receive this benefit till 18 years of age.
 - Other dependants like parents including a widowed mother can also receive the benefit under certain condition.
 - The rate of payment is about 70% of the wages shareable among dependants in a fixed ratio.
 - The first installment is payable within a maximum of 3 months following the death of an insured person and thereafter, on a regular monthly basis.
- Other benefits like funeral expenses, vocational rehabilitation, free supply of physical aids and appliances, preventive health care and medical bonus.

Obligations Of Employers

1. The employer should get his factory or establishments registered with the E.S.I. Corporation within 15 days after the Act becomes applicable to it, and obtain the employers Code Number.
2. The employer should obtain the declaration form from the employees covered under the Act and submit the same along with the return of declaration forms, to the E.S.I. office. He should arrange for the allotment of Insurance Numbers to the employees and their Identity Cards.
3. The employer should deposit the employees' and his own contributions to the E.S.I. Account in the prescribed manner, whether he has sufficient resources or not, his liability under the Act cannot be disputed. He cannot justify non-payment of E.S.I. contribution due to non-availability of finance.
4. The employer should furnish a Return of Contribution along with the challans of monthly payment, within 30 days of the end of each contribution period.
5. The employer should not reduce the wages of an employee on account of the contribution payable by him (employer).
6. The employer should cause to be maintained the prescribed records/registers namely the register of employees, the inspection book and the accident book.
7. The employer should report to the E.S.I. authorities of any accident in the place of employment, within 24 hours or immediately in case of serious or fatal accidents. He should make arrangements for first aid and transportation of the employee to the hospital. He should also furnish to the authorities such further information and particulars of an accident as may be required.
8. The employer should inform the local office and the nearest E.S.I. dispensary/hospital, in case of death of any employee, immediately.
9. The employer must not put to work any sick employee and allow him leave, if he has been issued the prescribed certificate.
10. The employer should not dismiss or discharge any employee during the period he/she is in receipt of sickness/maternity/temporary disablement benefit, or is under medical

treatment, or is absent from work as a result of illness duly certified or due to pregnancy or confinement.

Records To Be Maintained For Inspection By ESI authorities

1. Attendance Register / Muster Roll
2. Salary / Wage Register / Payroll
3. EC (Employee's & Employer's Contribution) Statement
4. Employees' Register
5. Accident Book
6. Return of Contribution
7. Return of Declaration Forms
8. Receipted Copies of Challans
9. Books of Account viz. Cash/Bank, Expense Register, Sales/Purchase Register, Petty Cash Book, Ledger, Supporting Bills and Vouchers, Delivery Challans (if any).
10. Form of annual information on company

Employees Insurance Court

Any dispute arising under the ESI Act will be decided by the Employees Insurance Court and not by a Civil Court. It is constituted by the State Government for such local areas as may be specified and consists of such number of judges, as the Government may think fit. It shall adjudicate on the following disputes and claims.

Disputes as to:

- i. Whether an employee is covered by the Act or whether he is liable to pay the contribution,
or
- ii. The rate of wages or average daily wages of an employee, or
- iii. The rate of contribution payable by the employer in respect of any employee, or
- iv. The person who is or was the principle employer in respect of any employee, or
- v. The right to any benefit and the amount and duration thereof, or
- vi. Any direction issued by the Corporation on a review of any payment of dependents benefit,
or

- vii. Any other matter in respect of any contribution or benefit or other due payable or recoverable under the Act.

Claims as to

- i. Recovery of contributions from the principal employer,
- ii. Recovery of contributions from a contractor,
- iii. Recovery for short payment or non-payment of any contribution under section 68,
- iv. Recovery of the value or amount of benefits received improperly under section 70,
- v. Recovery of any benefit admissible under the Act

No dispute shall be admitted unless the employer deposits with the Court 50% of the amount due from him as claimed by the Corporation.

An appeal will lie to the High Court within 60 days against an order of the Employees Insurance Court if it involves a substantial question of law.

Important Forms to be submitted under the Act

| | |
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| Form 01 | : Employers' Registration Form |
| Form 01(A) | : Form of Annual Information on Factory/Establishment |
| Form 1 | : Declaration Form |
| Form 1A | : Family Declaration Form |
| Form 1B | : Changes in Family Declaration Form |
| Form 3 | : Return of Declaration Forms |
| Form 4 | : Identity Card |

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|-----------|--|
| Form 4(A) | Family Identity Card |
| Form 5 | Return of Contributions |
| Form 6 | Register of employees |
| Form 8 | Special Intermediate Certificate |
| Form 10 | Abstention verification in r/o Sickness Benefit/Temporary Disablement Benefit/MB |
| Form 12 | Sickness of Temporary Disablement Benefit |
| Form 12A | Maternity Benefit for Sickness |
| Form 13 | Sickness or Temporary disablement or maternity benefit for sickness |
| Form 13A | Maternity benefit for sickness |
| Form 14 | Sickness or temporary disablement or maternity benefit for sickness |
| Form 14A | Maternity Benefit for Sickness |
| Form 16 | Accident report from employer |
| Form 17 | Dependant's or funeral benefit (Death Certificate) |
| Form 18 | Dependant's Benefit (Claim Form) |
| Form 18A | Dependant's Benefit (Claim for periodical payments) |
| Form 19 | Maternity Benefit (Notice of Pregnancy) |
| Form 20 | Maternity Benefit (Certificate of Pregnancy) |
| Form 21 | Maternity Benefit (Certificate of expected confinement) |
| Form 22 | Claim for Maternity Benefit |

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| Form 23 | Maternity Benefit (Certificate of confinement or miscarriage) |
| Form 24 | Maternity Benefit (Notice of work) |
| Form 25 | Claim for Permanent Disablement Benefit |
| Form 26 | Certificate for permanent disablement benefit |
| Form 27 | Declaration and certificate for dependant's benefit |

4c. EMPLOYEES PROVIDENT FUND AND MISC. PROVISIONS ACT, 1952

An Act to provide for the institution of provident funds, pension funds and deposit linked insurance fund for the employees in the factories and other establishments. The Act extends to the whole of India except the State of Jammu and Kashmir.

Applicability

- All factories and establishments in which 20 or more are employed

Schemes under the Act

Three beneficial schemes-

1. Employees Provident Fund Scheme 1952
2. Employees Pension Scheme 1995
3. Employees Deposit Linked Insurance 1976

Membership

- An employee at the time of joining the employment and getting wages up to Rs.6500/- is required to become a member.
- An employee is eligible for membership of fund from the very first date of joining a covered establishment.

Contribution to EPF

- Employees' share : 12% of the Basic + DA
- Employer's contribution : 12% to be deposited as :
 - 8.33% to be deposited in Pension Fund A/C No 10 and
 - the balance, ie, 3.67% to be deposited in Provident Fund A/C No 01 along with Employees' share of 12%
- Administration charges -
- @ 1.1% of the total wages/salary disbursed by deposit to A/C No 02,
- Employees Deposit Linked Insurance @ 0.5% of the total wages/salary by deposit to A/C No. 21 and
- Administration of EDLI @ 0.01% of the wages/ salary by deposit to A/C. No. 22.

Duties of employer

- Employer to furnish information about:
 - (a) Ownership and names of responsible persons of the establishment.
 - (b) Declaration and nomination.
 - (c) Joining and leaving of service by the members in form 5 and form 10 respectively
 - (d) Form 12A with monthly challans of deposit.
 - (e) Form 9 for details of employees.
 - (f) Form 3A/6A at the end of the financial year.
 - (g) Any other information as may be required under Para 76 of the scheme

Benefits to employees

- Provident Fund Benefits

- Pension Benefits
- Death Benefits

Provident Fund Benefits

- Employer also contributes to Members' PF @ 3.67% (1.67% in case of sick industry - eg: beedi)
- EPFO guarantees the Employer contribution and Govt. gives a decent interest to PF accumulations
- Member can withdraw from this accumulations to cater financial exigencies in life - No need to refund unless misused
- On resignation, the member can settle the account. i.e., the member gets his PF contribution, Employer Contribution and Interest

Pension Benefits

- Pension to Member
- Pension to Family (on death of member)
- Scheme Certificate
 - This Certificate shows the service & family details of a member
 - This is issued if the member has not attained the age of 58 while leaving an establishment and he applies for this certificate
 - Member can surrender this certificate while joining another establishment and the service stated in the certificate is added with the service he is gaining from the new establishment.
 - After attaining the age of 50 or above, the member can apply for Pension by surrendering this scheme certificate (if total service is at least 10 years)

- This is a better choice than Withdrawal Benefit, that if a member dies holding a valid scheme certificate, his family will get pension (Death when NOT in service)
- Withdrawal Benefit
- if not eligible for pension, member may withdraw the amount accumulated in his pension account
- the calculation of this amount is based only on (i) Last average salary and (ii) Service (Not based on actual amount available in Pension Fund Account)
- No amount is taken from Member to give Pension to the Member. Employer and Govt. contribute to Pension fund @8.33% and @1.16% respectively
- EPFO guarantees pension to members, even if the Employer has not contributed to Pension Fund.
- Pension calculation is similar to that of Govt. Employee

Death Benefits

- Provident Fund Amount to Family (or to Nominee)
- Pension to Family (or to Parent / Nominee)
- Capital Return of Pension
- Insurance (EDLI) amount to Family (or to Nominee)
 - No amount is taken from Member for this facility. Employer contributes for this.
- Nominee is basically determined as per the information submitted by the member at this office through FORM-2

4d. THE EMPLOYMENT EXCHANGES (COMPULSORY NOTIFICATION OF VACANCIES) ACT, 1959

The main purpose of the Act is to provide for the compulsory notification of vacancies to employment exchanges. The employer is required on a compulsory basis, to notify to the Employment Exchanges all vacancies other than vacancies in unskilled categories, temporary vacancies and vacancies proposed to be filled through promotion and tender to the Employment Exchanges, return relating to the staff strengths at regular intervals.

The Act extends to the whole of India.

Scheme of the Act

There are only 10 Sections in the Act.

Application of the Act

The Act covers the employers in establishments both in public and private sectors. The Act is applicable to establishments which are engaged in non-agricultural activities and employing 25 or more workers. The enforcement of the Act is the responsibility of States and Union Territories. Most of the States/Union Territories have set up special enforcement machinery for this purpose.

Act not to apply in relation to certain vacancies

The Act shall apply to the following category of vacancies:

- 1) In any employment in agriculture (including horticulture) in establishment in private sector other than employment as agricultural or farm machinery operatives;
- 2) In any employment in domestic service;
- 3) In any employment the total duration of which is less than 3 months;
- 4) In any employment which requires unskilled office work;
- 5) In any employment related to the staff of Parliament.

In addition, the Act shall not apply to the following vacancies unless the Central Government otherwise directs through notification in its Official Gazette:

- 1) Vacancies which are proposed to be filled through promotion
- 2) Vacancies which are proposed to filled through absorption of surplus staff of any branch or department of the same establishment

- 3) Vacancies which are proposed to be filled through the result of any examination conducted or interview held by, or on recommendation of, any independent agency such as Union or State Public Service Commission and the like.
- 4) Vacancies in an employment which carries a remuneration of less than sixty rupees in a month. (Section 3).

Notification of vacancies to Employment Exchanges

Section 4 of the Act provides for notification of vacancies to employment exchange. The employer in every establishment in public sector is required to notify any vacancy before filling it up, to the prescribed employment exchanges.

The Section further requires an employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector to notify to the prescribed employment exchanges from such date as may be specified in the notification issued by the appropriate Government in the Official Gazette.

Section 4(3) provides that the manner of notification of vacancies and the particulars of employments having such vacancies should be such as may be prescribed.

Section 4(4) says that the employer's obligation is only to notify the vacancy to the employment exchange. The Act does not impose any obligation on an employer to recruit any person through employment exchange to fill the vacancy merely because the vacancy has been notified as required by this Act.

Employment Exchanges to which vacancies are to be notified

Rule 3 of The Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960, says that the vacancies are to be notified either to the Central Employment Exchange or Local Employment Exchange, as the case may be.

The Central Employment Exchange means the Employment Exchange established by the Government of India, Ministry of Labour and Employment and to which the following vacancies shall be notified:

- Vacancies in posts of a technical and scientific nature carrying a basic pay of Rs. 1,400 or more per month occurring in establishments in respect of which the Central Government is the appropriate Government under the Act; and
- Vacancies which an employer may desire to be circulated to the employment exchanges outside the State or Union Territory to which the establishment is situated.

The Local Employment Exchange means the employment exchange (the Central Employment Exchange) notified in the Official Gazette by the State Government or the Administration or Union Territory as having jurisdiction over the area in which the establishment concerned is situated or over specified classes or categories of establishments of vacancies.

Vacancies of all types other than those which are required to be notified to Central Employment Exchange, shall be notified to these local employment exchanges.

Furnishing of Information or Returns

Section 5 requires an employer in every establishment in public sector to furnish, such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in the establishment to such employment exchanges as may be prescribed. In the case of private sector or every establishment pertaining to any class or category of establishments in private sector, the appropriate Government, by notification in the Official Gazette, may require that from such date as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment to such employment exchanges as may be prescribed and the employer shall thereupon, comply with such requisition.

The above return shall be furnished to the Director or other authorized officer of the Directorate administering employment exchanges in a State or Union Territory.

Right of Access to Records or Documents

Such officer of the Government as may be prescribed in this behalf, or any person authorized by him in writing, shall have access to any relevant record or document in the possession of any employer required to furnish any information or returns under Section 5 of this Act. Such officer is also empowered to enter at any reasonable time, any premises where he believes that such record or document to be and inspect and take copies of relevant records or documents or ask any question necessary for obtaining information required under that Section (Section 6).

Penalties (Section 7)

(1) If any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy in contravention of sub-Section (1) or sub-Section (2) of Section 4, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees.

(2) If any person - (a) required to furnish any information or return - (i) refuses or neglects to furnish such information or return, or

(ii) furnishes or causes to be furnished any information or return which he knows to be false, or

(iii) refuses to answer, or gives a false answer to, any question necessary for obtaining any information required to be furnished under Section 5; or

(b) impedes the right of access to relevant records or documents or the right of entry conferred by Section 6, he shall be punishable for the first offence with fine which may extend to two hundred and fifty rupees and for every subsequent offence with fine which may extend to five hundred rupees.

Cognizance of Offences - No prosecution for an offence under this Act shall be instituted except by, or with the sanction of, such officer of Government as may be prescribed in this behalf or any person authorised by that officer in writing (Section 8).

Protection of action taken in good faith - No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act (Section 9).

4e. THE FACTORIES ACT, 1948

Objective of the Act

- To ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.

- To prevent haphazard growth of factories through the provisions related to the approval of plans before the creation of a factory.

Applicability of the Act

- ✓ Applicable to the whole of India including Jammu & Kashmir.
- ✓ Covers all manufacturing processes and establishments falling within the definition of 'factory'.
- ✓ Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

Scheme of the Act

The Act consists of 120 Sections and 3 Schedules.

Schedule 1 contains list of industries involving hazardous processes

Schedule 2 is about permissible level of certain chemical substances in work environment.

Schedule 3 consists of list of notifiable diseases.

Important provisions the Act

Facilities and Conveniences - The factory should be kept clean. [Section 11]. There should be arrangement to dispose of wastes and effluents. [Section 12]. Ventilation should be adequate. Reasonable temperature for comfort of employees should be maintained. [Section 13]. Dust and fumes should be controlled below permissible limits. [Section 14]. Artificial humidification should be at prescribed standard level. [Section 15]. Overcrowding should be avoided. [Section 16]. Adequate lighting, drinking water, latrines, urinals and spittoons should be provided. [Sections 17 to 19]. Adequate spittoons should be provided. [Section 20].

Welfare - Adequate facilities for washing, sitting, storing clothes when not worn during working hours. [Section 42]. If a worker has to work in standing position, sitting arrangement to take short rests should be provided. [Section 44]. Adequate First aid boxes should be provided and maintained [Section 45].

Facilities in case of large factories - Following facilities are required to be provided by large factories - Ambulance room if 500 or more workers are employed; Canteen if 250 or more workers are employed. It should be sufficiently lighted and ventilated and suitably located. [Section 46]. Rest rooms / shelters with drinking water when 150 or more workmen are employed [Section 47]; Crèches if 30 or more women workers are employed. [Section 48]; Full time Welfare Officer if factory employs 500 or more workers [Section 49]; Safety Officer if 1,000 or more workmen are employed.

Safety - All machinery should be properly fenced to protect workers when machinery is in motion. [Section 21 to 27]. Hoists and lifts should be in good condition and tested periodically. [Section 28 and 29]. Pressure plants should be checked as per rules. [Section 31]. Floor, stairs and means of access should be of sound construction and free from obstructions. [Section 32]. Safety appliances for eyes, dangerous dusts, gas, and fumes should be provided. [Sections 35 and 36]. Worker is also under obligation to use the safety appliances. He should not misuse any appliance, convenience or other things provided. [Section 111]. In case of hazardous substances, additional safety measures have been prescribed. [Sections 41A to 41H]. Adequate firefighting equipment should be available. [Section 38]. Safety Officer should be appointed if number of workers in factory are 1,000 or more. [Section 40B].

Working Hours - A worker cannot be employed for more than 48 hours in a week. [Section 51]. Weekly holiday is compulsory. If he is asked to work on weekly holiday, he should have full holiday on one of three days immediately or after the normal day of holiday. [Section 52(1)]. He cannot be employed for more than 9 hours in a day. [Section 54]. At least half an hour rest should be provided after 5 hours. [Section 55]. Total period of work inclusive of rest interval cannot be more than 10.5 hours. [Section 56]. A worker should be given a weekly holiday. Overlapping of shifts is not permitted. [Section 58]. Notice of period of work should be displayed. [Section 61].

Overtime Wages - If a worker works beyond 9 hours a day or 48 hours a week, overtime wages are double the rate of wages are payable. [Section 59(1)]. A workman cannot work in two factories. There is restriction on double employment. [Section 60]. However, overtime wages are not payable when the worker is on tour. Total working hours including overtime should not exceed 60 in a week and total overtime hours in a quarter should not exceed 50. Register of overtime should be maintained. An employee working outside the factory premises like field workers etc. on tour outside headquarters are not entitled to overtime. – R Ananthan v. Avery India 1972(42) FJR 304 (Mad HC) * Director of Stores v. P S Dube 1978 Lab IC 390 = 52 FJR 299 = 1978 I LLN 464 = 36 FLR 420.

Employment of Women - A woman worker cannot be employed beyond the hours 6 a.m. to 7.00 pm. State Government can grant exemption to any factory or group or class of factories, but no woman can be permitted to work during 10 PM to 5 AM. Shift change can be only after weekly or other holiday and not in between. [Section 66].

Night Shift for women:

Factories Act has been proposed to be amended to allow night shift for women workers. The Government has decided to amend Section 66 of the Factories Act, 1948 to allow employment of women workers between 7.00 pm and 6.00 am. The demand of women's organisations and in tune with the present economic globalization, the Government has decided to bring in then required changes in the Act. This flexibility would be available to all manufacturing units including the apparel sector. This decision has been taken after meetings with the representatives of the employers and the trade unions. The proposed Bill will empower the State Governments for allowing the necessary flexibility in employment of women during night shift in factories.

The proposed amendment would inter-alia provide that the employer has to ensure occupational safety and adequate protection to the women workers. However, the State Government or any person authorised by it would be allowing employment of women during night only after consulting the workers or their representative organisations and concerned employers or their representatives. The State Governments are also empowered to frame their own rules for allowing such permissions.

Record of Workmen - A register (muster roll) of all workers should be maintained. No worker should be permitted to work unless his name is in the register. Record of overtime is also required to be maintained. [Section 62].

Leave - A worker is entitled in every calendar year annual leave with wages at the rate of one day for every 20 days of work performed in the previous calendar year, provided that he had worked for 240 days or more in the previous calendar year. Child worker is entitled to one day per every 15 days. While calculating 240 days, earned leave, maternity leave upto 12 weeks and lay off days will be considered, but leave shall not be earned on those days. [Section 79]. – Leave can be accumulated upto 30 days in case of adult and 40 days in case of child. Leave admissible is exclusive of holidays occurring during or at either end of the leave period. Wage for period must be paid before leave begins, if leave is for 4 or more days. [Section 81]. Leave cannot be taken for more than three times in a year. Application for leave should not normally be refused. [These are minimum benefits. Employer can, of course, give additional or higher benefits].

Wages for overtime and Leave Salary - Wages for leave encashment and overtime will include dearness allowance and cash equivalent of any benefit. However, it will not include bonus or overtime.

Child Employment - Child below age of 14 should not be employed. [Section 67]. Child above 14 but below 15 years of age can be employed only for 4.5 hours per day or during the night. [Section 71]. He should be certified fit by a certifying surgeon. [Section 68]. He cannot be employed during night between 10 pm to 6 am. [Section 71]. A person over 15 but below 18 years of age is termed as 'adolescent'. He can be employed as an adult if he has a certificate of fitness for a full day's work from certifying surgeon. An adolescent is not permitted to work between 7 pm and 6 am. [Section 70]. There are more restrictions on employment of female adolescent. Register of child workers should be maintained. [Section 73].

Display on Notice Board - A notice containing abstract of the Factories Act and the rules made there under, in English and local language should be displayed. Name and address of Factories Inspector and the certifying surgeon should also be displayed on notice board. [Section 108(1)].

Notice of Accidents, Diseases Etc. - Notice of any accident causing disablement of more than 48 hours, dangerous occurrences and any worker contracting occupational disease should be informed to Factories Inspector. [Section 88]. Notice of dangerous occurrences and specified diseases should be given. [Sections 88A and 89].

Obligation regarding Hazardous Processes / Substances - Information about hazardous substances / processes should be given. Workers and general public in vicinity should be informed about dangers and health hazards. Safety measures and emergency plan should be ready. Safety Committee should be appointed.

List of Industries Involving Hazardous Processes - THE FIRST SCHEDULE

1. Ferrous metallurgical Industries

- Integrated Iron and Steel

- Ferro-alloys

- Special Steels

2. Non-ferrous metallurgical Industries

- Primary Metallurgical Industries, namely, zinc, lead, copper manganese and aluminium

3. Foundries (ferrous and non-ferrous)

- Castings and forgings including cleaning or smoothing/roughening by sand and shot blasting.

4. Coal (including coke) industries. - Coal, Lignite, Coke, etc.

- Fuel Gases (including Coal gas, Producer gas, Water gas)

5. Power Generating Industries

6. Pulp and paper (including paper products) industries

7. Fertiliser Industries

- Nitrogenous

- Phosphatic

- Mixed

8. Cement Industries

- Portland Cement (including slag cement, puzzolona cement and their products)

9. Petroleum Industries

- Oil Refining

- Lubricating Oils and Greases

10. Petro-chemical Industries

11. Drugs and Pharmaceutical Industries

- Narcotics, Drugs and Pharmaceuticals

12. Fermentation Industries (Distilleries and Breweries)

13. Rubber (Synthetic) Industries

14. Paints and Pigment Industries

15. Leather Tanning Industries

16. Electro-plating Industries

17. Chemical Industries

- Coke Oven by-products and Coal-tar Distillation Products

- Industrial Gases (nitrogen, oxygen, acetylene, argon, carbon-dioxide, hydrogen, sulphur-dioxide, nitrous oxide, halogenated hydro-carbon, ozone etc.)

- Industrial Carbon

- Alkalies and Acids

- Chromates and dichromates

- Leads and its compounds

- Electrochemicals (metallic sodium, potassium and magnesium, chlorates, perchlorates and peroxides)

- Electrothermal products (artificial abrasive, calcium carbide)

- Nitrogenous compounds (cyanides, cyanamides and other nitrogenous compounds)

- Phosphorous and its compounds

- Halogens and Halogenated compounds (Chlorine, Fluorine, Bromine and Iodine)

- Explosives (including industrial explosives and detonators and fuses)

18. Insecticides, Fungicides, herbicides and other Pesticides Industries

19. Synthetic Resin and Plastics

20. Man-made Fibre (Cellulosic and non-cellulosic) Industry

21. Manufacture and repair of electrical accumulators

22. Glass and Ceramics

23. Grinding or glazing of metals

24. Manufacture, handling and processing of asbestos and its products

25. Extraction of oils and fats from vegetable and animal sources

26. Manufacture, handling and use of benzene and substances containing benzene

27. Manufacturing processes and operations involving carbon disulphide

28. Dyes and Dyestuff including their intermediates

29. Highly flammable liquids and gases.

PERMISSIBLE LEVELS OF CERTAIN CHEMICAL SUBSTANCES IN WORK ENVIRONMENT - THE SECOND SCHEDULE

| Sl. No. | Substance | Permissible limits of exposure | | | |
|---------|--------------------------|---|-------------------|--------------------------------------|-------------------|
| | | Time-Weighted average concentration (TWA) | (TWA) | Short-term exposure limits (15 min.) | (STEL) |
| a | A | PPm | mg/m ³ | PPm | mg/m ³ |
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1 | Acetaldehyde | 100 | 180 | 150 | 270 |
| 2 | Acetic Acid | 10 | 25 | 15 | 37 |
| 3 | Acetone | 750 | 1780 | 1000 | 2375 |
| 4 | Acrolein | 01 | 0.25 | 0.3 | 0.8 |
| 5 | Acrylonitrile-skin (S.C) | 2 | 4.5 | - | - |
| 6 | Aldrin-skin | - | 0.25 | - | - |
| 7 | Allyl Chloride | 1 | 3 | 2 | 6 |

| | | | | | |
|----|---|------|-------|-----|-----|
| 8 | Ammonia | 0.25 | 18 | 35 | 27 |
| 9 | Aniline-skin | 2 | 10 | - | - |
| 10 | Anisidine (O.P.isomers)- skin | 0.1 | 0.5 | - | - |
| 11 | Arsenic & Soluble compounds (as As) | - | 0.2 | - | - |
| 12 | Benzene (S.C) | 10 | 30 | - | - |
| 13 | Beryllium & Compounds (as Be) (S.C) | - | 0.002 | - | - |
| 14 | Boron trifluoride C | 1 | 3 | - | - |
| 15 | Bromine | 0.1 | 0.7 | 0.3 | 2 |
| 16 | Butane | 800 | 1900 | - | - |
| 17 | 2-Butanone (Methyle ethyle Ketone MEK) | 200 | 590 | 300 | 885 |
| 18 | N-Butyl acetate | 150 | 710 | 200 | 950 |
| 19 | N-Butyl alcohol-skin-C | 50 | 150 | - | - |
| 20 | Sec/tert, Butyl acetate | 200 | 950 | - | - |
| 21 | Butyl Mercaptan | 0.5 | 1.5 | - | - |
| 22 | Cadmium-dust and salts (as Cd) | - | 0.05 | - | - |
| 23 | Calcium oxide | - | 2 | - | - |
| 24 | Carbaryl (Sevin) | - | 5 | - | - |

| | | | | | |
|----|--|-------|-------|-----|-----|
| 25 | Carbofuran (Furadan) | - | 0.1 | - | - |
| 26 | Carbon disulphide-skin | 10 | 30 | - | - |
| 27 | Carbon monoxide | 50 | 55 | 400 | 440 |
| 28 | Carbon tetrachloride-skin (S.C.) | 5 | 30 | - | - |
| 29 | Chlordane-skin | - | 0.5 | - | 2 |
| 30 | Chlorine | 1 | 3 | 3 | 9 |
| 31 | Chlorobenzene (monochlorobenzene) | 75 | 350 | - | - |
| 32 | Chloroform (S.C.) | 10 | 50 | - | - |
| 33 | bis-(Chloromethyl) ether (H.C.) | 0.001 | 0.005 | - | - |
| 34 | Chromic acid and chromates (as Cr) (Water soluble) | - | 0.05 | - | - |
| 35 | Chromous Salts (as Cr) | - | 0.5 | - | - |
| 36 | Copper fume | - | 0.2 | - | - |
| 37 | Cotton dust, raw | - | 0.2 | - | - |
| 38 | Cresoal, all isomers-skin | 5 | 22 | - | - |
| 39 | Cyanides (as Cn)-skin | - | 5 | - | - |
| 40 | Cyanogen | 10 | 20 | - | - |
| 41 | DDT (Dichlorodiphenyl | - | 1 | - | - |

| | | | | | |
|----|-----------------------------------|------|------|---|---|
| | Trichloroethane) | | | | |
| 42 | Demeton-skin | 0.01 | 0.1 | - | - |
| 43 | Diazinon-skin | - | 0.1 | - | - |
| 44 | Dibutyl Phthalate | - | 5 | - | - |
| 45 | Dichlorous (DDVP)-skin | - | 1 | - | - |
| 46 | Dieldrin-skin | - | 0.25 | - | - |
| 47 | Dinitrobenzene (all isomers)-skin | 0.15 | 1 | - | - |
| 48 | Dinitrotoluene-skin | - | 1.5 | - | - |
| 49 | Diphenyl (Biphenyl) | 0.2 | 1.5 | - | - |
| 50 | Endosulfan (Thiodan)-skin | - | 0.1 | - | - |
| 51 | Endrin-skin | - | 0.1 | - | - |
| 52 | Ethyl acetate | 400 | 1400 | - | - |
| 53 | Ethyl alcohol | 1000 | 1900 | - | - |
| 54 | Ethylamin | 10 | 18 | - | - |
| 55 | Fluorides (as F) | - | 2.5 | - | - |
| 56 | Fluorine | 1 | 2 | 2 | 4 |
| 57 | Formaldehyde (S.C.) | 1.0 | 1.5 | 2 | 3 |
| 58 | Formic Acid | 5 | 9 | - | - |

| | | | | | |
|----|--|-----|------|-----|------|
| 59 | Gasoline | 300 | 900 | 500 | 1500 |
| 60 | Hydrazine-skin (S.C.) | 0.1 | 0.1 | - | - |
| 61 | Hydrogen Chloride-C | 5 | 7 | a | a |
| 62 | Hydrogen Cyanide skin-C | 10 | 10 | - | - |
| 63 | Hydrogen Fluoride (as F)- C | 3 | 2.5 | - | - |
| 64 | Hydrogen Peroxide | 1 | 1.5 | - | - |
| 65 | Hydrogen Sulphide | 10 | 14 | 15 | 21 |
| 66 | Iodine-C | 0.1 | 1 | - | - |
| 67 | Iron Oxide Fume (F0203) (as Fe) | - | 5 | - | - |
| 68 | Isoamyl acetate | 100 | 525 | - | - |
| 69 | Isoamyl alcohol | 100 | 360 | 125 | 450 |
| 70 | Isobutyl alcohol | 50 | 150 | - | - |
| 71 | Lead, inorg, dusts, dusts and fumes (as Pb) | - | 0.15 | - | - |
| 72 | Lindane-skin | - | 0.5 | - | - |
| 73 | Malathion-skin | - | 10 | - | - |
| 74 | Manganese dust and compounds (as (Mn)-C | - | 5 | - | - |
| 75 | Manganese Fume (as Mn) | - | 1 | - | 3 |

| | | | | | |
|----|---|------|------|-----|------|
| 76 | Mercury (as Hg)-skin | a | a | a | a |
| a | (i) Alkyle compounds | - | 0.01 | - | 0.03 |
| a | (ii) All forms except alkyle vapour | - | 0.05 | - | - |
| a | (iii) Aryle and inorganic compounds | - | 0.1 | - | - |
| 77 | Methyl alcohol (Methanol)-skin | 200 | 260 | 250 | 310 |
| 78 | Methyl cellosolve (2-methoxyethanol)-skin | 5 | 16 | - | - |
| 79 | Methyl isobutyl Ketone | 50 | 205 | 75 | 300 |
| 80 | Methyl Isocyanate-skin | 0.02 | 0.05 | - | - |
| 81 | Naphthalene | 10 | 50 | 15 | 75 |
| 82 | Nickel carbonyl (as Ni) | 0.05 | 0.35 | - | - |
| 83 | Nitric acid | 2 | 5 | 4 | 10 |
| 84 | Nitric Oxide | 25 | 30 | - | - |
| 85 | Nitrobenzene-skin | 1 | 5 | - | - |
| 86 | Nitrogen dioxide | 3 | 6 | 5 | 10 |
| 87 | Oil mist mineral | - | 5 | - | 10 |
| 88 | Ozone | 0.1 | 0.2 | 0.3 | 0.6 |
| 89 | Parathion-skin | - | 0.1 | - | - |

| | | | | | |
|-----|----------------------------------|------|------|-----|-----|
| 90 | Phenol-skin | 5 | 19 | a | a |
| 91 | Phorate (Thimet)-skin | - | 0.05 | 0.2 | - |
| 92 | Phosgene (Carbonyl Chloride) | 0.1 | 0.4 | - | - |
| 93 | Phosphine | 0.3 | 0.4 | 1 | 1 |
| 94 | Phosphoric acid | - | 1 | - | 3 |
| 95 | Phosphorus (yellow) | - | 0.1 | - | - |
| 96 | Phosphorus pentachloride | 0.1 | 1 | - | - |
| 97 | Phosphorus trichloride | 0.2 | 1.5 | 0.5 | 3 |
| 98 | Picric acid-skin | - | 0.1 | - | 0.3 |
| 99 | Pyridine | 5 | 15 | - | - |
| 100 | Silans (silicon tetrahydride) | 5 | 7 | - | - |
| 101 | Sodium hydroxide-C | - | 2 | - | - |
| 102 | Styrene, monomer (phanylethlene) | 50 | 215 | 100 | 425 |
| 103 | Sulphur dioxide | 2 | 5 | 5 | 10 |
| 104 | Sulphur hexafluoride | 1000 | 6000 | - | - |
| 105 | Sulphuric acid | - | 1 | - | - |
| 106 | Tetraethyl lead (as Pb) - Skin | - | 0.1 | - | - |

| | | | | | |
|-----|--------------------------------|-----|-------|-----|------|
| 107 | Toluene (Toluol) | 100 | 375 | 150 | 560 |
| 108 | O-Toluidine-skin (S.C.) | 2 | 9 | - | - |
| 109 | Tributylphosphohate | 0.2 | 2.5 | - | - |
| 110 | Trichloroethylene | 50 | 270 | 200 | 1080 |
| 111 | Uranium natural (as U) | - | 0.2 | - | 0.6 |
| 112 | Vinyl Chloride (H.C.) | 5 | 10 | - | - |
| 113 | Welding fumes | - | 5 | - | - |
| 114 | Xylene (O-m-P-isomers) | 100 | 435 | 150 | 655 |
| 115 | Zinc oxide | d | a | a | a |
| f | (i) Fume | - | 5.0 | - | 10 |
| d | (ii) Dust (Total dust) | - | 10.00 | - | - |
| 116 | Zirconium compounds (as Zr) | - | 5 | - | 10 |

THE THIRD SCHEDULE - LIST OF NOTIFIABLE DISEASES

1. Lead poisoning, including poisoning by any preparation or compound of lead or their sequelae.
2. Lead tetra-ethyl poisoning
3. Phosphorus poisoning or its sequelae.
4. Mercury poisoning or its sequelae.
5. Manganese poisoning or its sequelae.
6. Arsenic poisoning or its sequelae.
7. Poisoning by nitrous fumes.

8. Carbon disulphide poisoning.
9. Benzene poisoning, including poisoning by any of its homologues, their nitro or amido derivatives or its sequelae.
10. Chrome ulceration or its sequelae.
11. Anthrax.
12. Silicosis.
13. Poisoning by halogens or halogen derivatives of the hydrocarbons of the aliphatic series.
14. Pathological manifestations due to
 - (a) radium or other radio-active substances.
 - (b) X-rays.
15. Primary epitheliomatous cancer of skin.
16. Toxic anaemia.
17. Toxic jaundice due to poisonous substances.
18. Oil acne or dermatitis due to mineral oils and compounds containing mineral oil base.
19. Byssionosis.
20. Asbestosis.
21. Occupational or contract dermatitis caused by direct contact with chemicals and paints. These are of two types, that is primary irritants and allergic sensitizers.
22. Noise induced hearing loss (exposure to high noise levels).
23. Beryllium poisoning.
24. Carbon monoxide
25. Coal miners' pneumoconiosis.
26. Phosgene poisoning.
27. Occupational cancer.

28. Isocyanates poisoning.

29. Toxic nephritis.

4f. INDUSTRIAL DISPUTES ACT, 1947

Introduction

Prior to the year 1947, industrial disputes were being settled under the provisions of the Trade Disputes Act, 1929. Experience of the working of the 1929 Act revealed various defects, which needed to be overcome by a fresh legislation. Accordingly the Industrial Disputes Bill was introduced in the Legislature. The Bill was referred to the select committee. On the recommendations of the Select Committee amendments were made in the original Bill.

The Industrial Disputes Act, 1947 came into existence in April 1947. It was enacted to make provisions for investigation and settlement of industrial disputes and for providing certain safeguards to the workers. The Act contains 40 sections divided into 7 chapters. Chapter – I deals with the title, definitions, etc. Chapter – II contains the various authorities under the Act. These authorities include Conciliation Officers, Labour Courts and Tribunals. Chapter – III contains the main scheme of the Act such as reference of disputes to Labour Courts and Industrial Tribunals. Chapter – IV lays down the procedure, power and duties of the authorities constituted under the Act. Chapter – V contains provisions to prohibit strikes and lockouts, declaration of strikes and lockouts as illegal, and provisions relating to lay-off and retrenchment and closure. Chapter-VI contains provisions of various penalties under the Act. Chapter-VII contains miscellaneous provisions.

Definition of Industrial Disputes

An industrial dispute may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employees' representative; usually a trade union, over pay and other working conditions and can result in industrial actions. When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurize each other. The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos.

As per Section 2(k) of Industrial Disputes Act, 1947, an industrial dispute is defined as any dispute or difference between employees and employers, or between employers and workmen, or between

workmen and which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

Objective of the Act

The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.

The Act also lays down:

- (a) The provision for payment of compensation to the Workman on account of closure or lay off or retrenchment.
- (b) The procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments
- (c) Unfair labour practices on part of an employer or a trade union or workers.

Applicability

The Industrial Disputes Act extends to whole of India and applies to every industrial establishment carrying on any business, trade, manufacture or distribution of goods and services irrespective of the number of workmen employed therein. Every person employed in an establishment for hire or reward including contract labour, apprentices and part time employees to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act. This Act though does not apply to persons mainly in managerial or administrative capacity, persons engaged in a supervisory capacity and drawing > 1600 p.m or executing managerial functions and persons subject to Army Act, Air Force and Navy Act or those in police service or officer or employee of a prison.

Important provisions of the Act

- Defines industry, industrial dispute, layoff, lockout, retrenchment, trade union, strike, wages, workman etc.
- Provides machinery for investigating and settling disputes through works committees, conciliation officers, boards of conciliation, courts of enquiry, labour courts, tribunals and voluntary arbitration.
- Reference of dispute for adjudication.

- Awards of labour courts and tribunals.
- Payment of wages to workers pending proceedings in High Courts.
- Rights of appeal.
- Settlements in outside conciliation.
- Notice of change in employment conditions.
- Protection of workmen during pendency of proceedings
- Strike and lockout procedures.
- Lay-off compensation.
- Retrenchment compensation.
- Proceedings for retrenchment.
- Compensation to workmen in case of transfer of undertakings.
- Closure procedures.
- Reopening of closed undertakings.
- Unfair labour practices.
- Recovery of money due from employer.
- Penalties.
- Obligations and rights of employees.

When to consult and refer a dispute

- When a dispute arises with the workers' union.
- When there is a plan to change employment conditions.
- When there is a strike.
- When there is a lock-out.
- When there is retrenchment of workmen.
- When undertaking is being transferred
- On closure of an establishment.
- On re-opening establishment.

Offences/Penalties under the Act

| Section | Offence | Penalty |
|-----------------------|--|---|
| Sec.25-Q | Lay-Off or Retrenchment without prior permission - Contravening the provisions of Section 25-M or 25-(N) | Workman entitled to all benefits as if they had not been laid off. Employer shall be punishable with imprisonment upto 1 month and / or fine upto Rs. 1000. |
| Sec.25-R(1) | Illegal Closure: - Closing down an undertaking without complying with the provisions of Section 25-O(1) | Workman entitled to all benefits as if there had not been any closure. Employer shall be punishable with imprisonment upto 6 month and / or fine upto Rs. 5000. |
| Sec.25-R(2) | Contravening an order refusing permission to close down the undertaking under Section 25-O or a direction given under Section 25-P | Workman entitled to all benefits as if there had not been any closure. Employer shall be punishable with imprisonment upto 1 year and / or fine upto Rs. 5000, with a further fine of upto 2000 Rs for each day of contravention after conviction |
| Sec.25-T, 25-U | Committing an Unfair Labour Practice. | Imprisonment upto 6 months and / or fine upto Rs. 1000. |
| Sec.26 (1) | Illegal strikes by a workman - workman who commences, continues or otherwise acts in furtherance, of, a strike which is illegal under that Act | Imprisonment for 1 month and / or fine upto Rs. 50. |
| Sec.26 (2) | Illegal lockout -employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act | Imprisonment for 1 month and / or fine upto Rs. 1000. |
| Sec.27 | Instigation - Any person who instigates or incites others to take part in, or otherwise acts | Imprisonment for 6 month and / or fine upto Rs. 1000. |

| | | |
|------------------|---|--|
| | in furtherance of, a strike or lock-out which is illegal under that Act | |
| Sec.28 | Financial Assistance to a Strike - Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out | Imprisonment for 6 month and / or fine upto Rs. 1000. |
| Sec.29 | Breach of settlement or award binding under the act | Imprisonment for 6 month and / or fine + an additional fine of Rs. 200 per day if breach continues after conviction. |
| Sec.30 | Disclosing confidential information in contravention of the provisions of Section 21 | Imprisonment for 6 month and / or fine Rs. 1000. |
| Sec.30-A | Closing down any undertaking without complying with the provisions of Section 25- FFA | Imprisonment for 6 month and / or fine Rs. 5000. |
| Sec.31(1) | Contravention of Section 33 - Service conditions remaining unchanged during pendency of proceedings | Imprisonment for 6 month and / or fine Rs. 1000. |
| Sec.31(2) | Contravening any other provision where specific penalty is not provided for. | Fine upto Rs. 100. |

Authorities Empowered By This Act

| Name of Authority | Duties | Powers |
|---------------------------|---|---|
| Central Government | To determine the extent of the act and to make rules to | To appoint Conciliation Officers, Boards of Conciliation, Courts of Inquiry, Labour Courts and Tribunals, to refer disputes to these bodies, to |

| | | |
|------------------------------|---|---|
| | give effect to the Act | make rules, to delegate its powers to other officers, and to amend the Schedules to the Act |
| State Government | To make rules to give effect to the Act in the State and to implement the act in the State | To appoint Conciliation Officers, Boards of Conciliation, Courts of Inquiry, Labour Courts and Tribunals, to refer disputes to these bodies, to make rules, to delegate its powers to other officers, and to amend the Schedules to the Act |
| Conciliation Officer | Appointed by the appropriate government to mediate in and promote the settlement of industrial disputes | To enter the premises of any establishment related to a dispute, enforce the attendance of any person for examination |
| Court of Inquiry | Constituted by the appropriate government for inquiring into any matter appearing to be connected with or relevant to an Industrial Dispute | To enter the premises of any establishment related to a dispute, enforce the attendance of any person for examination, compel the production of documents, appoint one or more people having special knowledge of the matter |
| Board of Conciliation | Appointed by the appropriate government for promoting the settlement of an industrial dispute. | To enter the premises of any establishment related to a dispute, enforce the attendance of any person for examination, compel the production of documents, appoint one or more people having special knowledge of the matter |
| Labour Courts | Appointed by the appropriate government for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other | To enter the premises of any establishment related to a dispute, enforce the attendance of any person for examination, compel the production of documents, appoint one or more people having special knowledge of the matter |

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|---------------------------|---|--|
| | functions as may be assigned to them under this Act. | |
| Tribunals | Appointed by the appropriate government for the adjudication of Industrial Disputes relating to matters specified in IInd or III rd Schedule. | To enter the premises of any establishment related to a dispute, enforce the attendance of any person for examination, compel the production of documents, appoint one or more people having special knowledge of the matter |
| National Tribunals | Appointed by the appropriate government for the adjudication of Industrial Disputes of national importance / affecting several States. | To enter the premises of any establishment related to a dispute, enforce the attendance of any person for examination, compel the production of documents, appoint one or more people having special knowledge of the matter |

4g. LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS & MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS) ACT, 1988

Objective

The main objective of the Act is to exempt establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. This Act relieves the small companies from following cumbersome paperwork that is required under various labour laws both at the Central and State level thereby reducing the compliance requirement under various labour laws.

Applicability

- This Act is applicable to small establishments or very small establishments.
- An establishment may be an industrial or other establishment or factory or plantation or newspaper establishment.

- Small establishment means an establishment in which not less than ten and not more than nineteen persons are employed or were employed on any day of the preceding twelve months.
- Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.

Exemption from returns and registers under certain labour laws:

Small establishments and very small establishments are exempted from submitting returns and maintaining registers under the following Acts:

- 1) The Payment of Wages Act, 1936
- 2) The Weekly Holidays Act, 1942
- 3) The Minimum Wages Act, 1948
- 4) The Factories Act, 1948
- 5) The Plantations Labour Act, 1951
- 6) The Working Journalists and other Newspaper employees (conditions of service) and Miscellaneous Provisions Act, 1955
- 7) The Contract Labour (Regulation and Abolition) Act, 1970
- 8) The Sales Promotion employees (Conditions of Service) Act, 1976
- 9) Equal Remuneration Act, 1976

But the employer of small and very small establishments should continue to do the following:

- i. Issue wage slips in the Form XI prescribed in the Minimum Wages (Central) Rules, 1950, made under Secs. 18 and 30 of the Minimum Wages Act, 1948 (11 of 1948)
- ii. Issue slips relating to measurement of the amount of work done by piece-rated worker required to be issued under the Payment of Wages (Mines) Rules, 1956 made under Secs. 13-A and 26 of the Payment of Wages Act, 1936 (4 of 1936)
- iii. File returns relating to accidents under Secs. 88 and 88-A of the Factories Act, 1948 (63 of 1948), and Secs. 32-A and 32-B of the Plantations Labour Act, 1951 (69 of 1951).

Returns and Registers under the Act

Instead of maintaining registers and filing returns under the above mentioned 9 legislations, the employer of small and very small establishments should do the following:

- Submit Core returns in Form A for the year ending 31st December.
 - This return should be submitted on or before the 15th February of the succeeding year by small establishments and very small establishments. This return should contain the details of the establishment / employer / principal employer / contractor and the nature of operation / industry /work carried on.
- Maintain register in Form B.
 - This is the register of wages required to be maintained by small establishments. It should be maintained within seven days of the expiry of the wage period.
- Maintain register in Form C.
 - This is the muster roll to be maintained by small establishments.
- Maintain register in Form D.
 - This is the monthly register showing welfare amenities to be maintained by small establishments. It should be completed within seven days of the expiry of each calendar month.
- Maintain register in Form E.
 - This is the monthly register of muster roll-cum-wages required to be maintained by very small establishments.

Penalty

An employer who fails to comply with the provisions of the Act will be liable to payment of fine that may extend to Rupees five thousand in case of first conviction and in case of second or subsequent conviction, the employer will be liable to imprisonment for a period not less than one month but may extend to six months or with fine not less than Rupees ten thousand rupees but may extend to Rupees twenty thousand, or with both.

Other related information

Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment Bill, 2007 - This Bill aims at amending the 1988 Act by exempting establishments employing up to 40 workers. The basket of labour laws for which companies can uniformly comply is likely to be raised from nine to sixteen.

The Kerala Labour Laws (Simplification Of Returns And Registers Of Small Establishments) Bill, 2002 – This Bill provides for simplification of forms of returns to be furnished and registers to be maintained by employers under certain labour laws in relation to establishments employing up to 50 employees.

4h. THE PAYMENT OF BONUS ACT, 1965:

The payment of Bonus Act provides for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.

It extends to the whole of India and is applicable to every factory and to every other establishment where 20 or more workmen are employed on any day during an accounting year.

Eligibility for Bonus

Every employee receiving salary or wages upto **Rs. 10,000** p.m. and engaged in any kind of work whether skilled, unskilled, managerial, supervisory etc. is entitled to bonus for every accounting year if he has worked for at least 30 working days in that year.

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent, of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

However employees of L.I.C., Universities and Educational institutions, Hospitals, Chamber of Commerce, R.B.I., IFCI, U.T.I., IDBI, NABARD, SIDBI, Social Welfare institutions are not entitled to bonus under this Act.

Calculation for Working Days in An Accounting Year

An employee shall be deemed to have worked in an establishment in any accounting year also on the days on which--

- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

- (b) he has been on leave with salary or wage;
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (d) the employee has been on maternity leave with salary or wage, during the accounting year.

Disqualification for Bonus

Notwithstanding anything contained in the act, an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behaviour while in the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

Minimum and Maximum Bonus Payable

Minimum Bonus

- The minimum bonus which an employer is required to pay even if he suffers losses during the accounting year or there is no allocable surplus is 8.33 % of the salary or wages during the accounting year, or
- Rs. 100 in case of employees above 15 years and Rs 60 in case of employees below 15 years, at the beginning of the accounting year, whichever is higher

Maximum Bonus

If in an accounting year, the allocable surplus, calculated after taking into account the amount 'set on' or the amount 'set of' exceeds the minimum bonus, the employer should pay bonus in proportion to the salary or wages earned by the employee in that accounting year subject to a maximum of 20% of such salary or wages.

Time Limit for Payment

The bonus should be paid in cash within 8 months from the close of the accounting year or within one month from the date of enforcement of the award or coming into operation of a settlement following an industrial dispute regarding payment of bonus.

However if there is sufficient cause extension may be applied for.

Calculation of Bonus

The method for calculation of annual bonus is as follow:

1. Calculate the gross profit in the manner specified in-
 - a. First Schedule, in case of a banking company, or
 - b. Second Schedule, in any other case.
2. Calculate the Available Surplus.

Available Surplus = A+B, where A = Gross Profit – Depreciation admissible u/s 32 of the Income tax Act - Development allowance - Direct taxes payable for the accounting year (calculated as per Sec.7) – Sums specified in the Third Schedule.

B = Direct Taxes (calculated as per Sec. 7) in respect of gross profits for the immediately preceding accounting year – Direct Taxes in respect of such gross profits as reduced by the amount of bonus, for the immediately preceding accounting year.

3. Calculate Allocable Surplus

Allocable Surplus = 60% of Available Surplus, 67% in case of foreign companies.

4. Make adjustment for 'Set-on' and 'Set-off'. For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set on and set off from the previous years, as illustrated in Fourth Schedule.
5. The allocable surplus so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year.

In case of an employee receiving salary or wages above **Rs. 3,500** the bonus payable is to be calculated as if the salary or wages were **Rs. 3,500 p.m.** only.

Duties / Rights of Employer

Duties

- To calculate and pay the annual bonus as required under the Act

- To submit an annual return of bonus paid to employees during the year, in Form D, to the Inspector, within 30 days of the expiry of the time limit specified for payment of bonus.
- To co-operate with the Inspector, produce before him the registers/records maintained, and such other information as may be required by them.
- To get his account audited as per the directions of a Labour Court/Tribunal or of any such other authority.

Rights

An employer has the following rights:

- Right to forfeit bonus of an employee, who has been dismissed from service for fraud, riotous or violent behaviour, or theft, misappropriation or sabotage of any property of the establishment.
- Right to make permissible deductions from the bonus payable to an employee, such as, festival/interim bonus paid and financial loss caused by misconduct of the employee.
- Right to refer any disputes relating to application or interpretation of any provision of the Act, to the Labour Court or Labour Tribunal.

Rights of Employees

- Right to claim bonus payable under the Act and to make an application to the Government, for the recovery of bonus due and unpaid, within one year of its becoming due.
- Right to refer any dispute to the Labour Court/Tribunal Employees, to whom the Payment of Bonus Act does not apply, cannot raise a dispute regarding bonus under the Industrial Disputes Act.
- Right to seek clarification and obtain information, on any item in the accounts of the establishment.

Recovery of Bonus Due

- Where any bonus is due to an employee by way of bonus, employee or any other person authorised by him can make an application to the appropriate government for recovery of the money due.
- If the government is satisfied that money is due to an employee by way of bonus, it shall issue a certificate for that amount to the collector who then recovers the money.
- Such application shall be made within one year from the date on which the money became due to the employee.
- However the application may be entertained after a year if the applicant shows that there was sufficient cause for not making the application within time.

Offences and Penalties

For contravention of the provisions of the Act or rules the penalty is imprisonment upto 6 months or fine up to Rs.1000, or both.

For failure to comply with the directions or requisitions made the penalty is imprisonment upto 6 months or fine up to Rs.1000, or both.

In case of offences by companies, firms, body corporate or association of individuals, its director, partner or a principal officer responsible for the conduct of its business, as the case may be, shall be deemed to be guilty of that offence and punished accordingly, unless the person concerned proves that the offence was committed without his knowledge or that he exercised all due diligence.

4i. Payment of Gratuity Act, 1972

Applicability of the Act

The Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments. The Act enforces the payment of 'gratuity', a reward for long service, as a statutory retiral benefit. Every employee irrespective of his wages is entitled to receive gratuity if he has rendered continuous service of 5 years or more than 5 years.

It is not paid to an employee gratuitously or merely as a matter of boon. It is paid for the service rendered by him to the employer (Delhi Cloth and General Mills Co; Ltd Vs the Workmen).

Gratuity is payable to an employee on termination of his employment after he has rendered continuous service for not less than five years:

- on his superannuation
- on his resignation
- on his death or disablement due to employment injury or disease

The Working Journalists and Other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955, provides for payment of gratuity. As such, three years of continuous service is required for eligibility for Gratuity.

The payment of gratuity shall be forfeited:

- to the extent of the damage or loss caused by the employee to the property of the employer
- where the service of the employee is terminated due to misconduct

According to Sec.2(e) "**employee**" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied,[and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity].

According to Sec.2A (1) **an employee shall be said to be in continuous service** for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment), lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act. (2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer -

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) two hundred and forty days, in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) one hundred and twenty days, in any other case;

Explanation: For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which -

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

(3) where an employee employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during such period.

Rate of gratuity

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned.

In the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

In the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days wages for each season.

In the case of a monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees.

Responsibility of the Employer:

Every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject to the provisions of sub-section (2), obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other prescribed insurer:

The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed.

Where an employer fails to make any payment by way of premium to the insurance or by way of contribution to all approved gratuity fund, he shall be liable to pay the amount of gratuity due

under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

Whoever contravenes the provision above shall be punishable with fine which may extend to Rs 10,000/- and in the case of a continuing offence with a further fine which may extend to Rs 1000/- for each day during which the offence continues.

4j. THE WORKMEN'S COMPENSATION ACT, 1923

The Workmen's Compensation Act, aims to provide workmen and/or their dependents some relief in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen.

It provides for payment by certain classes of employers to their workmen compensation for injury by accident.

Act does not apply where workman covered under ESI Act - Since a workman is entitled to get compensation from Employees State Insurance Corporation, a workman covered under ESI Act is not entitled to get compensation under Workmen's Compensation Act, as per section 53 of ESI Act, 1948.

Meaning of Workman (Sec.2 (n))

"**Workman**" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is - (i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or (ia)

(a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

The provisions of the Act have been extended to cooks employed in hotels, restaurants using power, liquefied petroleum gas or any other mechanical device in the process of cooking.

Employees Entitled To Compensation:

Every employee (including those employed through a contractor but excluding casual employees), who is engaged for the purposes of employers business and who suffers an injury in any accident arising out of and in the course of his employment, shall be entitled for compensation under the Act.

Employers Liability for Compensation (Accidents)

The employer of any establishment covered under this Act, is required to compensate an employee:

- a. Who has suffered an accident arising out of and in the course of his employment, resulting into (i) death, (ii) permanent total disablement, (iii) permanent partial disablement, or (iv) temporary disablement whether total or partial, or
- b. Who has contracted an occupational disease.

Employer Shall Not Be Liable:

- a. In respect of any injury which does not result in the total or partial disablement of the workmen for a period exceeding **three days**;
- b. In respect of any injury not resulting in death, caused by an accident which is directly attributable to-
 - i. the workmen having been at the time thereof under the influence or drugs, or

- ii. the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
- iii. the wilful removal or disregard by the workmen of any safeguard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

The burden of proving intentional disobedience on the part of the employee shall lie upon the employer.

- iv. when the employee has contracted a disease which is not directly attributable to a specific injury caused by the accident or to the occupation; or
- v. when the employee has filed a suit for damages against the employer or any other person, in a Civil Court.

Contracting Out:

Any contract or agreement which makes the workman give up or reduce his right to compensation from the employer is null and void insofar as it aims at reducing or removing the liability of the employer to pay compensation under the Act.

Definition of Disablement

Disablement is the loss of the earning capacity resulting from injury caused to a workman by an accident.

- **Disablements can be classified as** (a) Total, and (b) Partial. It can further be classified into (i) Permanent, and (ii) Temporary, Disablement, whether permanent or temporary is said to be total when it incapacitates a worker for all work he was capable of doing at the time of the accident resulting in such disablement.
- **Total disablement** is considered to be permanent if a workman, as a result of an accident, suffers from the injury specified in Part I of Schedule I or suffers from such combination of injuries specified in Part II of Schedule I as would be the loss of earning capacity when totalled to one hundred per cent or more. Disablement is said to be permanent partial when it reduces for all times, the earning capacity of a workman in every employment, which he was capable of undertaking at the time of the accident. Every injury specified in Part II of Schedule I is deemed to result in permanent partial disablement.

- **Temporary disablement** reduces the earning capacity of a workman in the employment in which he was engaged at the time of the accident.

Accident Arising Out Of And In The Course Of Employment

An accident arising out of employment implies a casual connection between the injury and the accident and the work done in the course of employment. Employment should be the distinctive and the proximate cause of the injury. The three tests for determining whether an accident arose out of employment are:

1. At the time of injury workman must have been engaged in the business of the employer and must not be doing something for his personal benefit;
2. That accident occurred at the place where he was performing his duties; and
3. Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature condition of employment.

Amount of compensation

The amount of compensation payable will be as follows, namely :-

(a) where death results an amount equal to fifty per cent of the monthly wages of the deceased workman multiplied by the relevant factor; or an amount of fifty thousand rupees, whichever is more;

(b) where permanent total an amount equal to disablement results from sixty the injury per cent of the monthly wages of the injured workman multiplied by the relevant factor, or an amount of sixty thousand rupees, whichever is more; For the purposes of clause (a) and clause (b), "relevant factor", in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due. Where the monthly wages of a workman exceed two thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be two thousand rupees only;

(c) where permanent partial disablement results from the injury (i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the

case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

(d) Where temporary a half monthly payment of the sum disablement, whether equivalent to twenty-five per cent of total or partial, results monthly wages of the workman, to from the injury be paid in accordance with the provisions of sub-section (2).

(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.

(2) The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day - (i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more; or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter : Provided that - (a) there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and (b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident. Explanation : Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of one thousand rupees for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure

General principles of the Act

- There must be a casual connection between the injury and the accident and the work done in the course of employment;
- The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury;
- It is not necessary that the workman must be actually working at the time of his death or that death must occur while he was working or had just ceased to work; and
- Where the evidence is balanced, if the evidence shows a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury it would be enough for the workman to succeed. But where the accident involved a risk common to all humanity and did not involve any peculiar or exceptional danger resulting from the nature of the employment or where the accident was the result of an added peril to which the workman by his own conduct exposed himself, which peril was not involved in the normal performance of the duties of his employment, then the employer will not be liable.

Employer's fault is immaterial

The compensation is payable even when there was no fault of employer. In *New India Assurance Co. Ltd. v. Pennamna Kuriern* - (1995) 84 Comp. Cas. 251 (Ker HC DB), claim of workmen for compensation under Motor Vehicle Act was rejected due to negligence of employee, but compensation was awarded under Workmen's Compensation Act on the principle of 'no fault'.

Compensation payable even if workman was careless

Compensation is payable even if it is found that the employee did not take proper precautions. An employee is not entitled to get compensation only if (a) he was drunk or had taken drugs (b) he wilfully disobeyed orders in respect of safety (c) he wilfully removed safety guards of machines. However, compensation cannot be denied on the ground that workman was negligent or careless. – *Mar Themotheous v. Santosh Raj* 2001 LLR 164 (Ker HC DB).

Number of Workmen Employed Is Not Criteria

In definition of 'workman' in schedule II, in most of the cases, number of workmen employed is not the criteria. In most of cases, employer will be liable even if just one workman is employed. The Act applies to a workshop even if it employs less than 20 workmen and is not a 'factory' under Factories Act. – *Sunil Industries v. Ram Chander* 2000 AIR SCW 4109 = 2001 LLR 64 = 2000(7) SCALE 415.

Payment of compensation only through Commissioner - A Commissioner for Workmen's Compensation is appointed by Government. The compensation must be paid only through the Commissioner in case of death or total disablement. Any lump sum payment to workman under the Act must be made only through Commissioner. Direct payment to workman or his dependents is not recognized at all as compensation.

4k. THE TRADE UNIONS ACT, 1926:

The Trade Unions Act, 1926 provides for registration of trade unions with a view to render lawful organisation of labour to enable collective bargaining. It also confers on a registered trade union certain protection and privileges.

The Act extends to the whole of India and applies to all kinds of unions of workers and associations of employers, which aim at regularising labour management relations. A Trade Union is a combination whether temporary or permanent, formed for regulating the relations not only between workmen and employers but also between workmen and workmen or between employers and employers.

Registration

Registration of a trade union is not compulsory but is desirable since a registered trade union enjoys certain rights and privileges under the Act. Minimum seven workers of an establishment (or seven employers) can form a trade union and apply to the Registrar for its registration.

- The application for registration should be in the prescribed form and accompanied by the prescribed fee, a copy of the rules of the union signed by at least 7 members, and a statement containing
 - (a) the names, addresses and occupations of the members making the application,
 - (b) the name of the trade union and the addresses of its head office, and
 - (c) the titles, names, ages, addresses and occupations of its office bearers.
- If the union has been in existence for more than a year, then a statement of its assets and liabilities in the prescribed form should be submitted along with the application.
- The registrar may call for further information for satisfying himself that the application is complete and is in accordance with the provisions, and that the proposed name does not resemble
- On being satisfied with all the requirements, the registrar shall register the trade union and issue a certificate of registration, which shall be conclusive evidence of its registration.

Legal Status of a Registered Trade Union

- A registered trade union is a body corporate with perpetual succession and a common seal.
- It can acquire, hold sell or transfer any movable or immovable property and can be a party to contracts.
- It can sue and be sued in its own name
- No civil suit or other legal proceeding can be initiated against a registered trade union in respect of any act done in furtherance of a trade dispute under certain conditions.
- No agreement between the members of a registered trade union shall be void or voidable merely on the ground that any of its objects is in restraint of trade.

Appointment of Office Bearers

At least 50% of the office bearers of a union should be actually engaged or employed in the industry with which the trade union is concerned, and the remaining 50% or less can be outsiders such as Lawyers, politicians, social workers etc.

To be appointed as an office bearer or executive of a registered trade union, a person must have

- a. attained the age of 18 years; and
- b. not been convicted of any offence involving moral turpitude and sentenced to imprisonment, or a period of at least 5 years has elapsed since his release.

Change of Name & Registered Office

- A registered trade union may change its name with the consent of at least 2/3rds of the total numbers of its members.
- Notice of change of name in writing, signed by the secretary and 7 members of the union, should be sent to the registrar.
- the Registrar shall register the change in name if he is satisfied that the proposed name is not identical with the name of any other existing union and the requirements with respect to change of name have been complied with.
- The change of name shall not affect any rights and obligations of the trade union or render any legal proceeding by or against the trade union as defective.

Change of Registered Office

Notice of change in registered office address should be given to the Registrar in writing within 14 days of such change.

Dissolution of a Trade Union

A registered trade union can be dissolved in accordance with the rules of the union. A notice of dissolution signed by any seven members and the secretary of the union should be sent to the registrar within 14 days of the dissolution. On being satisfied the registrar shall register the notice and the union shall stand dissolved from the date. The funds of the union shall be divided by the

Registrar amongst its members in the manner prescribed under the rules of the union or as laid down by the government.

Amalgamation of Trade Unions

Any registered trade union may amalgamate with any other union(s), provided that at least 50% of the members of each such union record their votes and at least 60% of the votes so recorded are in favour of amalgamation. A notice of amalgamation signed by the secretary and at least 7 members of each amalgamating union, should be sent to the registrar, and the amalgamation shall be in operation after the Registrar registers the notice.

Obligations of Registered Trade Unions

1. The general funds of a registered trade union should be spent only for the objects specified such as, payment of salaries, allowances and expenses of its office bearers, its administrative and audit expenses, prosecution or defence of any legal proceeding for securing or protecting its rights, conduct of trade disputes, compensation for loss arising out of trade disputes, compensation for loss arising out of trade disputes, provision of educational, social or religious benefits and allowances on account of death, old age, sickness, accident or unemployment to its members, publication of labour journals etc. The trade union may set up a separate political fund for furtherance of civic and political interest of members. Contribution to this fund is not compulsory.
2. The account books and membership register of the union should be kept open for inspection by any of its office-bearers.
3. A copy of every alteration made in the rules of the union should be sent to the Registrar within 15 days of making the alteration.
4. An annual statement of receipts and expenditure and assets and liabilities of the union for the year ending on the 31st December, prepared in the prescribed forms and duly audited should be sent to the Registrar within the prescribed time. This statement should be accompanied by a statement showing changes in office bearers during the year and a copy of the rules as amended upto date.

| | Offence | Penalty |
|----|---|---|
| 1. | If the registered trade union/ its office bearers or members fail to give any notice or send any statement as required under the Act. | Fine upto Rs. 5 plus additional fine upto Rs. 5 per week in case of continuing offence. (Maximum fine imposable Rs. 50) |
| 2. | If any person wilfully makes any false entry in the annual statement of the union or its rules. | Fine upto Rs. 500. |
| 3. | If any person, with intent to deceive, gives an incorrect copy of rules of the union to any member or a prospective member. | Fine upto Rs. 200. |

4I. THE SHOPS AND ESTABLISHMENT ACT

The Shops and Establishment Act is a state legislation and each state has framed its own Act and Rules for the Act. The object of this Act is to provide statutory obligation and rights to employees and employers in the unauthorized sector of employment, i.e., shops and establishments. This Act is applicable to all persons employed in an establishment with or without wages, except the members of the employers' family.

This Act lays down the following rules:

- Working hours per day and week.
- Guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work.
- Employment of children, young persons and women.
- Rules for annual leave, maternity leave, sickness and casual leave, etc.
- Rules for employment and termination of service.

Generally under this Act, registration of shop/establishment is necessary within thirty days of commencement of work but in some states like Delhi, registration has been kept in abeyance. Hence the rules regarding registration of shops and establishment vary from state to state. Fifteen days of notice is required to be served before the closing of the establishment and State government can

exempt, either permanently or for specified period, any establishments from all or any provisions of this Act.

Bombay Shops & Establishment Act, 1948

This act is a social piece of legislation of the State Government enacted to prevent sweat labourers of Un-organized sector and to regulate the condition of work and employment and therefore to secure maximum benefits to the employees working in different categories of establishment viz. Shops, Commercial Establishments, residential hotels, restaurants, eating houses, theatres and other places of public amusement or entertainments for the jurisdiction of Greater Mumbai by virtue of the statutory provisions of Section 43 of the said Act subject to the overall supervisions of the State Government through the Commissioner of Labour, Mumbai. The shops & Establishments Department is headed by the Chief Inspector, Shops & Establishments. The Chief Inspector, Shops & Establishments is assisted by Four Deputy Chief Inspectors.

Forms and Formalities

- Form 'A': This form is prescribed for registration of the establishments under Bombay Shops & Establishments Act, 1948. Registration is made under Sec 7(1)(4) of the said act.
- Form 'B': This is prescribed for the periodical renewal of registration certificate say for one year or three years at a time. Renewal is made under Sec.7(2A) of the Bombay Shops and Establishments Act
- Form 'E': This form is prescribed for making any subsequent change in the information already submitted in form 'A'.
- The Registration Certificate is generally valid up to the end of the calendar year for which it is granted under Sec.7(2A) it is required to get every Registration Certificate renewed for next calendar year fifteen days before the date of expiry of Registration Certificate in hand by submitting prescribed form 'B' along with prescribed renewal fees to the concerned Shop Inspector.
- As per Sec. 7(2B), the renewal of Registration Certificate can be made for 3 calendar years at a time at the option of the employer by paying requisite for that period. In such cases the Registration Certificate will be valid up to the end of 3rd calendar year including and from the year to which it is granted or renewed as the case may be.
- If the renewal application is not made within the period prescribed but it is made within thirty days after the date of expiry of Registration Certificate or the renewed Registration

Certificate as the case may be, then in such cases an additional fee as late fee equal to half of the fee payable for normal renewal of Registration Certificate is charged.

Documents required for registration

- Memorandum of Articles of Association/Trust deed.
- Premises purchase Agreement.
- List of Directors/Managers.
- 1st Bank Account opening proof/Bank Account No. details.
- First Income Tax Assessment order/PAN
- BMC declaration
- Date of commencement of business

Compliance

- During the course of enforcement the inspectors visit various establishments and detect breaches of the provisions of the Act and rules framed there under and launch prosecutions on defaulters accordingly.
- The major breaches of the provisions of the Act consist of non-registration, non-renewal, opening of establishment before prescribed hours, closing of establishments later than prescribed hours, exceeding total hours, continuous work without rest interval, spread over, not granting privilege leave, keeping establishment open on weekly closed day, calling employees for work on their weekly offs, employing female employees after prescribed hours, employing child labour, not providing Identity Cards to certain class of employees, not paying wages as per rates prescribed under Minimum Wages Act etc.
- The major breaches of the provisions of rule are in the nature of procedural lapses. Viz. Not maintaining prescribed register of employment, leave register, visit book, lime washing register, not providing leave book to the employees or not making suitable entries therein, not producing requisite record register, notices for inspection on demand, not displaying name board in Marathi in Devnagari Script etc.

Maintenance of Registers

Generally the following Registers/ records/ notices etc. are to be kept by the different categories of work:

- Register of Employment by employers of Shop or Commercial Establishment in prescribed form 'H' or 'J' as the case may be.
- Register of leave in form 'M'.
- Leave Book in form 'N'.
- Notice in form 'L' specifying the days of holidays.
- Muster-Roll – Cum-Wage Register as laid down under Rule 27(1) of Maharashtra Minimum Wages Rules 1963.
- Notify to the Sr. Inspector (Shops & Establishments) at the beginning of the every calendar year regarding list of closed day of the respective year.
- The employer has to provide Identity Cards to the certain class of employees.
- The Employer has to apply for permission to maintain computerized records.
- The employer also has to obtain permission for ladies working beyond 8.30 p.m. under Sec 33 of the Act. (However as per the notification dated June 2002, Government has waived such conditions with respect to certain class of industries including CALL CENTRES.)

4m. THE PAYMENT OF WAGES ACT, 1936

Application of the Act:

The Act will apply to persons employed in any factory or employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration, and to persons employed in an industrial or other establishment.

Here "factory" means a factory as defined in section 2(m) of the Factories Act, 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under section 85(1) thereof.

"Industrial or other establishment" means any-

- (a) Tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- (b) Air transport service other than such service belonging to, or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- (c) Dock, Wharf or Jetty;
- (d) Inland vessel, mechanically propelled;

- (e) Mine, Quarry or Oil-field;
- (f) Plantation;
- (g) Workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;
- (h) Establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation, or to the supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.

2. This Act applies to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed Rs 6500/- per month or such other higher sum which, on the basis of figures of the Consumer Expenditure Survey published by the National Sample Survey Organisation, the Central Government may, after every five years, by notification in the Official Gazette, specify."

Meaning of wages

"Wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

- (a) Any remuneration payable under **any award or settlement** between the parties or order of a court;
- (b) Any remuneration to which the person employed is entitled in respect of **overtime work or holidays or any leave period**;
- (c) Any **additional remuneration** payable under the terms of employment (whether called a bonus or by any other name);
- (d) Any sum which by **reason of the termination of employment** of the person employed is **payable under any law, contract or instrument** which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) Any sum to which the person employed is **entitled under any scheme** framed under any law for the time being in force,

But **does not include-**

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
- (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (3) Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (4) Any traveling allowance or the value of any traveling concession;
- (5) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) Any sum as gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).]

Responsibility for Payment of wages

Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,-

- (a) In factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948);
- (b) In industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;
- (c) Upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;
- (d) In the case of contractor, a person designated by such contractor who is directly under his charge; and
- (e) In any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be,

shall be responsible for such payment.

It shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.

Wage period for payment of wages

The person responsible for payment of wages shall decide the wage period. But the period shall not exceed one month.

The wages of every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than 1000 persons are employed, shall be paid before the expiry of the 7th day after the last day of the wage-period in respect of which the wages are payable

Any other railway, factory or industrial or other establishment that is where more than 1000 people are employed, shall be paid before the expiry of the 10th day, after the last day of the wage-period in respect of which the wages are payable.

In the case of persons employed on a dock, wharf or jetty or in a mine, the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the 7th day from the day of such completion.

Where the employment of any person is terminated by or on behalf of the employer, the wages, earned by him shall be paid before the expiry of the 2nd working day from the day on which his employment is terminated.

But where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognized holiday, the wages earned by him shall be paid before the expiry of the 2nd day from the day on which his employment is so terminated.

Deductions from Wages allowable under the Act

Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely:

(a) Fines: The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to 3% of the wages payable to him in respect of that wage-period. No fine shall be imposed on any employed person who is under the age of fifteen years. Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed. No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of 90 days from the day on which it was imposed

(b) Deductions for absence from duty;

(c) Deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(d) Deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidizing house- accommodation which may be specified in this behalf by the State Government by notification in the Official Gazette;

(e) Deductions for such amenities and services supplied by the employer as the State Government or any officer specified by it in this behalf may, by general or special order, authorize.

Explanation: The word "services" in ²³[this clause] does not include the supply of tools and raw materials required for the purposes of employment;

(f) Deductions for recovery of advances of whatever nature (including advances for traveling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages. Recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage-period, but no recovery shall be made of such advances given for traveling-expenses.

(ff) deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;

(fff) deductions for recovery of loans granted for house-building or other purposes approved by the State Government and the interest due in respect thereof;]

(g) Deductions of income-tax payable by the employed person;

(h) Deductions required to be made by order of a court or other authority competent to make such order;

- (i) Deductions for subscriptions to, and for repayment of advances from any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies or any recognized provident fund as defined or any provident fund approved in this behalf by the State Government, during the continuance of such approval;
- (j) deductions for payments to co-operative societies approved by the State Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office, and
- (k) deductions, made with the written authorization of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation Act of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Savings Bank in furtherance of any savings scheme of any such government.]]
- (kk) deductions, made with the written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Union Act, 1926 (16 of 1926), for the welfare of the employed persons or the members of their families, or both, and approved by the State Government or any officer specified by it in this behalf, during the continuance of such approval;
- (kkk) deductions, made with the written authorization of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Union Act, 1926 (16 of 1926);
- (l) Deductions, for payment of insurance premium on Fidelity Guarantee Bonds;
- (m) Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;
- (n) Deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration whether in respect of fares, freight, demurrage, wharfage and carnage or in respect of sale of food in catering establishments or in respect of sale of commodities in grain shops or otherwise;
- (o) Deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;]

(p) Deductions, made with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as the Central Government may, by notification in the Official Gazette, specify;]

(q) Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

The total amount of deductions which may be made above in any wage-period from the wages of any employed person shall not exceed-

(i) in cases where such deductions are wholly or partly made for payments to co-operative societies under clause (j) above, 75% of such wages, and

(ii) in any other case, 50% of such wages:

Where the total deductions authorized exceed 75% or, as the case may be, 50% of the wages, the excess may be recovered in such manner as may be prescribed.

Maintenance of registers and records

It is the responsibility of the employer to maintain such registers and records giving particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages and such other particulars. Every record and register maintained shall be preserved for a period of 3 years after the date of last entry made therein.

Rights of employees

Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, than following persons may apply to such authority:

- (1) Such person himself,
- (2) Any legal practitioner or
- (3) Any official of a registered trade union authorized in writing to act on his behalf, or
- (4) Any Inspector under this Act, or
- (5) Any other person acting with the permission of the authority appointed by the state government.

Every such application shall be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Any application may be admitted after the said period of 12 months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

When any application made is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount:

- (1) Deducted, or
- (2) The payment of the delayed wages, together with the payment of such compensation as the authority may think fit. The amount of such compensation shall:
 - a) Not exceeding 10 times the amount deducted in the case where deduction has been wrongly made from the wages and;
 - b) Not exceeding Rs 3000/- but not less than Rs 1500/- in the case where there is delay in payment of wages.

Even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding Rs 2000/-.

A claim under this Act shall be disposed of as far as practicable within a period of 3 months from the date of registration of the claim by the authority.

Also no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to- (a) A bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) The occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unable, in spite of exercising reasonable diligence.

If the authority hearing an application under this section is satisfied-

(a) That the application was either malicious or vexatious, the authority may direct that a penalty not exceeding Rs 375/- to be paid to the employer or other person responsible for the payment of wages by the person presenting the application; or

(b) That in any case in which compensation is directed to be paid under the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty not exceeding Rs 375/- to be paid to the State Government by the employer or other person responsible for the payment of wages.

A single application can also be made by the unpaid group of the employed persons. Employed persons can be said to belong to Unpaid Group:

- (1) If they are borne by the same establishment, and
 - a. If deductions have been made from their wages for the same wage period in contravention of the Act, or
 - b. Their wages for the same wage period have remained unpaid after the day fixed by the Act.

An appeal can be made against an order dismissing either wholly or part of an application made. The appeal can be made within 30 days of the date on which the order or direction was made. The appeal has to be made before the court of small causes or the District Court by following persons:

- (1) By an employed person or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf or any Inspector under this Act, if the total amount of wages claimed to have been withheld from the employed person exceeds Rs 20/- or from the unpaid group to which the employed person belongs or belonged exceeds Rs 50, or
- (2) By the employer or other person responsible for the payment of wages, if the total sum directed to be paid by way of wages and compensation exceeds Rs 300/- or such direction has the effect of imposing on the employer or the other person a financial liability exceeding Rs 1000/-, or
- (3) By any person directed to pay a penalty.

Penalties

- (1) Whoever being required under this Act to maintain any records or registers or to furnish any information or return-
 - (a) Fails to maintain such register or record; or
 - (b) Willfully refuses or without lawful excuse neglects to furnish such information or return; or
 - (c) Willfully furnishes or causes to be furnished any information or return which he knows to be false; or
 - (d) refuses to answer or willfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act,

shall, for each such offence, be punishable with fine which shall not be less than Rs 1500/- one but which may extend to Rs 7500/-.

(2) Whoever-

- (a) Willfully obstructs an Inspector in the discharge of his duties under this Act; or
- (b) refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorized by or under this Act in relation to any railway, factory or industrial or other establishment; or
- (c) Willfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or
- (d) prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act;

shall be punishable with fine which shall not be less than Rs 1500/-one but which may extend to Rs 7500/-.

- (3) If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which shall not be less than Rs 3750/- but which may extend to Rs 22500/-.
- (4) If any person fails or willfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf, he shall, without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to Rs 750/- for each day for which such failure or neglect continues.

Payment in case of death of the employed person whose wages are not disbursed

Where the amount payable to an employed person as wages could not be paid on account of his death before payment or on account of his whereabouts not being known;

- (a) Be paid to the person nominated by him in this behalf.
- (b) Where no such nomination has been made or where for any reasons such amount cannot be aid to the person nominated, be deposited with the prescribed authority.

4m. MINIMUM WAGES ACT, 1948

The concept of Minimum Wages was first evolved by ILO in 1928 with reference to remuneration of workers in those industries where the level of wages was substantially low and the labour was vulnerable to exploitation, being not well organised and having less effective bargaining power. The need for a legislation for fixation of minimum wages in India received boost after World War – II when a draft bill was considered by the Indian Labour Conference in 1945. On the recommendation of the 8th Standing Labour Committee, the Minimum Wages Bill was introduced in the Central Legislative assembly on 11.4.1946 to provide for fixation of minimum wages in certain employments. The Minimum Wages Bill was passed by the Indian Dominion Legislature and came into force on 15th March, 1948. Under the Act both State and Central Government are “Appropriate Governments” for fixation/revision of minimum rates of wages for employments covered by the Schedule to the Act. The minimum rates of wages also include Special Allowance (Variable Dearness Allowance) linked to Consumer Price Index Number which are revised twice a year effective from April and October. The rates of wages once fixed are revised at an interval not exceeding of five years.

The National Minimum Wage has been considered at various for a in the past. However, State/UT Governments are not unanimous on the need of a National Minimum Wage as socioeconomic conditions vary from state to state, region to region and also from industry to industry due to different geographical, topographical and agro-climatic factors. The Six Regional Minimum Wages Advisory Committees set up in 1987 to reduce regional disparities among States have been broadened and renamed as Regional Labour Ministers’ Conferences.

Employer’s Checklist for Minimum Wages

The employer must pay every employee wages as fixed by the Government.

(a) Wages must be paid in cash.

(b) For the fixation of minimum wages, the employment must have been in Schedule originally or added to the Schedule by a notification under Section 27 of the Act.

(c) The employer can take actual work on any day up to 9 hours in a 12 hours shift, but he must pay double the rate for any hour or part of an hour of actual work in excess of 9 hours or for more than 48 hours in any week.

(d) Once a minimum wage is fixed according to the provisions of the Act, the employer must pay to every employee engaged in a Scheduled employment, minimum wages notification for that class of employees.

(e) The employer should fix wage-period for the payment of wages at intervals not exceeding one month or such other larger period as may be prescribed.

(f) The employer should pay wages on a working day within seven days of the end of wage period or within 10 days if 1000 or more persons are employed in an establishment.

(g) The employer should pay the wages to a person discharged not later than the second working day after his discharge.

(h) Every employer should maintain a register of wages at workplace specifying the following particulars for each wage period in respect of each employed person:

- i. Minimum rate of wages payable;
- ii. The number of days in which overtime was worked;
- iii. The gross wages;
- iv. The wages actually paid and the date of payment.

(i) Every employer should get the signature or the thumb impression of every person employed on the wage book and the wage slips.

(j) The employer should exhibit at main entrance to the establishment and its offices, a notice in respect of the following in English and local language:

- i. Minimum rates of wages;
- ii. Abstracts of the Acts and rules made there under;
- iii. Name and address of the Labour Inspector/ Asst. Commissioner of Labour etc.

The minimum wages covers all workers in the sectors agricultural, industrial and small-scale sectors.

This means:

- farm labourers
- landless labourers
- factory workers
- people working in cottage industries
- Construction workers etc.

The issue of fixation of minimum wages is of primary importance in a country like India where 300 million people are employed in the informal sector with no collective bargaining power. This is 93 percent of the workers. The enactment of the Minimum Wages Act in 1948 is a landmark in the labour history of India. The Act provides for fixation of minimum wages for notified scheduled employment.

As per Government of India, for all the States, the minimum wages have been fixed at about Rs 40 to 60 per day per person, average about Rs 50 per day for 25 days per month.

There are 45 scheduled employments in the Central sphere and 1232 in the state sphere for which minimum wages have been fixed. To protect the wages against inflation they were linked to rise in the Consumer Price Index.

The variable dearness allowance (VDA) came into being in 1991 and the allowance is revised twice a year.

At present 22 states /Union Territories have these provisions. The states and Union Territories were further directed to ensure that minimum wages are not below Rs 45 per day for any scheduled employment.

Fixation of Minimum Wage Rate in India:

Minimum rate of the wages fixed or revised consists of the following:

- A basic rate of wages and a special allowance, viz., cost of living allowance ;
- A basic rate of wages with or without cost of living allowance and cash value of concessions for supplies of essential commodities ;
- An all inclusive rate, i.e. basic rate, cost of living allowance and cash value of concessions.

The Government may fix the minimum rates of wages either by the hour, by the day, by the month or by such wage period as may be prescribed.

The minimum wage rate may be fixed at

- a) Time rate,
- b) Piece rate,
- c) Guaranteed time rate and
- d) Overtime rate.

The Act provides that different minimum wage rate may be fixed for

- a) Different scheduled employments,
- b) Different works in the same employment,
- c) Adult, adolescent and children,
- d) Different locations or
- e) Male and Female.

Also, such minimum wage may be fixed by

- a) An hour,
- b) Day,
- c) Month, or
- d) Any other period as may be prescribed by the notified authority.

Norms for fixing minimum wage:

- Three consumption units per earner,
- Minimum food requirement of 2700 calories per average Indian adult,
- Cloth requirement of 72 yards per annum per family,

- Rent corresponding to the minimum area provided under the government's Industrial Housing Scheme and
- Fuel, lighting and other miscellaneous items of expenditure to constitute 20 per cent of the total minimum wage
- Fuel, lighting and other miscellaneous items of expenditure to constitute 20% of the total Minimum Wages,
- Children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage etc. should further constitute 25% of the total minimum wage.

Cost of Living Allowance:

The minimum basic wages fixed are linked to consumer price index as a counter measure against inflation. The cost of living is set twice in a year. The Commissioner of Labour notifies the rate 1st of April and 1st of October. The rates are fixed on the basis of the average rise in the State industrial workers consumer price index numbers for half year ending December and June respectively.

Variable Dearness Allowance:

Dearness Allowance is payable to monthly, daily and piece rate earners. Every six months the respective State Governments issues the Cost of Living Index number for each and every scheduled employment.

For checking the minimum wage rate log on to <http://www.paycheck.in/main/officialminimumwages>. It gives state wise updated minimum wage rate with their effective date.

4n. LAWS RELATED TO CHILD LABOUR

Background

The problem of child labour continues to pose a challenge before the nation. Government has been taking various pro-active measures to tackle this problem. Way back in 1979, Government formed the first committee called Gurupadswamy Committee to study the issue of child labour and to suggest measures to tackle it. The Committee made some far-reaching recommendations. It observed that as long as poverty continued, it would be difficult to totally eliminate child labour and

hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee felt that in the circumstances, the only alternative left was to ban child labour in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that a multiple policy approach was required in dealing with the problems of working children.

Based on the recommendations of Gurupadaswamy Committee, the Child Labour (Prohibition & Regulation) Act was enacted in 1986. The Act prohibits employment of children in certain specified **hazardous occupations and processes** and regulates the working conditions in others. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act.

In consonance with the above approach, a **National Policy on Child Labour** was formulated in 1987. The Policy seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children working in hazardous occupations & processes in the first instance. The Action Plan outlined in the Policy for tackling this problem is as follows:

- **Legislative Action Plan** for strict enforcement of Child Labour Act and other labour laws to ensure that children are not employed in hazardous employments, and that the working conditions of children working in non-hazardous areas are regulated in accordance with the provisions of the Child Labour Act. It also entails further identification of additional occupations and processes, which are detrimental to the health and safety of the children.
- **Focusing of General Developmental Programmes for Benefiting Child Labour -**
As poverty is the root cause of child labour, the action plan emphasizes the need to cover these children and their families also under various poverty alleviation and employment generation schemes of the Government.
- **Project Based Plan of Action** envisages starting of projects in areas of high concentration of child labour. Pursuant to this, in 1988, the **National Child Labour Project (NCLP)** Scheme was launched in 9 districts of high child labour endemicity in the country. The Scheme envisages running of special schools for child labour withdrawn from work. In the special schools, these children are provided formal/non-formal education along with vocational training, a stipend of Rs.100

per month, supplementary nutrition and regular health check ups so as to prepare them to join regular mainstream schools. Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by the NGOs in the district.

Commission for protection of rights

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.

The Commission visualises a rights-based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, District and Block levels, taking care of specificities and strengths of each region. In order to touch every child, it seeks a deeper penetration to communities and households and expects that the ground experiences inform the support the field receives from all the authorities at the higher level. Thus the Commission sees an indispensable role for the State, sound institution-building processes, respect for decentralization at the level of the local bodies at the community level and larger societal concern for children and their well-being.

Website: <http://ncpcr.gov.in/index.htm>

CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986 & THE CHILD LABOUR (PROHIBITION AND REGULATION) RULES, 1988

The Child Labour (Prohibition & Regulation) Act, 1986 was enacted to prohibit the engagement of children below the age of fourteen years in factories, mines and hazardous employments and to regulate their conditions of work in certain other employments. According to the Act, no child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on, provided that nothing in this Act shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from the Government. Also, the Central Government may, by notification in the official

Gazette, constitute 'the Child Labour Technical Advisory Committee' to advise the Central Government for the purpose of additions of occupations and processes to the Schedule of the Act.

The provisions of the Act in a nutshell -

- No child shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments. The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
- No child shall be required or permitted to work overtime. No child shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.
- Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.
- Every occupier shall maintain, in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing:- (i) the name and date of birth of every child so employed or permitted to work; (ii) hours and periods of work of any such child and the intervals of rest to which he is entitled; (iii) the nature of work of any such child; and (iv) such other particulars as may be prescribed.
- The appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.
- Whoever employs any child or permits any child to work in contravention of the provisions of this Act shall be punishable with imprisonment or with fine or with both.
- Any person, police officer or inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction. No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

Maintenance of registers (section 11) – Every occupier in whose establishment children are employed or permitted to work will maintain a register in **form A** which will be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing –

- a. the name and date of birth of every child so employed or permitted to work;
- b. hours and periods of work of any such child and the intervals of rest to which he is entitled;
- c. the nature of work of any such child; and
- d. such other particulars as may be prescribed

Form B- certificate of age

(1) All young persons in employment in any of the occupations stated in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on, shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an Inspector.

(2) The certificate of age referred to in sub-rule (1) shall be issued in Form 'B'.

(3) The charges payable to the medical authority for the issue of such certificate shall be the same as prescribed by the State Government or the Central Government, as the case may be for their respective Medical Boards.

(4) The charges payable to the medical authority shall be borne by the employer of the young person whose age is under question.

Authority under the act

Appointment of Inspectors – The appropriate Government may appoint inspectors for the purposes of securing compliance with the provisions of this Act and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code [**Section 17**].

Penalty

1. Section 3 of the Act states the prohibited occupations and processes, Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than, three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.
2. Repeat offence under section 3 is punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.
3. Whoever –
 - a. fails to give notice as required by Sec. 9, or
 - b. fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or
 - c. fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or
 - d. fails to comply with or contravenes any other provisions of this Act or the rules made there under, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

Other major provisions:

Hours and Period of Work:

No child shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed with no period exceeding three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

No child shall be permitted or required to work between 7 p.m. and 8 a.m. and no child shall be required or permitted to work overtime. No child shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

Weekly Holidays:

Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Prohibition of Employment of Children in Certain Occupations and Processes

No child shall be employed or permitted to work in any of the occupations stated in Part A of the Schedule or in any workshop where the processes mentioned in Part B of the Schedule is carried on. however, this prohibition is not applicable to any workshop where any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.[Section 3]

Prohibited occupations as per PART A

Any occupation concerned with: -

1. Transport of passengers, goods or mails by railways;
2. Cinder picking, clearing of an ash pit or building operation in the railway premises;
3. Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train;
4. Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
5. A port authority within the limits of any port;
6. Work relating to selling of crackers and fireworks in shops with temporary licenses;
7. Abattoirs/Slaughter House;
8. Automobile workshops and garages;

9. Foundries;
10. Handling of toxic or inflammable substances or explosives;
11. Handloom and power loom industry;
12. Mines (underground and under water) and collieries;
13. Plastic units and fiberglass workshops;

Prohibited processes as per PART B

1. Beedi-making.
2. Carpet-weaving including preparatory and incidental process thereof
3. Cement manufacture, including bagging of cement.
4. Cloth printing, dyeing and weaving including processes preparatory and incidental thereto
5. Manufacture of matches, explosives and fire-works.
6. Mica-cutting and splitting.
7. Shellac manufacture.
8. Soap manufacture.
9. Tanning.
10. Wool-cleaning.
11. Building and construction industry including processing and polishing of granite stones

- (12) Manufacture of slate pencils (including packing).

- (13) Manufacture of products from agate.

- (14) Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.

- (15) "Hazardous processes" as defined in Sec. 2 (cb) and 'dangerous operation' as notice in rules made under section 87 of the Factories Act, 1948

- (16) Printing as defined in Section 2(k) (iv) of the Factories Act, 1948

- (17) Cashew and cashewnut descaling and processing.

- (18) Soldering processes in electronic industries.

- (19) 'Aggarbatti' manufacturing.

20. Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe work, dent beating and painting.
21. Brick kilns and Roof tiles units.
22. Cotton ginning and processing and production of hosiery goods.
23. Detergent manufacturing.
24. Fabrication workshops (ferrous and non ferrous)
25. Gem cutting and polishing.
26. Handling of chromite and manganese ores.
27. Jute textile manufacture and coir making.
28. Lime Kilns and Manufacture of Lime.
29. Lock Making.
30. Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scraping of lead paint, burning of lead in enameling workshops, lead mining, plumbing, cable making, wiring patenting, lead casting, type founding in printing shops. Store type setting, assembling of cars, shot making and lead glass blowing.
31. Manufacture of cement pipes, cement products and other related work.
32. Manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products.
33. Manufacture of dyes and dye stuff.
34. Manufacturing or handling of pesticides and insecticides.
35. Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry.
36. Manufacturing of burning coal and coal briquettes.
37. Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather.
38. Moulding and processing of fiberglass and plastic.
39. Oil expelling and refinery.
40. Paper making.
41. Potteries and ceramic industry.
42. Polishing, moulding, cutting, welding and manufacturing of brass goods in all forms.

43. Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting.
44. Saw mill – all processes.
45. Sericulture processing.
46. Skinning, dyeing and processes for manufacturing of leather and leather products.
47. Stone breaking and stone crushing.
48. Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form.
49. Tyre making, repairing, re-treading and graphite beneficiation.
50. Utensils making, polishing and metal buffing.
51. 'Zari' making (all processes)'.

(52) Electroplating;

53. Graphite powdering and incidental processing;
54. Grinding or glazing of metals;
55. Diamond cutting and polishing;
56. Extraction of slate from mines;
57. Rag picking and scavenging.

Ban on employment of children

Ban on employment of children as domestic servants or in dhabas (roadside eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centers is now in force from 10th October 2006 under the Child Labour (Prohibition & Regulation) Act, 1986. The Union Ministry of Labour had earlier issued a notification giving three-month mandatory notice. The Ministry has warned that anyone employing children in these categories would be liable to prosecution and other penal action under the Act.

Rehabilitating Children

The Labour Ministry has sought necessary support from the State Governments in enforcing the ban on employment of children as domestic servants and also in eateries etc. In a letter to the Chief Ministers, the Minister for Labour and Employment has also sought their support in rehabilitating

children withdrawn from work due to this ban. The Ministry is holding zonal level meetings to sensitize the concerned state level officials, civil society organisations, NGOs and other stakeholders.

The Secretary, Labour and Employment, has also written to his counterparts in several Central Government Ministries requesting them for infrastructure support by the concerned departments towards rehabilitation of the released children from work and their families as an immediate objective. He has also urged them to make specific provisions in the schemes of their Ministries for working children and their families as a long term measure. The Secretaries who have been approached include those from the Ministries of Women and Child Development, Human Resource Development, Rural Development, Urban Development and Poverty Alleviation, Social Justice and Empowerment. The views and cooperation of industrial associations and NGOs are also sought in providing necessary support towards rehabilitation as a consequence of ban. Government servants have already been prohibited from employing children as domestic servants.

Child Helpline

A toll free 24-hour telephone help line 1098 for children in distress can be accessed in 72 cities of the country. This number can be available by any child or concerned adult on his or her behalf. This helpline, easily remembered in Hindi as “Dus, Nau, Aath”, is presently working in the following 72 cities:

Agartala, Aurangabad, Chennai, Guwahati, Kanchipuram, Kozhikode, Nadia, Pune, South 24 Paraganas, Varanasi, Shimla, Ahmedabad, Bangalore, Coimbatore, Hyderabad, Kanyakumari, Kutch, Nagapattinam, Puri, Thiruvananthapuram, Vijayawada, Ludhiana, Ahmednagar, Baroda, Cuddalore, Imphal, Karaikal, Lucknow, Nagpur, Rourkela, Thirunelveli, Vishakhapatnam, Akola, Bhopal, Delhi, Indore, Kochi, Mangalore, Nasik, Ranchi, Thrissur, Waynad, Allahabad, Bhubaneswar, East Midnapore, Jammu, Kolkata, Madurai, New Jalpaiguri, Salem, Tiruchirapalli, West Midnapore, Alwar, Chandigarh, Goa, Jaipur, Kollam, Mumbai, Patna, Shillong, Udaipur, Agra, Amarawati, Cuddalore, Gorakhpur, Kalyan, Kota, Murshidabad, Port Blair, Sholapur, Ujjain and Gurgaon.

National Child Labour Project (NCLP)

The ban is expected to go a long way in ameliorating the condition of hapless working children. The Labour Ministry is also contemplating to strengthen and expand its rehabilitative Scheme of National Child Labour Project (NCLP), which already covers 250 child labour endemic districts in the country.

4o. THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

This legislation regulates the employment of contract labourers in establishments and by contractors. The Rules for implementing the provisions of the Act vary from state to state.

Applicability of the Act

An establishment which engages 20 or more persons or engaged on any day of the preceding 12 months as contract labourers come under the purview of the legislation. The legislation is also applicable to contractors who employ workmen as contract labourers, or who employed on any day of the preceding 12 months.

Authorities under the Act

- i. Registering officer of the area – The Registering Officer of the area is the person to whom application shall be made for the grant of certificate of registration, for the purpose of engaging contract labourers. Any change in the establishment shall be intimated to the Registering officer within 30 days of change, and an amendment to the certificate shall be made by applying to him.
- ii. Licensing officer of the area – The Licensing officer is the person from whom a contractor shall obtain licence for the purpose of engaging contractors. He is entitled to make such investigation as required in respect of the application received from a contractor. (Section 12)
- iii. Inspectors - Under Section 28 Inspectors shall be appointed for a particular area the local limits for which shall be defined. He has the power to enter at all reasonable hours any place where contract labour takes place, for the purpose of verifying registers, records or notices, to examine persons, to collect information, to seize or take copies of registers, records of wages, or notices, and to exercise such other powers as is prescribed.

Important definitions

"Contractor" : with relation to an establishment a contractor is a person who undertakes to do some work for the establishment through contract labour, not being a mere supply of goods or articles of manufacture to the establishment or one who supplies contract labour for any work of the establishment and includes a sub-contractor.

"Principal employer": in a factory is the owner or occupier of the factory and where a person has been named as the manager of the factories under the Factories Act, 1948, such person is the principal employer. In any other establishment any person responsible for the supervision and control of the establishment.

"Workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled, or unskilled manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be express or implied but does not include any person : (1) who is employed mainly in a managerial or administrative capacity, (2) who, being employed in a supervisory capacity draws wages exceeding Rs.500/- per month or exercises either by virtue of powers vested on him or by the nature of the duties attached to the office functions which are of managerial nature or (3) who is an outworker to whom any article or materials are given out by or on behalf of the principal employer for being processed.

Important provisions of the Contract Labour Act, 1971

Registration of principal employer

The Principal employer has to file an application for registration, to the Registering Officer. The application must be made in triplicate, accompanied by treasury receipt showing the payment of fees. The Registering Officer will register the Company and issue a Certificate of Registration. If the Company fails to obtain Certificate of Registration, the position would be that the workmen employed by the Contractors would be deemed to be employed by the Company, which is the Principal Employer.

Licensing of contractors

The Principal employer should engage workmen only through licensed contractors. The Principal employer should therefore ensure that the Contractors engaged by it for various services, hold a licence issued under the Act.

Responsibility for payment of wages

The Principal employer must nominate a representative to be present at the time of disbursement of wages by the contractor and such representative must certify the amounts paid as wages to the contract labourers.

Facilities to be provided to contract labourers

The following facilities should be provided to the contract labourers if the contractors do not provide it:

- 1) Rest rooms
- 2) Canteen
- 3) Latrines and urinals
- 4) Drinking water
- 5) First aid facilities

Submission of returns

The Principal employer should file a return within 15 days of the commencement or completion of each contract work under each contractor. The Principal employer has to file Annual Return in duplicate to the Registering Officer before the 15th of February every year containing details of the contractors engaged in the previous year.

The contractor should file half yearly returns in duplicate within 30 days from the close of the half year, which in this case is a period of 6 months commencing from the 1st of January and the 1st of July every year, to the Licensing Officer.

Maintenance of records

The Principal employer should maintain a register of contractors. The contractors should maintain the following registers:

- 1) Register of persons employed.
- 2) Muster roll
- 3) Register of wages
- 4) Register of deductions for damage or loss
- 5) Register of fines
- 6) Register of advances
- 7) Register of overtime

Displays

Notice showing the place and time of disbursement of wages, rate of wages, hours of work, wage period, dates of payment of wages, name and addresses of the Inspector having jurisdiction and date of payment of unpaid wages should be displayed in the premises in the local language understood by majority of the contract labourers.

4p. MATERNITY BENEFIT ACT, 1961

Motherhood is a very special experience in a woman's life. A woman needs to be able to give quality time to her child without having to worry about whether she will lose her job and her source of income. That is where the concept of maternity leave and the benefits it entails, comes in handy. The Maternity Benefits Act, 1961, gives her the assurance that her rights will be looked after while she is at home to care for her child.

The object of the Act is to regulate the employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefits and certain other benefits.

Applicability of the Act

This act applies to women who work in factories, mines, plantations, circus industry, shops and establishment with more than 10 employees. It does not apply to employees covered by the Employees State Insurance Act, 1948. It can be extended to other establishments by the State Governments.

Important definitions under the Act

"**Child**" includes a still-born child. (Sec.3(b))

"**Delivery**" means the birth of a child. (Sec.3(c))

"**Employer**" means – (i) in relation to an establishment which is under the control of the Government, a person or authority appointed by the Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(ii) in relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iii) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person. (Sec.3(d))

"Establishment" means—

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
- (iva) a shop or establishment; or]
- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable. (Sec.3(e))

"Miscarriage" means the expulsion of the contents of a pregnant uterus at any period prior to or during the twenty-sixth week of pregnancy but does not include any miscarriage, the cause of which is punishable under the Indian Penal Code, 1860. (Sec.3(j))

"Wages" means remuneration paid or payable in cash to a woman and includes dearness and house rent allowance, incentive bonus and the money value of the concessional supply of food grains and other articles. It does include any other kind of bonus, overtime earnings, any contribution towards the pension fund or provident fund and any gratuity payable on the termination of service. (Sec.3(n))

Persons entitled to maternity benefit

Every woman is entitled to the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day.

The average daily wage is calculated on the basis of the amount payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she has absented herself on account of maternity, or one rupee a day, whichever is higher.

To be eligible for maternity benefit, a woman should have worked in an establishment for not less than 160 days in the twelve months immediately prior to the date of her expected delivery.

The maximum period for which any woman can be entitled to maternity benefit is twelve weeks.

This includes six weeks up to and including the day of her delivery and six weeks immediately

following that day. If a woman dies during this period, the maternity benefit will be payable only for the days up to and including the day of her death. However, if she delivers a child and dies during the delivery or during the period of six weeks following the delivery, the employer will be liable for the maternity benefits of the entire period of six weeks immediately following the day of her delivery. If the child dies during this period, the liability will be only up to and including the day of the death of the child.

In case the woman dies before receiving the benefit, the amount must be paid to her nominee or legal representative.

In the event of a miscarriage, the woman must produce relevant proof that she has suffered a miscarriage. This will entitle her to receive leave with wages at the rate of the maternity benefit, for a period of six weeks immediately following the date of the miscarriage. Women who are ill on account of pregnancy, delivery, premature birth of a child or a miscarriage are also entitled to a period of absence or to leave with wages at the rate of maternity benefit for a maximum period of one month. However, they must submit proof of their illness.

Notice of claim for maternity benefit

A pregnant woman is required to give her employer a notice in writing, stating that the maternity benefit that she is entitled to should be given to her or any person nominated by her and that she will not be working during the period in which she receives the benefit. This notice should start from the date when she was absent from work, provided that date is not earlier than six weeks from the date of her expected delivery. This notice can also be given soon after the delivery.

On receiving the notice, the employer is bound to permit the woman to absent herself from work until the expiry of six weeks after the delivery. In case a woman fails to give notice, this does not disentitle her from claiming maternity benefit. The employer is still liable to pay her the amount due to her.

Dismissal during absence on account of pregnancy

When a woman absents herself from work on account of illness during pregnancy, she may not be discharged or dismissed by her employer or issued notice for dismissal. It is equally unlawful for the employer to alter any of the conditions of her service to her disadvantage.

If she is discharged or dismissed from service, she should still be entitled to receiving maternity benefit or medical bonus. She cannot be deprived of these.

The woman can be dismissed only if she is guilty of gross misconduct. In this case, the employer is well within his rights to deprive her of the maternity benefit or medical bonus.

A woman who has been deprived of maternity benefit or medical bonus may, within sixty days from the date on which the order was communicated to her, appeal to the relevant authority. This authority has the final say on whether the woman should or should not be deprived of these benefits.

If a woman continues to report to work during the period when she is entitled to maternity benefit, she forfeits her claim to the maternity benefit for the period. However, individual companies may allow the woman to take her leave as late as possible so that she may have more time to nurse the baby later on.

Punishment under the Act

An employer who violates the provisions of the Maternity Benefits Act can be punishable with imprisonment up to three months or with fine up to five hundred rupees or both. Besides, if the violation is related to the non-payment of maternity benefit or any other amount, the court can recover this amount as if it is a fine and pay it to the aggrieved person.

5. CHECKLIST OF LABOUR LAW COMPLIANCE

Statutory compliance under various labour laws has to be ensured by establishments. It is not just limited to the statutory deposits, returns and records to be maintained by the employer under various labour laws, but also to represent them in case of prosecution under various statutes. Hence, it hardly needs to be emphasized that the labour related laws cast an obligation on the employer for meticulous, impeccable and timely compliances. In the event of violation or delay in complying with the statutory requirements, the consequences in terms of levy of damages, prosecution is inevitable.

A specimen checklist to check compliance of labour laws is given hereunder.

A detailed checklist to check compliance of labour laws is given hereunder.

| Legislation | Objective & Applicability | Compliance requirements |
|------------------------|--|--|
| Apprentices Act , 1961 | This Act provides for the regulation and control of training of apprentices, and to supplement the availability of trained technical | <ul style="list-style-type: none"> • Appointment of apprentices if the company falls under the notified industry. |

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| | employees for the industry. The Act requires employers to hire apprentices in certain designated trades as notified by the Government. | <ul style="list-style-type: none"> • Submission of returns as stipulated under the Act. • Maintenance of registers as required under the Act. |
| Contract Labour (Regulation & Abolition) Act , 1970 and Rules | This Act regulates the employment of Contract Labour in certain establishments and provides for its abolition in certain circumstances. It applies to every establishment or contractor wherein 20 or more workmen are or were employed on any day of the preceding 12 months as contract labour. | <ul style="list-style-type: none"> • Working conditions of workmen. • Adequate facilities like drinking water, canteen etc for workmen. • Adequate facilities for women workers also. • Maintenance of registers as required under the Act. • Submission of returns. |
| Employee State Insurance Act , 1948 | This Act provides for the provision of benefits to employees in case of sickness, maternity and employment injury. All employees including casual, temporary or contract employees drawing wages less than Rs 10000 per month are covered. | <ul style="list-style-type: none"> • Remittance of contribution every month. • Maintenance of registers. • Submission of returns as per the provisions of the Act. |
| Employee's Provident Fund and Miscellaneous Provisions Act , 1952 | The PF Act provides for the compulsory institution of contributory provident funds, pension funds and deposit linked insurance funds for employees. This Act applies to industries specified in Schedule I employing 20 or more persons and any other class of | <ul style="list-style-type: none"> • Payment of contribution every month. • Maintenance of registers. • Submission of returns as per the provisions of the Act. |

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| | establishments employing 20 or more persons notified by the Government. | |
| Employment Exchanges (Compulsory Notification of Vacancies) Act , 1959 | The Employment Exchanges Act aims to provide for compulsory notification of vacancies to employment exchanges. It applies to all establishments in the public sector and to establishments in the private sector ordinarily employing more than 25 employees. | <ul style="list-style-type: none"> • Intimation of vacancy to the local employment exchange when vacancy arises. • Submission of returns. |
| Equal Remuneration Act , 1976 | This Act provides for payment of equal remuneration to men and women workers, for the same work and prevents discrimination on the grounds of sex against women in the matter of employment, recruitment and for matters connected therewith or incidental thereto. This Act is applicable to almost every kind of establishments. | <ul style="list-style-type: none"> • No discrimination with regard to payment for the same work done by men and women workers. • Maintenance of register. |
| Factories Act , 1948 | The Factories Act provides for the health, safety, welfare, service conditions and other aspects of workers in factories. It applies to all factories employing more than 10 people and working with the aid of power or employing 20 people and working without the aid of power. It covers all workers employed in the factory premises or precincts directly or through an agency including a contractor, involved in any | <ul style="list-style-type: none"> • Licensing and renewal of licence under the Act. • Provision of adequate safety measures within the factory premises. • Provision of adequate welfare measures like creche, canteen, wash room etc for the workers. • Payment of wages as per the |

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| | <p>manufacture. Some provisions of the Act will vary according to the nature of work of the establishment.</p> | <p>provisions of the Act.</p> <ul style="list-style-type: none"> • Payment of overtime wages. • Maintenance of registers. • Submission of returns. |
| <p>Industrial Disputes Act , 1947</p> | <p>The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations. This Act applies to every industrial establishment carrying on any business, trade, manufacture or distribution of goods and services irrespective of the number of workmen employed therein. Every person employed in an establishment for hire or reward including contract labour, apprentices and part time employees to do any manual, clerical, skilled, unskilled, technical, operational or supervisory work, is covered by the Act.</p> | <ul style="list-style-type: none"> • Prevention of unfair labour practices. • Prior permission of appropriate Government / concerned labour authority for laying off or retrenching the workers or closing down the industrial establishment. • Payment of compensation to workers on account of closure or lay off or retrenchment. |
| <p>Industrial Employment and Standing Orders Act , 1946</p> | <p>The Standing Orders Act requires employers to clearly define and publish standing orders (service rules) and to make them known to the workmen employed by them. It applies to every industrial establishment where 100 or more</p> | <ul style="list-style-type: none"> • Formulation of service rules and obtain its approval from the concerned Labour authority. • Display of standing orders in a prominent place for the |

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| | workmen are/were employed on any day of the preceding 12 months. | knowledge of workers. |
| Maternity Benefit Act , 1961 | <p>The Maternity Benefit Act aims to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefits including maternity leave, wages, bonus, nursing breaks etc.</p> <p>It is applicable to every factory, mine or plantation including those belonging to Government, irrespective of the number of employees, and to every shop or establishment wherein 10 or more persons are employed or were employed on any day of the preceding 12 months.</p> | <ul style="list-style-type: none"> • Grant of leave along with payment of wages after child birth or any other maternity related problems like abortion etc. • Submission of returns. |
| Minimum Wages Act , 1948 | <p>This Act was formulated to provide for fixing minimum rates of wages in certain employments. It applies to all establishments employing one or more persons and engaged in any of the scheduled employments.</p> | <ul style="list-style-type: none"> • Provision of minimum rate of wages as prescribed by the government. • Maintenance of registers as prescribed under the Act. • Submission of returns. |
| Payment of Bonus Act , 1965 | <p>The object of the Payment of Bonus Act is to provide for the payment of bonus (linked with profit or productivity) to persons employed in certain establishments and matters connected therewith. This Act is applicable to every factory and to</p> | <ul style="list-style-type: none"> • Payment of bonus in accordance with the provisions of the Act. • Submission of returns. |

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| | every establishment wherein 20 or more workers are employed on any day during an accounting year. | |
| Payment of Gratuity Act , 1972 | <p>The Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments.</p> <p>The Act enforces the payment of 'gratuity', a reward for long service, as a statutory retiral benefit. Every employee irrespective of his wages is entitled to receive gratuity if he has rendered continuous service of 5 years or more than 5 years.</p> | <ul style="list-style-type: none"> • Payment of gratuity to employees leaving the establishment after completion of 5 years. • Notice of opening to concerned labour authority. • Displays required under the Act. • Maintenance of registers of allocable surplus, bonus etc. • Submission of annual returns. |
| Payment of Wages Act, 1936 | <p>The Act ensures payment of wages in a particular form at regular intervals without unauthorised deductions. It is applicable to any factory, any railway establishment and any industrial or other establishment like tramway service, motor transport service, air, oilfield, plantation, workshop, or other establishment producing, adapting or manufacturing any article, establishments engaged in construction, development and maintenance of buildings, roads, bridges or canals, navigation, irrigation or water supply, transmission, generation and</p> | <ul style="list-style-type: none"> • Payment of wages without any unauthorised deductions. • Maintenance of registers of fines, deductions, advance, wages etc. • Displays as per the provisions of the Act. • Submission of annual returns. |

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| | distribution of electricity/power and any other establishment notified by the Central or a State Government. | |
| The Indian Boilers Act , 1923 | The Act aims to regulate the licencing and use of boilers in the Industry. It applies to all establishments using a boiler. | <ul style="list-style-type: none"> • Licensing of boilers • Adequate safety precautions • Appointment of trained personnel to handle the boilers. • Maintenance of registers as per the provisions of the Act. |
| The Weekly Holidays Act , 1942 | The Weekly Holidays Act provides for grant of weekly holidays to persons employed in shops, restaurants and theatres. | <ul style="list-style-type: none"> • Provision of weekly holidays. |
| Trade Unions Act , 1926 | This Act provides for registration of trade unions (including association of employers) with a view to render lawful organisation of labour to enable collective bargaining. The act also confers certain protection and privileges on a registered trade union. It applies to all kinds of unions of workers and associations of employers which aim at regularising labour-management relations. | <ul style="list-style-type: none"> • Registration of trade unions in accordance with the provisions of the Act. |
| Workmen's Compensation Act , 1923 | The act aims to provide workmen and their dependents, compensatory payment, in case of accidents arising out of and in course of employment and causing either death or | <ul style="list-style-type: none"> • Provision of compensation in case of accident. • Submission of returns as stipulated under the Act. |

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| | <p>disablement of workmen.</p> <p>The act applies to factories, mines, docks, construction establishments, plantations, oilfields and other establishments listed in Schedule II and III of the act but excludes establishments covered by the ESI Act.</p> | |
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To facilitate day-to-day functioning, a sample checklist of periodic Returns and Informations to be filed with the concerned authority, which could be effectively followed to ensure compliance of various employment laws, is given below.

| Monthwise | | | | |
|------------------|--|-------------------------------|---|------------------------------|
| Month | Legislation | Form | Return | Authority |
| January | Employment Exchanges (Compulsory Notification of Vacancies) Act , 1959 | ER - I | Quarterly return | Local Employment Exchange |
| January | The Factories act, 1948 | Vary according to State Rules | Annual return | Chief Inspector of Factories |
| February | The Minimum Wages Act, 1948 | Form III | Annual return | Regional labour inspector |
| July | Employment Exchanges (Compulsory Notification of | ER - I | Quarterly return for quarter ended June | Local Employment Exchange |

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|----------|--|--------|---------------|------------------------------|
| | Vacancies) Act , 1959 | | | |
| December | Payment of Bonus Act, 1965 and Rules | Form D | Annual Return | Regional labour inspector |

| Every month | | | | |
|--|----------|---|--|---------------------|
| Legislation | Form | Compliance | | Authority |
| Employee State Insurance Act , 1948 | Challans | Remittance of contributions | | Regional ESI office |
| Employee's Provident Fund and Miscellaneous Provisions Act , 1952 | Challans | Remittance of contributions | | Regional ESI office |
| Employee's Provident Fund and Miscellaneous Provisions Act , 1952 | Returns | Return of employees joining and leaving the organisation. | | Regional PF office |

| On occurrences | | | | |
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| Date | Legislation | Form | Compliance | Authority |
| Within 15 days | Contract Labour (Regulation & Abolition) Act , 1970 and Rules | Form VIB | Commencement and/or completion of each contract | Concerned Labour Inspector of the region |
| Immediately in case of death and within 48 hours in | Employee State Insurance Act , | Form 16 | Report of accident | Regional ESI office |

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| case of accident | 1948 | | | |
| Within 30 days of applicability of Act | Payment of Gratuity Act, 1972 | Form A | Notice of opening | Regional Labour authority |

6. UNFAIR LABOUR PRACTICES

According to Sec.2 (ra) of the Industrial Disputes Act, 1947, unfair labour practices refer to “any of the practices specified in the Fifth Schedule to the Industrial Disputes Act, 1947.

According to Section 25T of the Industrial Disputes Act, 1947 no employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 or not, shall commit any unfair labour practice.

Fifth Schedule to the Industrial Disputes Act, 1947 provides a list as to what constitutes an unfair labour practices:

Unfair labour practices on the part of employers and trade union of employers

1. To interfere with, restrain from or coerce workmen in the exercise of their rights to organize, from, join or assist a trade union, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, i.e.

- a. Threatening workmen with discharge or dismissal, if they join a trade union,
- b. Threatening a lock out or closure if a trade union is organized,
- c. Granting wage increase to workmen at crucial periods of the union organisation, with a view to undermining the efforts of the trade union organization

2. To dominate, interfere with or contribute, support, financially or otherwise to any trade union, that is to say: -

- a. An employer taking an active interest in organizing a trade union of his workmen and
- b. An employer showing partiality or granting favor to one of several trade unions attempting to organize his workmen or to its members where such a trade union is not a recognized trade union.

3. To establish employer sponsored trade unions of workmen.

4. To encourage or discourage membership in any trade unions by discriminating against workman, that is to say:-

- a. Discharging or punishing a workman, because he urged other workmen to join or organize a trade union.
- b. Discharging or dismissing a workman for taking part in strike (not being a strike which is deemed to be an illegal strike under this act)
- c. Changing seniority rating of workmen because of trade union activities
- d. Refusing to promote workmen to hire posts on account of their trade union activities
- e. Giving unmerited promotions to certain workmen with a view to creating discord between other workmen or to undermine the strength of their trade union
- f. Discharging office bearers or active members of the trade union on account of their trade union activities

5. To discharge or dismiss workmen-

- a. By way of victimization
- b. Not in good faith but in the colorable exercise of the employer's right
- c. By falsely implicating a workman in a criminal case on false evidence or concocted evidence
- d. For patently false reasons
- e. On untrue or trumped up allegations of absence without leave

f. In utter disregard of the principles of natural justice.

g. For misconduct of minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the workman, thereby leading to disproportionate punishment.

6. To abolish the work of a regular nature being done by workmen and to give such work to contractors as a measure of breaking a strike.

7. To transfer a workman malafide from one place to another under the guise of following management policy.

8. To insist upon individual workman who are on a legal strike to sign a conduct bond as a precondition to allowing them to resume work

9. To show favoritism or partiality to one set of workers regardless of merit.

10. To employ workmen as 'badlis', casuals or temporaries and to continue them as such for the years with the object of depriving them of the status and privileges of permanent workmen.

11. To discharge or discriminate against any workmen for filing charges or testifying against employer in any enquiry or proceeding relating to any industrial dispute.

12. To recruit workmen during a strike which is not an illegal strike.

13. Failure to implement award, settlement or agreement.

14. To indulge in acts of force or violence.

15. To refuse to bargain collectively, in good faith with the recognized trade unions.

16. Proposing or continuing a lock out deemed to be illegal under this act.

If the employer of any establishment commits any of these acts then he will be liable for an offence of unfair labour practice.

Unfair labour practices on the part of workmen and trade unions of workmen

1. To advise or actively support or instigate any strike deemed to be illegal under the Industrial Disputes Act, 1947.

2. To coerce workmen in the exercise of their right to self-organization or to join a trade union or refrain from joining any trade union, that is to say-

a) For a trade union or its members to picketing in such a manner that non striking workmen are physically debarred from entering the work places

b) To indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.

3. For a recognized union to refuse to bargain collectively in good faith with the employer.

1. To indulge in coercive activities against certification of bargaining representative.

2. To stage, encourage or instigate such forms of coercive actions and willful 'go slow', squatting on the work premises after working hours or 'gherao' of any of the members of the managerial or the other staff.

3. To stage demonstrations at the residences of the employers or the managerial staff members.

4. To incite or indulge in willful damage to employer's property connected with industry.

5. To indulge in the acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.

Punishment for committing unfair labour practice

According to Section 25U of the Industrial Disputes Act, 1947, any person who commits any unfair labour practice will be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

7. LABOUR LAWS IN THE UNORGANIZED SECTOR

The unorganized sector can be defined as that part of the work force that have not been able to organize itself in pursuit of a common objective because of certain constraints such as casual nature

of employment, ignorance or illiteracy, superior strength of the employer singly or in combination etc. viz. construction workers, labour employed in cottage industry, handloom/power loom workers, sweepers and scavengers, beedi and cigar workers etc. This sector is marked by low incomes, unstable and irregular employment, and lack of protection either from legislation or trade unions. The unorganized sector uses mainly labour intensive and indigenous technology.

Out of 440 million workers in India, 93% of the workers are in the unorganized sector. The contributions made by the unorganized sector to the national income, is very substantial as compared to that of the organized sector. It adds more than 60% to the national income while the contribution of the organised sector is almost half of that depending on the industry.

Under this category are laws like the Building and Construction Workers Act 1996, the Bonded Labour System (Abolition) Act 1976, The Interstate Migrant Workers Act 1979, The Dock Workers Act 1986, The Plantation Labour Act 1951, The Transport Workers Act, The Beedi and Cigar Workers Act 1966, The Child Labour (Prohibition and Regulation) Act 1986, and The Mine Act 1952. Many of the labour and employment laws apply to the unorganized sector also.

In India, only about 8% of workers actually get the benefits available under various labour Acts. The rest 92% work in the unorganized sector, and either are not eligible for coverage, or these Acts are just not implemented for them, with the result that these workers have insecure employments and low incomes. They have no coverage of social security, and have to spend out of their meager incomes for all contingencies such as illness and children's education; in their old age they are helpless.

This is so because the Acts as they exist today only apply to those workers who have a clear employer-employee relationship. 50% of India's workers are self employed like small and marginal farmers, artisans and street vendors, many workers work for contractors or have no fixed employer like agricultural labourers and home-based workers and also, employers have been decentralizing, hiring contract labour and divesting themselves of responsibility, so that even organized workers are becoming unorganized. Second, workers are not organized and hence have no bargaining power, because of this, even when laws exist workers are too weak, too disorganized to demand them. Third, no social security system has been devised which would meet the needs of these workers. For example, many of these workers are migratory; others have no fixed income, and could pay at certain times but not at others. Fourth, the laws are supposed to be implemented through the

Government bureaucracy which has neither the manpower nor the knowhow to reach the scattered crores of workers.

Purpose of the Unorganized Workers' Social Security Act of 2008

This Act builds a social security system for the unorganized workers. It does the following:

1. It redefines worker so as to include all types of workers, not only those who have a fixed employer. In so doing, it brings in all the self employed workers as well as casual, contract, home based etc.
2. It identifies each worker and gives him/her a unique social security number and social security card.
3. It offers a variety of social security benefits to the unorganized worker. These would include health insurance, maternity benefit and pensions. As these schemes become successful, the trust and participation of workers' builds up, and more funds come in, a variety of different benefits can be included such as children's education, housing, skill building etc.
4. It binds the Central Government to providing a minimum amount of benefits and funds.
5. It creates a structure, an architecture that works with but does not rely solely on the Government system. It creates a participatory structure that builds on already existing civil society, government and semi-government organizations which have a good record.
6. It encourages the unorganized workers to organize around the social security structures and benefits, creating a voice and space for them.

Important provisions of the Act

'Unorganized Sector Worker' means a person who :

1. works for wages or income; and
2. directly or through any agency or contractor or who works on his own or her own account or is self employed; and
3. in any place of work including his or her home, field or any public place; and
4. who is not availing of benefits under the ESIC Act and the P.F Act, individual insurance and pension schemes of LIC, private insurance companies, or other benefits as decided by the Authority from time to time.

This includes all workers in all types of occupations including agriculture.

Functions of Worker Facilitation Centres

- a) Registration of workers and giving them unique identification social security numbers and identity cards.
- b) Mobilization of workers to become members of the Scheme.
- c) Securing the contribution of members to the funds
- d) Delivery of benefits to the members.
- e) Maintaining a database of members in such form as may be prescribed showing the details of employment of members registered with it.

In addition, the centers may:

- f. Give skill upgradation training to increase the skill of workers.
- g. Maintain and provide information related to employment and marketing opportunities for workers. Training and assisting workers to form themselves into cooperatives, unions, federations and into any other appropriate form of organization.
- h. Constitute employment exchanges for unorganized sector.
- i. Create public awareness about schemes available for workers.
- j. Collect statistics and information of workers engaged in the employments of the unorganized sector.
- k. Conduct other activities as may be prescribed.

The Worker Facilitation Centres will be managed and run by a network of Facilitating Agencies. These agencies will be reputed organisations of all types which work directly with unorganized sector workers. They can include the following:

1. Self Help Groups or their Associations
2. Post Offices
3. All types of Co-operative societies
4. Micro-Finance Institutions
5. Trade Unions
6. District Panchayat
7. Village Panchayat
8. Existing Welfare Boards
9. Urban local body

10. Any other organization or agency dealing directly with unorganized workers, as may be identified by the Authority below.

Registration of workers will be through the Worker Facilitation center. Each worker will pay a nominal sum and will obtain an unique social security card and number. The worker will then be a “member” of the Welfare Fund and eligible for schemes.

The Authority may notify the schemes as under, subject to sustainability of the Fund:-

- i. Medical Care or sickness benefit scheme
- ii. Employment injury benefit scheme
- iii. Maternity benefit scheme
- iv. Old age benefit including pension
- v. Survivor’s benefit scheme
- vi. Integrated Insurance Scheme
- vii. Schemes for Conservation of natural resources on which workers depend for livelihood,
- viii. Housing schemes
- ix. Educational schemes
- x. Any other schemes to enhance the quality of life of the unorganized worker or her family.

The Act will be executed through a **Central Social Security Authority**. The Authority will have a Supervisory Board with representatives of Central and State Government, of unorganized workers and of professionals. It will be run by a managing director and two directors appointed directly by the Union Government. The authority will be responsible for managing the funds and implementing the provisions of the Act. It will appoint the Facilitating Agencies as the implementing agencies on its behalf.

8. WOMEN LABOUR AND THE LAW

Women are known to work on farms, in road and housing construction, and of late, in factories manufacturing garments and electronic assembly plants. Skilled women workers also have been working in traditional village industries either as self employed or as paid workers. In hill areas, search for forest products including fuel wood engages a fairly large number of women. The majority

of women work in the unorganized sector for low wages and at low levels of skills. The number of women workers during the last four decades has more than doubled from 40 million to 90 million. Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as labourers and cultivators.

Employment opportunities and wage disparity

In India, as in many developing countries, gender inequality persists in terms of women participation in labour force, lower wages and salaries of women and access to resources. The percentage share of female population in total population in India is around 48%, while the work participation rate of females is only 26% as compared to 52% in males. About 24.9% of women in rural areas and about 14.8% of women in urban areas were in the workforce in India during 2004-05 (UNCTAD report).

In urban areas, on an average wage/salary paid to females is only 75% of that paid to males, while in rural areas females are paid 58% of what is paid to the males. This wage disparity differs across sectors and education levels.

Applicability of Labour laws for women

In addition to the Maternity Benefit Act, 1961 almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of occupational hazards concerning the safety of women at workplaces, in 1997 the Supreme Court of India in the case of Vishakha Vs. State of Rajasthan [(1997) 6 SCC 241] held that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment (Standing Orders) Act, 1946.

The Factories Act, 1948 has the following provisions of interest to women (Sections 19, 22(2), 27, 42(1)(b), 48, 66, 79(1) and 114.):

- a. The Act prohibits women from being employed in cleaning; lubricating or adjusting certain machinery when it is in motion, if that would expose them to risk of injury. Women are also not allowed to work in the part of a factory where a cotton-opener is at work unless certain conditions are met.
- b. Suitable sanitation facilities must be provided.
- c. If more than 30 women are employed, the employer must provide a free crèche on the premises for children under six years of age. State governments may make rules governing these crèches, which may include requirements to provide clothes washing and changing facilities, child-feeding facilities and free milk and refreshments for the children.
- d. Women cannot be exempted from the requirement that the maximum working day for adults is 9 hours, and cannot work in factories between the hours of 6am and 7 pm (unless the factory falls within a specific exemption, but in any case, not between the hours of 10 pm and 5 am.). In relation to women, there must not be a change of shifts except after a weekly or other holiday. However, the State governments can change these requirements in the fish curing and canning industries.
- e. Periods of absence on maternity leave are included in calculating periods of service for the purposes of annual leave.

GUIDELINES TO PREVENT SEXUAL HARASSMENT OF WORKING WOMEN

Sexual harassment is a serious criminal offense which can destroy human dignity and freedom. In an effort to promote the well being of all woman employees at the work place the following code of conduct has been prescribed :-

1. It shall be duty of the employer to prevent or deter the commission of any act of sexual harassment at the work place.
2. Sexual harassment will include such unwelcome sexually determined behavior by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as :-
 - (i) Eve-teasing
 - (ii) Unsavoury remarks
 - (iii) Jokes causing or likely to cause awkwardness or embarrassment
 - (iv) Innuendos and taunts
 - (v) Gender based insults or sexist remarks
 - (vi) Unwelcome sexual overtone in any manner such as over telephone (obnoxious telephone calls) and the like

(vii) Touching or brushing against any part of the body and the like

(viii) Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings.

(ix) Forcible physical touch or molestation

(x) Physical confinement against one's will and any other act likely to violate one's privacy and includes any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to person belonging to the other sex, only on the ground of sex.

Explanation :- Where any comment, act or conduct is committed against any person and such person has a reasonable apprehension that,

1. It can be humiliating and may constitute a health and safety problem, or
2. It is discriminatory, as for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or study, including or promotion or advancement or when it creates a hostile environment, or
3. It would result in adverse consequences if she does not consent to the conduct or raises any objection, it shall be deemed to be sexual harassment.

3. Eve-Teasing:-

Eve-teasing will include any person willfully and indecently exposing his person in such a manner as to be seen by other employees or use indecent language or behave indecently or in a disorderly manner in the work place. It will also include any word, gesture or act intended to insult the modesty of a woman by making any sound or gesture or exhibit any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such women or intrudes upon the privacy of a woman employee.

4. Sexual harassment of an employee means use of authority by any person in charge of the management or any person employed by it to exploit the sexuality or sexual identity of a subordinate employee to harass her in a manner which prevents or impairs the employee's full utilization of employment benefits or opportunities. It also includes behaviour that covertly or overtly uses the power inherent in the status of the employer or the head of the institution or management to affect negatively an employee's work experience or career opportunities and/or to threaten, coerce or intimidate an employee to accept sexual advances or making employment decision affecting the individual or create an intimidating, hostile or offensive working environment.

5. It shall be the duty of the employer to prevent or deter the committing of any act of sexual harassment at the work place.

6. All employers should take appropriate steps to prevent sexual harassment of any nature. Express prohibition of sexual harassment should be notified at the work place and also published for the general information of the employees and evaluated in an appropriate manner periodically.
7. Appropriate working conditions should be provided in respect of work, leisure, health and hygiene to ensure that there is no hostile environment towards women at the work place and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment in that organisation.
8. Women employees should not be treated as sex objects.
9. No male employee shall outrage or insult the modesty of a female employee at the work place.
10. No male employee shall make any type of sexual advances to woman colleagues or woman subordinates.
11. The head of the organisation shall constitute a Complaints Committee as specified in the Judgement of the Supreme Court, i.e., the Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any undue pressure or influence from senior levels such Complaints Committee should involve a third party either a non-government organisation or other body who is familiar with the issue of sexual harassment.
12. Conducting enquiry by the Complaints Committee:-
 - (i) Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time and in any case within 15 days from the date of occurrence of the alleged incident.
 - (ii) The complaint shall contain all the material and relevant details concerning the alleged sexual harassment including the names of the contravenor and the complaint shall be addressed to the Complaints Committee.
 - (iii) If the complainant feels that she cannot disclose her identity for any particular reason the complainant shall address the complaint to the head of the organisation and hand over the same in person or in a sealed cover. Upon receipt of such complaint the head of the organisation shall retain the original complaint with himself and send to the Complaints Committee a gist of the complaint containing all material and relevant details other than the name of the complainant and other details which might disclose the identity of the complainant.
13. The Complaints Committee shall take immediate necessary action to cause an enquiry to be made discreetly or hold an enquiry, if necessary.
14. The Complaints Committee shall after examination of the complaint submit its recommendations to the head of the organisation recommending the penalty to be imposed.

15. The head of the organisation, upon receipt of the report from the Complaints Committee shall after giving an opportunity of being heard to the person complained against submit the case with the Committee's recommendations to the management.

16. The Management of the Organisation shall confirm with or without modification the penalty recommended after duly following the prescribed procedure.

17. Disciplinary Action:

Where the conduct of an employee amounts to misconduct in employment as defined in the relevant service rules the employer should initiate appropriate disciplinary action in accordance with the relevant rules.

18. Worker's Initiative :

Employees should be allowed to raise issues of sexual harassment at worker's meeting and in other appropriate fora and it should be affirmatively discussed in periodical employer-employee meetings.

19. Third Party harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider the employer and the persons in charge shall take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

20. Annual Report:

The Complaints Committee shall prepare an Annual Report giving a full account of its activities during the previous year and forward a copy thereof to the Head of the Organisation concerned who shall forward the same to the government department concerned with its comments.

Savings:-

Nothing contained in this code shall prejudice any right available to the employee or prevent any person from seeking any legal remedy under the National Commission for Women Act 1990, Protection of Human Rights Commission Act 1993 or under any other law for the time being in force. Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

9. INDUSTRIAL RELATIONS

Concept of Industrial Relations

The term 'Industrial Relations' comprises of two terms: 'Industry' and 'Relations'. "Industry" refers to "any productive activity in which an individual (or a group of individuals) is (are) engaged". By "relations" we mean "the relationships that exist within the industry between the employer and his workmen." The term industrial relations explain the relationship between employees and management which stem directly or indirectly from union-employer relationship. Industrial relations are the relationships between employees and employers within the organizational settings. The field of industrial relations looks at the relationship between management and workers, particularly groups of workers represented by a union. Industrial relations are basically the interactions between employers, employees and the government, and the institutions and associations through which such interactions are mediated. The term industrial relations have a broad as well as a narrow outlook. Originally, industrial relations were broadly defined to include the relationships and interactions between employers and employees. From this perspective, industrial relations cover all aspects of the employment relationship, including human resource management, employee relations, and union-management (or labour) relations. Now its meaning has become more specific and restricted. Accordingly, industrial relations pertains to the study and practice of collective bargaining, trade unionism, and labour-management relations, while human resource management is a separate, largely distinct field that deals with non-union employment relationships and the personnel practices and policies of employers. The relationships which arise at and out of the workplace generally include the relationships between individual workers, the relationships between workers and their employer, the relationships between employers, the relationships employers and workers have with the organizations formed to promote their respective interests, and the relations between those organizations, at all levels. Industrial relations also includes the processes through which these relationships are expressed (such as, collective bargaining, workers' participation in decision-making, and grievance and dispute settlement), and the management of conflict between employers, workers and trade unions, when it arises. The relationship between Employer and employee or trade unions is called Industrial Relation. Harmonious relationship is necessary for both employers and employees to safeguard the interests of the both the parties of the production. In order to maintain good relationship with the employees, the main functions of every organization should avoid any dispute with them or settle it as early as possible so as to ensure industrial peace and higher productivity. Personnel management is mainly concerned with the human relation in industry because the main theme of personnel management is to get the work done by the human

power and it fails in its objectives if good industrial relation is maintained. In other words good Industrial Relation means industrial peace which is necessary for better and higher productions.

Definition of Industrial Relations

1. Industrial Relation is that part of management which is concerned with the manpower of the enterprise – whether machine operator, skilled worker or manager. BETHEL, SMITH & GROUP
2. Industrial Relation is a relation between employer and employees, employees and employees and trade unions. - Industrial dispute Act 1947
3. While moving from jungle of the definitions, here, Industrial Relation is viewed as the “process by which people and their organizations interact at the place of work to establish the terms and conditions of employment.”

The Industrial Relation relations is also called as labour - management, employee-employers relations.

Labour relations can take place on many levels, such as the "shop-floor", the regional level, and the national level. The distribution of power amongst these levels can greatly shape the way an economy functions.

Governments set the framework for labour relations through legislation and regulation.

Industrial relations has become one of the most delicate and complex problems of modern industrial society. Industrial progress is impossible without cooperation of labours and harmonious relationships. Therefore, it is in the interest of all to create and maintain good relations between employees (labour) and employers (management).

A few notable features pertaining to Industrial Relations are as under:

1. Industrial Relation does not emerge in vacuum they are born of employment relationship in an industrial setting. Without the existence of the two parties, i.e. labour and management, this relationship cannot exist. It is the industry, which provides the environment for industrial relations.
2. Industrial Relations are characterized by both conflict and co-operations. This is the basis of adverse relationship. So the focus of Industrial Relations in on the study of the

attitudes, relationships, practices and procedure developed by the contending parties to resolve or at least minimize conflicts.

3. As the labour and management do not operate in isolations but are parts of large system, so the study of Industrial Relation also includes vital environment issues like technology of the workplace, country's socio-economic and political environment, nation's labour policy, attitude of trade unions workers and employers.
4. Industrial Relation also involve the study of conditions conducive to the labour, management's co-operations as well as the practices and procedures required to elicit the desired co-operation from both the parties.
5. Industrial Relations also study the laws, rules regulations agreements, awards of courts, customs and traditions, as well as policy framework lay down by the governments for eliciting co-operations between labour and management. Besides this, it makes an in-depth analysis of the interference patterns of the executive and judiciary in the regulations of labour-managements relations.

In fact the concepts of Industrial Relations are very broad-based, drawing heavily from a variety of discipline like social sciences, humanities, behavioural sciences, laws etc.

Industrial Relation encompasses all such factors that influence behaviour of people at work. A few such important factors are details below:

1. Institution: It includes government, employers, trade unions, unions' federations or associations, government bodies, labour courts, tribunals and other organizations which have direct or indirect impact on the industrial relations systems.
2. Characters : It aims to study the role of workers unions and employers' federations officials, shop stewards, industrial relations officers/ manager, mediator/conciliators / arbitrator, judges of labour court, tribunal etc.
3. Methods : Focus on collective bargaining, workers' participation in the Industrial Relation schemes, discipline procedure, grievance re-dressal machinery, dispute settlements machinery working of closed shops, union reorganization, organizations of protests through methods like revisions of existing rules, regulations, policies, procedures, hearing of labour courts, tribunals etc.

4. Contents : Includes matter pertaining to employment conditions like pay, hours of works, leave with wages, health, and safety disciplinary actions, lay-off, dismissals retirements etc., laws relating to such activities, regulations governing labour welfare, social security, industrial relations, issues concerning with workers' participation in management, collective bargaining, etc.

Objectives of Industrial Relation

1. To safeguard the interest of labour and management by securing the highest level of mutual understanding and good-will among all those sections in the industry which participate in the process of production.
2. To avoid industrial conflict or strife and develop harmonious relations, which are an essential factor in the productivity of workers and the industrial progress of a country.
3. To raise productivity to a higher level in an era of full employment by lessening the tendency to high turnover and frequency absenteeism.
4. To establish and nurse the growth of an Industrial Democracy based on labour partnership in the sharing of profits and of managerial decisions, so that ban individuals personality may grow its full stature for the benefit of the industry and of the country as well.
5. To eliminate, as far as is possible and practicable, strikes, lockouts and gheraos by providing reasonable wages, improved living and working conditions, said fringe benefits.
6. To establish government control of such plants and units as are running at a loss or in which productions has to be regulated in the public interest.
7. Improvements in the economic conditions of workers in the existing state of industrial managements and political government.
8. Control exercised by the state over industrial undertaking with a view to regulating production and promoting harmonious industrial relations.
9. Socializations or rationalization of industries by making the state itself a major employer
10. Vesting of a proprietary interest of the workers in the industries in which they are employed.

The main aspect of Industrial Relations are:-

1. Labour Relations, i.e. relations between union and management.

2. Employer-employees relations, i.e. relations between management and employees.
3. Group relations, i.e. relations between various groups of workmen.
4. Community or Public relations, i.e. relations between industry and society.
5. Promotions and development of healthy labour-managements relations.
6. Maintenance of industrial peace and avoidance of industrial strife
7. Development of true industrial Democracy.

Effects of poor Industrial Relations

Poor Industrial Relation produces highly disquieting effects on the economic life of the country. We may enumerate the ill-effects of poor Industrial Relations as under:

1. Multiplier effects: Modern industry and for that matter modern economy are interdependent. Hence although the direct loss caused due to industrial conflict in any one plant may not be very great, the total loss caused due to its multipliers effect on the total economy is always very great.
2. Fall in normal tempo: poor Industrial Relations adversely affect the normal tempo of work so that work far below the optimum level. Costs build up. Absenteeism and labour turnover increase. Plants discipline breaks down and both the quantity and quality of production suffer.
3. Resistance of change: Dynamic industrial situation calls for change more or less continuously. Methods have to be improved. Economics have to be introduced. New products have to be designed, produced and put in the market. Each of these tasks involves a whole chain of changes and this is resisted bitterly if these are industrial conflict.
4. Frustration and social cost: every man comes to the work place not only to earn a living. He wants to satisfy his social and egoistic needs also. When he finds difficulty in satisfying these needs he feels frustrated. Poor Industrial Relations take a heavy toll in terms of human frustration. They reduce cordiality and aggravate social tension.

Suggestions to Improve Industrial Relation:-

1. Both management and unions should develop constructive attitudes towards each other
2. All basic policies and procedures relating to Industrial Relation should be clear to everybody in the organization and to the union leader. The personnel manager must make certain that line people will understand and agree with these policies.
3. The personnel manager should remove any distrust by convincing the union of the company's integrity and his own sincerity and honesty. Suspicious, rumours and doubts should all be put to rest.
4. The personnel manager should not vie with the union to gain workers' loyal to both the organization. Several research studies also confirm the idea of dual allegiance. There is strong evidence to discard the belief that one can owe allegiance to one group only.
5. Management should encourage right kind of union leadership. While it is not for the management to interfere with union activities, or choose the union leadership, its action and attitude will go a long way towards developing the right kind of union leadership.

IMPORTANCE OF INDUSTRIAL RELATIONS:

The healthy industrial relations are a key to the progress. Their significance may be discussed as under -

1. **Uninterrupted production** – The most important benefit of industrial relations is that this ensures continuity of production. This means, continuous employment for all from manager to workers. The resources are fully utilized, resulting in the maximum possible production. There is uninterrupted flow of income for all. Smooth running of an industry is of vital importance for several other industries; to other industries if the products are intermediaries or inputs; to exporters if these are export goods; to consumers and workers, if these are goods of mass consumption.
2. **Reduction in Industrial Disputes** – Good industrial relation reduces the industrial disputes. Disputes are reflections of the failure of basic human urges or motivations to secure adequate satisfaction or expression which are fully cured by good industrial relations. Strikes, lockouts, go-slow tactics, gherao and grievances are some of the reflections of industrial unrest which do not spring up in an atmosphere of industrial peace. It helps promoting co-operation and increasing production.

3. **High morale** – Good industrial relations improve the morale of the employees. Employees work with great zeal with the feeling in mind that the interest of employer and employees is one and the same, i.e. to increase production. Every worker feels that he is a co-owner of the gains of industry. The employer in his turn must realize that the gains of industry are not for him alone but they should be shared equally and generously with his workers. In other words, complete unity of thought and action is the main achievement of industrial peace. It increases the place of workers in the society and their ego is satisfied. It naturally affects production because mighty co-operative efforts alone can produce great results.
4. **Mental Revolution** – The main object of industrial relation is a complete mental revolution of workers and employees. The industrial peace lies ultimately in a transformed outlook on the part of both. It is the business of leadership in the ranks of workers, employees and Government to work out a new relationship in consonance with a spirit of true democracy. Both should think themselves as partners of the industry and the role of workers in such a partnership should be recognized. On the other hand, workers must recognize employer's authority. It will naturally have impact on production because they recognize the interest of each other.
5. **New Programmes** – New programmes for workers development are introduced in an atmosphere of peace such as training facilities, labour welfare facilities etc. It increases the efficiency of workers resulting in higher and better production at lower costs.
6. **Reduced Wastage** – Good industrial relations are maintained on the basis of cooperation and recognition of each other. It will help increase production. Wastages of man, material and machines are reduced to the minimum and thus national interest is protected.

Thus, from the above discussion, it is evident that good industrial relation is the basis of higher production with minimum cost and higher profits. It also results in increased efficiency of workers. New and new projects may be introduced for the welfare of the workers and to promote the morale of the people at work.

An economy organized for planned production and distribution, aiming at the realization of social justice and welfare of the masses can function effectively only in an atmosphere of industrial

peace. If the twin objectives of rapid national development and increased social justice are to be achieved, there must be harmonious relationship between management and labour.

Difference between industrial relations and human relations

The term “Industrial Relations” is different from “Human Relations”. Industrial relations refer to the relations between the employees and the employer in an industry. Human relations refer to a personnel-management policy to be adopted in industrial organizations to develop a sense of belongingness in the workers improves their efficiency and treat them as human beings and make a partner in industry.

Industrial relations cover the matters regulated by law or by collective agreement between employees and employers. On the other hand, problems of human relations are personal in character and are related to the behavior of worker where morale and social elements predominated. Human relations approach is personnel philosophy which can be applied by the management of an undertaking. The problem of industrial relations is usually dealt with a three levels – the level of undertaking, the industry and at the national level. To sum up the term “Industrial Relations” is more wide and comprehensive and the term “Human Relations” is a part of it.

Determining factors of industrial relations –

Good industrial relations depend on a great variety of factors. Some of the more obvious ones are listed below:

1. History of industrial relations – No enterprise can escape its good and bad history of industrial relations. A good history is marked by harmonious relationship between management and workers. A bad history by contrast is characterized by militant strikes and lockouts. Both types of history have a tendency to perpetuate themselves. Once militancy is established as a mode of operations there is a tendency for militancy to continue. Or once harmonious relationship is established there is a tendency for harmony to continue.
2. Economic satisfaction of workers – Psychologists recognize that human needs have a certain priority. Need number one is the basic survival need. Much of men conducted are dominated by this need. Man works because he wants to survive. This is all the more for underdeveloped countries where workers are still living under subsistence

conditions. Hence economic satisfaction of workers is another important prerequisite for good industrial relations.

3. Social and Psychological satisfaction – Identifying the social and psychological urges of workers is a very important step in the direction of building good industrial relations. A man does not live by bread alone. He has several other needs besides his physical needs which should also be given due attention by the employer. An organization is a joint venture involving a climate of human and social relationships wherein each participant feels that he is fulfilling his needs and contributing to the needs of others. This supportive climate requires economic rewards as well as social and psychological rewards such as workers' participation in management, job enrichment, suggestion schemes, redressal of grievances etc.
4. Off-the-Job Conditions – An employer employs a whole person rather than certain separate characteristics. A person's traits are all part of one system making up a whole man. His home life is not separable from his work life and his emotional condition is not separate from his physical condition. Hence for good industrial relations it is not enough that the worker's factory life alone should be taken care of his off-the-job conditions should also be improved to make the industrial relations better.
5. Enlightened Trade Unions – The most important condition necessary for good industrial relations is a strong and enlightened labour movement which may help to promote the status of labour without harming the interests of management, Unions should talk of employee contribution and responsibility. Unions should exhort workers to produce more, persuade management to pay more, mobilize public opinion on vital labour issues and help Government to enact progressive labour laws.
6. Negotiating skills and attitudes of management and workers – Both management and workers' representation in the area of industrial relations come from a great variety of backgrounds in terms of training, education, experience and attitudes. These varying backgrounds play a major role in shaping the character of industrial relations. Generally speaking, well-trained and experienced negotiators who are motivated by a desire for industrial peace create a bargaining atmosphere conducive to the writing of a just and equitable collective agreement. On the other hand, ignorant, inexperienced and ill-trained persons fail because they do not recognize that collective bargaining is a difficult human activity which deals as much in the emotions of people as in their economic

interests. It requires careful preparation and top –notch executive competence. It is not usually accomplished by some easy trick or gimmick. Parties must have trust and confidence in each other. They must possess empathy, i.e. they should be able to perceive a problem from the opposite angle with an open mind. They should put themselves in the shoes of the other party and then diagnose the problem. Other factors which help to create mutual trust are respect for the law and breadth of the vision. Both parties should show full respect for legal and voluntary obligations and should avoid the tendency to make a mountain of a mole hill.

7. Public policy and legislation: - when Government, regulates employee relations, it becomes a third major force determining industrial relations the first two being the employer and the union. Human behaviour is then further complicated as all three forces interact in a single employee relation situation. Nonetheless, government in all countries intervenes in management – union relationship by enforcing labour laws and by insisting that the goals of whole society shall take precedence over those of either of the parties. Government intervention helps in three different ways 1) it helps in catching and solving problems before they become serious. Almost everyone agrees that it is better to prevent fires than to try stopping them after they start; 2) It provides a formalized means to the workers and employers to give emotional release to their dissatisfaction; and 3) It acts as a check and balance upon arbitrary and capricious management action.
8. Better education: - with rising skills and education workers' expectations in respect of rewards increase. It is a common knowledge that the industrial worker in India is generally illiterate and is misled by outside trade union leaders who have their own axe to grind. Better workers' education can be a solution to this problem. This alone can provide worker with a proper sense of responsibility, which they owe to the organization in particular, and to the community in general.
9. Nature of industry: - In those industries where the costs constitute a major proportion of the total cost, lowering down the labour costs become important when the product is not a necessity and therefore, there is a little possibility to pass additional costs on to consumer. Such periods, level of employment and wages rise in decline in employment and wages. This makes workers unhappy and destroys good industrial relations.

Today's professional industrial relations director, or by whatever title he is designated, no longer views his job as personalizing management, or that of a social worker in a factory, or a union buster, he looks upon his department as an adjunct to management supervision at all levels; he keeps other executives informed about new discoveries, programme trends and needs. At the same time, he provides efficient service in the operation of several centralized services.

A successful industrial relations programme reflects the personnel viewpoint, which is influenced by three main considerations:

a) Individual thinking

b) Policy awareness and

c) Expected group reaction

Individualized thinking makes it imperative for the administrator to consider the entire situation in which the affected individual is placed. Policy awareness underscores the idea of the consistency of treatment and the precedent value of any decision which a management takes; while expected group reaction balances what we know of human nature in groups against an individual's situation in the light of the policy that has been formulated and implemented. In all these different circumstances, reality demands that all the three aspects of the personnel viewpoint should be considered at once in terms of the past, the present and the future. This viewpoint is held at all the levels of management from the top to the bottom, from the top executives and staff to the line and supervisory personnel.

Scope of industrial relations work

The staff employed in the industrial relations department should know the limitations within which it has to function. The industrial relations director generally has several assistants who help him to perform his functions effectively, and he usually reports directly to the president or chairman of the board of directors of an organization.

The functions of the industrial relations staff are -

1. Administration, including overall organization, supervision and co-ordination of industrial relations policies and programmes.
2. Liaison with outside groups and personnel departments as well as with various cadres of the management staff.

3. Drafting of regulations, rules, laws or orders and their construction and interpretation.
4. Position classification, including overall direction of job analysis, salary and wage administration, wage survey and pay schedules.
5. Recruitment and employment of workers and other staff.
6. Employment testing, including intelligence tests, mechanical aptitude tests and achievement tests.
7. Placement, including induction and assignment.
8. Training of apprentices, production workers, foremen and executives.
9. Employee counselling on all types of personnel problems-educational, vocational, health or behaviour problems.
10. Medical and health services.
11. Safety services, including first aid training.
12. Group activities, including group health insurance, housing, cafeteria programmes and social clubs.
13. Suggestion plans and their uses in labour, management and production committees.
14. Employee relations, especially collective bargaining with representatives and settling grievances.
15. Public relations.
16. Research in occupational trends and employee attitudes and analysis of labour turnover.
17. Employee records for all purposes.
18. Control of operation surveys, fiscal research and analysis.
19. Benefit, retirement and pension programmes.

Functional Requirements of A Successful Industrial Relations Programme

The basic requirements on which a successful industrial relations programme is based are:-

1. **Top Management Support:** - Since industrial relations is a functional staff service, it must necessarily derive its authority from the line organization. This is ensured by providing that the industrial relations director should report to a top line authority to the president, chairman or vice president of an organization.
2. **Sound Personnel Policies:** - These constitute the business philosophy of an organization and guide it in arriving at its human relations decisions. The purpose of such policies is to decide, before any emergency arises, what shall be done about the large number of problems which crop up every day during the working of an organization. Policies can be successful only when they are followed at all the level of an enterprise, from top to bottom.
3. **Adequate Practices should be developed by professionals:** - In the field to assist in the implementation of the policies of an organization. A system of procedures is essential if intention is to be properly translated into action. The procedures and practices of an industrial relations department are the “tool of management” which enables a supervisor to keep ahead of his job that of the time-keeper, rate adjuster, grievance reporter and merit rater.
4. **Detailed Supervisory Training :-** To ensure the organizational policies and practices are properly implemented and carried into effect by the industrial relations staff, job supervisors should be trained thoroughly, so that they may convey to the employees the significance of those policies and practices. They should, moreover, be trained in leadership and in communications.
5. **Follow-up of Results:** - A constant review of an industrial relations programme is essential, so that existing practices may be properly evaluated and a check may be exercised on certain undesirable tendencies, should they manifest themselves. A follow up of turnover, absenteeism, departmental morale, employee grievances and suggestion; wage administration, etc. should be supplemented by continuous research to ensure that the policies that have been pursued are best fitted to company needs and employee satisfaction. Hints of problem areas may be found in exit interviews, in trade union demands and in management meetings, as well as in formal social sciences research.

Perspective theories

When studying the theories of industrial relations, there are three major perspectives that contrast in their approach to the nature of workplace relations. The three views are generally described as the unitary, pluralist and Marxist perspectives. The Marxist perspective is sometimes referred to as the Conflict Model. Each offers a particular perception of workplace relations and will therefore

interpret such events as workplace conflict, the role of trade unions and job regulation varies differently.

1. Unitary perspective

In Unitarianism, the organization is perceived as an integrated and harmonious whole with the ideal of "one happy family", where management and other members of the staff all share a common purpose, emphasizing mutual cooperation. Furthermore, unitarism has a paternalistic approach where it demands loyalty of all employees, being predominantly managerial in its emphasis and application.

Consequently, trade unions are deemed as unnecessary since the loyalty between employees and organizations are considered mutually exclusive, where there can't be two sides of industry. Conflict is perceived as disruptive and the pathological result of agitators, interpersonal friction and communication breakdown.

2. Pluralistic perspective

In pluralism the organization is perceived as being made up of powerful and divergent sub-groups, each with its own legitimate loyalties and with their own set of objectives and leaders. In particular, the two predominant sub-groups in the pluralistic perspective are the management and trade unions.

Consequently, the role of management would lean less towards enforcing and controlling and more toward persuasion and co-ordination. Trade unions are deemed as legitimate representatives of employees; conflict is dealt by collective bargaining and is viewed not necessarily as a bad thing and, if managed, could in fact be channelled towards evolution and positive change.

3. Marxist/Radical Perspective

This view of industrial relations looks at the nature of the capitalist society, where there is a fundamental division of interest between capital and labour, and sees workplace relations against this history. This perspective sees inequalities of power and economic wealth as having their roots in the nature of the capitalist economic system. Conflict is therefore seen as inevitable and trade unions are a natural response of workers to their exploitation by capital. Whilst there may be periods of acquiescence, the Marxist view would be that institutions of joint regulation would enhance rather than limit management's position as they presume the continuation of capitalism rather than challenge it. There are two variants of this view - the pessimist view propounded by Lenin, Trotsky and Michel and the optimist view propounded by Marx and Engels.

Industrial Relations in India

Prior to 1991, the industrial relations system in India sought to control conflicts and disputes through excessive labour legislations. These labour laws were protective in nature and covered a wide range of aspects of workplace industrial relations like laws on health and safety of labours, layoffs and retrenchment policies, industrial disputes and the like. The basic purpose of these laws was to protect labours. However, these protectionist policies created an atmosphere that led to increased inefficiency in firms, over employment and inability to introduce efficacy. With the coming of globalization, the 40 year old policy of protectionism proved inadequate for Indian industry to remain competitive as the lack of flexibility posed a serious threat to manufacturers because they had to compete in the international market.

With the advent of liberalization in 1992, the industrial relations policy began to change. Now, the policy was tilted towards employers. Employers opted for workforce reduction, introduced policies of voluntary retirement schemes and flexibility in workplace also increased. Thus, globalization brought major changes in industrial relations policy in India. The changes can be summarized as follows:

1. Collective bargaining in India has mostly been decentralized, but now in sectors where it was not so, are also facing pressures to follow decentralization.
2. Some industries are cutting employment to a significant extent to cope with the domestic and foreign competition e.g. pharmaceuticals. On the other hand, in other industries where the demand for employment is increasing are experiencing employment growths.
3. In the expansionary economy there is a clear shortage of managers and skilled labour.
4. The number of local and enterprise level unions has increased and there is a significant reduction in the influence of the unions.
5. Under pressure some unions and federations are putting up a united front e.g. banking.
6. Another trend is that the employers have started to push for internal unions i.e. no outside affiliation.
7. HR policies and forms of work are emerging that include, especially in multi-national companies, multi-skills, variable compensation, job rotation etc. These new policies are difficult to implement in place of old practices as the institutional set up still needs to be changed.
8. HRM is seen as a key component of business strategy.
9. Training and skill development is also receiving attention in a number of industries, especially banking and information technology.

10. SPECIAL POINTS TO BE NOTED WHILE DRAFTING EMPLOYMENT AGREEMENT

Employment Agreement

Employment agreement is an agreement that is entered into between two parties, i.e. the employer and employee. It is a document that pacifies the responsibilities and duties expected of an employee. It also described the profile of the job and the title. The document ensures that the employee knows his place in the organisation and what is expected of him. Employment agreements should be created in a way that is just and fair for all the employees. If this is followed, employees will do their tasks and responsibilities well and without any negative emotions toward their employers. Usually employment contracts contain only vague references to the "policies and procedures to which the employee will be bound". The employer should provide the employee with all of the company policies and other documents that relate to the contract or are referred to in the contract.

Following are the usual contents of an employment agreement:

- 1) Name of the parties involved
- 2) Starting date of employment
- 3) Title and description of the job
- 4) Location of work
- 5) Hours of work
- 6) Probationary period
- 7) Salary
- 8) Restrictive terms
- 9) Holidays
- 10) Other information like deductions, permissible expenses, notice period etc.

The employment agreement may be beneficial for both parties because they will know what responsibilities they are getting in to. On the part of the employees, they are assured that they will be able to get compensation as an exchange for the work they rendered. Employees will also be clearly informed about the things that employers are expecting them to do. On the part of the employers, they are assured that their employees are well informed of the things that they should do, as well as their obligations for the company. Through employment agreement, employers will not be left immediately by their employees without providing them enough time to seek for someone who will take the latter's place.

The benefits of an employment agreement are enumerated below:

- ✓ Employment agreement is useful because it has control over the employee's capability to leave. An employer will be given more time to find a replacement for the employee.
- ✓ If the employee is given confidential information about the business, certain confidentiality clauses can also be included in the agreement. The employer may forbid the employee from using or disclosing the information he/she acquired for personal gain.
- ✓ Employers can also use the employment agreement in enticing skilled individuals to work for them. Certain promises like benefits that will be received as well as job security could be included in the contract to convince the person into working for the company.
- ✓ Employee agreements also give employers control over their employees.

Certain important issues that need to be taken care of before finalizing the employment agreement are given hereunder:

- Identify the long term requirement of employees.
- Identifying the workmen and employees not covered under definition of workmen, respectively.
- Local laws of the State should be borne in mind while drawing up the contracts
- Issue appointment letters which clearly define the employment terms and conditions.
- Employment contracts, where necessary, should be put in place with clauses for wages, benefits, non-compete, confidentiality, term, termination etc.
- Depending on the requirement, use fixed term contracts for workmen.
- The terms and conditions of the employment should be clearly explained to employees before execution and should be drafted without any ambiguity.

A detailed checklist for an Employee Agreement is given hereunder:

1. Details of employment
 - a. Full name of employer and employee
 - b. Address of employer
 - c. Place of work of employee, and, where the employee is required or permitted to work at various places
 - d. Title of job or nature of the work or a brief job description
 - e. Date of commencement of employment
2. Pay and Benefits
 - a. Wages/ salary details

- b. Rate of overtime work (if eligible for overtime pay)
 - c. Any other cash benefits that the employee is entitled to
 - d. Any payment in kind that the employee is entitled to and the value of that payment (e.g. accommodation)
 - e. Any deductions to be made from the employee's remuneration (e.g. Pension / Medical Aid)
 - f. Method of payment and method of calculating wages
 - g. Additional benefits, and any conditions under which they apply, e.g. achievement of targets
 - h. Pension scheme - whether one exists, and if so conditions
 - i. Approvals for any deductions from pay, e.g. pension scheme other than those required by law
3. Nature of contract
- a. Type of contract: permanent, temporary, fixed term
 - b. Duration of a temporary contract or termination date for a fixed term contract
 - c. Period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate
4. Hours of work
- a. Number of hours in workweek and workday. · Procedure for scheduling.
 - b. Alternative work schedules
 - c. Definition of overtime & pay or compensatory time off
 - d. Advance notice of overtime & right to refuse overtime
 - e. Staffing and workload standards.
 - f. Meal and rest periods.
 - g. Timekeeping and attendance requirements
5. Leaves
- a. Annual leave entitlement
 - b. Role of seniority in scheduling vacations.
 - c. Conditions relating to taking leave, e.g. present company holidays or notice requirements
 - d. Details of any other paid leave entitlements
6. Disciplinary procedures
- a. Details of the disciplinary procedure

- b. Conditions under which the employer can terminate the contract e.g. gross misconduct
- 7. Grievance procedure
 - a. Definition of a grievance.
 - b. Employees' right to union representation.
 - c. Explanations of each step in grievance procedure and time limits at each step.
- 8. Health and Safety
 - a. Employer and employee responsibilities
- 9. Protection of Business information
 - a. Details of confidentiality requirements
 - b. Use and misuse of electronic communications and Internet
- 10. Probation period
 - a. Purpose & duration of the probationary period
 - b. Benefits that will come into effect when the probationary period is completed
- 11. Performance evaluation
 - a. Criteria & frequency for evaluations.
- 12. Retirement policy
- 13. Any other conditions
- 14. Acceptance
 - a. Acceptance clause whereby employees sign that they accept the contract of employment and conditions therein.

Non-Disclosure Agreement / Contract of Confidentiality

A non-disclosure agreement is a legal agreement between two parties where the company gives access to certain restricted information to the employee preventing its disclosure by the employee to third parties. The secrecy of the restricted information is protected through the non-disclosure agreement or the confidentiality agreement. If the classified information is transferred to the employee orally he must provide in writing that the information so communicated constitutes confidential information to which he is legally bound.

Confidential information constitutes the essence of every business. Disclosure of such information may be potentially damaging to a company and provide an unfair advantage to its competitors. Protection of confidential information, therefore, assumes tremendous importance. In the business world, confidential information includes information that qualifies as a trade or business secret. A

trade secret is defined as any information that is not known outside the company and which is not readily ascertainable by proper means, thereby giving the company an advantage over its competitors. Whether any information is a trade secret depends on a variety of factors, such as the extent to which the information is known outside of the company's business; the extent to which the information is known by employees and others involved in the company's business; the measures taken by the company to guard the secrecy of the information; the value of the information to the company and to its competitors; the money or effort expended in developing the information; and the ease with which the information can be duplicated by others. Examples of trade secrets include methods of production not protected by patent, testing procedures, processes, designs, formulas and software.

If it is found that the employee is likely to misuse confidential information obtained while in employment, the employer is entitled to an injunction preventing such misuse. However, an injunction cannot be granted to protect the employer for misuse that has already taken place. For such past misuse, the employer is entitled only to damages; as otherwise, this will go against fair competition. The injunction should not give a competitive advantage to the employer, as for example no injunction should be granted if an employee obtains the information independently from the market. Additional remedies include an award of damages for loss of profit because of diminution in the employer's business or damage to the employer's goodwill. However, these are not granted in the absence of detailed evidence to that effect.

The following steps can be taken by employers to protect confidential information:

- i. Companies should ensure that before disclosing confidential information to employees, a non-disclosure agreement is in place.
- ii. Companies should ensure that the confidential nature of the information is expressly communicated to the employees before disclosure.
- iii. Companies should restrict the number of employees having access to confidential information at any point of time.
- iv. Companies should mark files and relevant documents as confidential.
- v. Companies should have in place proper security systems for computers and networks. Passwords should be provided and changed frequently.
- vi. Companies should have in place proper policies for document retention and destruction.
- vii. Companies should very clearly set forth the standards of non-disclosure of confidential information in the employee handbook.

- viii. Companies should take special care when an employee is leaving the company. The employee should be reminded of his obligations and asked to deposit all confidential material in his possession.
- ix. A covenant of non-disclosure should also include a clause whereby the employee is under an obligation to disclose to the employer any confidential information acquired in the course of employment, which is in the nature of a trade secret for the company but unknown to the employer.

11. IMPORTANT CASE LAWS

1. Apprentices Act, 1961

- a) ***UP State Road Transport Corpn v. UP Parivahan Nigam Shishukh Berozgar Sangh*** AIR 1995 SC 1114 = (1995) 2 SCC 1 , it was held that other things being equal, a trained apprentice should be given preference over direct recruits. It was also held that he need not be sponsored by the employment exchange. Age bar may also be relaxed, to the extent of training period. The concerned institute should maintain a list of persons already trained and in between trained apprentices, preference should be given to those who are senior. – same view in *UP Rajya Vidyut Parishad v. State of UP* 2000 LLR 869 (SC).

2. Contract Labour (Regulation and Abolition) Act, 1970

- a) In ***Steel Authority of India v. National Union Water Front*** 2001(5) SCALE 626 = 2001 LLR 961 = AIR 2001 SC 3527 = JT 2001(5) SC 602 = 2001 III CLR 349 = (2001) 7 SCC 1 = 2001 LLN 135 = 2001 AIR SCW 3574 (SC 5 member Constitution bench), it was held that Central / State Government can issue notification u/s 10 abolishing contract labour only after following prescribed procedure regarding consultation etc. It was also held that even if such a notification is issued, the employees with contractor will not be automatically absorbed in the employment of the company, if the contract was genuine. However, company will give preference to them. However, if the contract was not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of principal employer.
- b) ***Food Corporation of India Workers Union Vs Food Corporation of India and others, 1992 LLJ (Guj)*** - It has been held that workmen can be employed as contract labour

only through licensed contractors, who shall obtain licence under section 12. As per section 7, the principal employer is required to obtain Certificate of Registration. Unless both these conditions are complied with the provisions of Contract Labour Act will not be attracted. Even if one of these conditions is not complied with, the provisions of the Contract Labour Act will not apply. In a situation where in either of these two conditions is not satisfied, the position would be that a workman employed by an intermediary is deemed to have been employed by the principal employer.

3. Employees Provident Funds Act, 1952

- a) In ***RPFC v. T S Hariharan*** 1971 Lab IC 951 (SC), it was held that temporary workers should not be counted to decide whether the Act would apply.
- b) ***RPFC v. Shiv Kumar Joshi*** (1996) 4 CTJ 805 = 1996 LLR 641 (NCDRC 5 member bench), it was held that the Regional Provident Fund Commissioner is providing service under the Act and hence he is liable under Consumer Protection Act. Confirmed in ***RPFC v. Shiv Kumar Joshi*** 1999 AIR SCW 4456 = 1999(7) SCALE 453 = 2000 LLR 217 = AIR 2000 SC 331 = 99 Comp Cas 347 = (2000) CLA-BL Supp 26 = 24 SCL 46 (SC).

4. Payment of Gratuity Act, 1972

- a) "Gratuity" as observed by the Supreme Court in its etymological sense, means a gift, especially for services rendered or return for favours received. AIR 1970 SC 919, ***Delhi Cloth & General Mills Co. Ltd. v. Its Workmen.***
- b) AIR 1960 SC 251, ***Indian Hume Pipe Co. Ltd. v. ts Workmen.*** Gratuity has to be considered to be an amount paid unconnected with any consideration and not resting upon it and has to be considered something given freely or without recompense. It does not have foundation on any legal liability, but upon a bounty steaming from appreciation and graciousness. Long service carries with it expectation of an appreciation from the employer and a gracious financial assistance to tide over post retrieval difficulties.
- c) In the case of ***B. Mohan Reddy vs. A.P.S. Co-op. Marketing Federation Ltd.*** 1990 (1) LLN 820 it was held that payment of Gratuity Act does not authorize employer to with-hold Gratuity of employee for any reasons such as negligence and unauthorized leave except where services of employee are terminated for any act of willful

omission or negligence which caused any damage, loss or destruction to employers property or for riotous or disorderly behaviour or for any act which constitutes an offence involving moral turpitude committed in the course of employment.

- d) It has been held by the Bombay High Court in the case of ***Bombay Gas Public Ltd. Co. V/s. Papa Akbar and Anr.*** 1990 II LLJ 220 that the provisions of Sec. 4 (6) (a) of the payment of Gratuity Act do not come into force unless there is a termination of service. Merely stating that the employee went on strike and thereby caused a heavy loss to the company could not be a ground to deny gratuity to the employees.
- e) Re-employment under same employer under fresh contract will not militate against concept of gratuity - When an employee retires and earns gratuity and the same employer offers such employee a job under a fresh agreement and the new agreement provides for the payment of gratuity, that would, in no way, militate against the concept of gratuity if such gratuity is paid on the first retirement - **CIT v. Smt. Savitaben N. Amin** [1986] 157 ITR 135 (Guj.).

12. IMPORTANT ORGANIZATIONS

1. International Labour Organization

The International Labour Organization (ILO) is a specialized agency of the United Nations that deals with labour issues. Its headquarters are in Geneva, Switzerland. Its secretariat — the people who are employed by it throughout the world is known as the International Labour Office.

The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. Post-war reconstruction and the protection of labour unions occupied the attention of many nations during and immediately after World War I.

The first annual conference (referred to as the International Labour Conference, or ILC) began on 29 October 1919 in Washington DC and adopted the first six International Labour Conventions, which dealt with hours of work in industry, unemployment, maternity

protection, night work for women, minimum age and night work for young persons in industry. The prominent French socialist Albert Thomas became its first Director General. The ILO became a member of the United Nations system after the demise of the League in 1946. Its constitution, as amended, includes the Declaration of Philadelphia (1944) on the aims and purposes of the organisation. As of April 2009, the current director-general is Juan Somavia (since 1999).

Unlike other United Nations specialized agencies, the International Labour Organization has a tripartite governing structure — representing governments, employers and workers. Presently there are 181 members.

The International Labour Organization (ILO) is devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. Its main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues. In promoting social justice and internationally recognized human and labour rights, the organization continues to pursue its founding mission that labour peace is essential to prosperity. Today, the ILO helps advance the creation of decent jobs and the kinds of economic and working conditions that give working people and business people a stake in lasting peace, prosperity and progress.

The Governing Body is the executive of the International Labour Office. It meets three times a year, in March, June and November. It takes decisions on ILO policy, decides the agenda of the International Labour Conference, adopts the draft programme and budget of the organisation for submission to the conference, and elects the director-general. The Governing Body is composed of 28 government representatives, 14 workers' group representatives, and 14 employers' group representatives. Ten of the government seats are held permanently by Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom, and the United States. The remaining government representatives are elected by government delegates every three years.

13. Important authorities under the Labour law in India

1. Ministry of Labour and Employment , Government of India

The Ministry of Labour and Employment, a branch of the Government of India, is the apex body for formulation and administration of the rules and regulations and laws relating to

labour and employment in India. The Ministry of Labour and Employment works out of Shram Shakti Bhavan, Rafi Marg, New Delhi

The main objectives of the Ministry of Labour and Employment are the following: Labour Policy and legislation; Safety, health and welfare of labour; Social security of labour; Policy relating to special target groups such as women and child labour; Industrial relations and enforcement of labour laws in the Central sphere; Adjudication of industrial disputes through Central Government Industrial Tribunals cum Labour Courts and National Industrial Tribunals.

A. Main Secretariat of Ministry of Labour and Employment

- i. Industrial Relations division
- ii. Child and Women Labour Division
- iii. Directorate General, Labour Welfare
- iv. Economic and Statistics Division
- v. International Labour Affairs Section
- vi. Labour Conference Section

B. Attached Offices

- i. Office of the Chief Labour Commissioner (Central), New Delhi (Also known as Central Industrial Relations Machinery)
- ii. Directorate General, Employment and Training, New Delhi
- iii. Labour Bureau, Chandigarh
- iv. Directorate General, Factory Advice Service and Labour Institutes, Bombay

C. Subordinate Offices

- i. Directorate General, Mines Safety, Dhanbad
- ii. Office of the Welfare Commissioner, Allahabad, Bangalore, Bhubaneswar, Calcutta, Hyderabad, Jabalpur, Karma(Bihar) and Nagpur

D. Adjudicating Bodies

Central Government Industrial Tribunal-cum-Labour Court No.1 Dhanbad (Bihar) and No.1 Mumbai and at Asansol, Calcutta, Jabalpur, New Delhi, Chandigarh, Kanpur, and Bangalore.

E. Arbitration Bodies

Board of Arbitration (JCM), New Delhi

F. Autonomous Organizations

- i. Employee Provident fund Organisation, Head Office - New Delhi
- ii. Employee State Insurance Corporation, Head Office - New Delhi
- iii. V.V.Giri National Labour Institute, NOIDA, (U.P)
- iv. Central Board for Workers' Education, Nagpur

2. Organisation of the Chief Labour Commissioner (CLC)

The Organisation of the Chief Labour Commissioner(C) known as **Central Industrial Relations Machinery** was set up in April, 1945 in pursuance of the recommendation of the Royal Commission on Labour in India and was then charged mainly with duties of prevention and settlement of industrial disputes, enforcement of labour laws and to promote welfare of workers in the undertakings falling within the sphere of the Central Government.

Presently there are 18 regions each headed by a Regional Labour Commissioner (C) with Headquarters at Ajmer , Ahmedabad, Asansol, Bangalore, Bombay, Bhubaneswar, Chandigarh, Cochin, Calcutta, Gwahati, Hyderabad, Jabalpur, Madras, New Delhi, Patna, Nagpur, Dhanbad and Kanpur. Out of these, 14 regions have been placed under the supervision of three zonal Dy.CLCs (C) and 4 regional offices are supervised directly by headquarters office of CLC(C).

The **Central Industrial Relations Machinery** is the enforcing agency for the following Acts:

- 1) Payment of Wages Act 1936.
- 2) Minimum Wages Act, 1948
- 3) Payment of Bonus Act 1965
- 4) Equal Remuneration Act 1979
- 5) Contract Labour (Regulation and Abolition) Act, 1970
- 6) Child Labour (Prohibition and Regulation) Act,1986
- 7) The Industrial Employment (standing orders) Act 1946
- 8) Maternity Benefit Act, 1961

9) Payment of Gratuity Act, 1972

10) Industrial Disputes Act, 1947

Apart from the Chief Labour Commissioner, the Central Industrial Relations Machinery consists of the following officers:

- i. **Assistant Labour Commissioner (Central)** - Assistant Labour Commissioners have been declared inspectors under all the enactments enumerated above, except Equal remuneration Act, 1979 and Payment of Gratuity Act, 1972. They are conciliation officers under the Industrial Disputes Act (Section 4). They intervene and prevent the industrial disputes and maintain harmonious Industrial Relations. A.L.Cs(C) are also controlling authorities under the Payment of Gratuity Act, 1972 (sec.3), Authorities under the Equal remuneration Act, 1979 (Sections 7) and Registering and Licensing Officers (Sections 6 and 11 respectively) under the Contract Labour (Regulation & Abolition) Act, 1970. As controlling authorities under the payment of Gratuity Act, 1972 (sec. 3), and Authorities under the Equal remuneration Act, 1979 (Sections 7), they decide the claim cases filed before them under these acts.
- ii. **Labour Enforcement Officer (Central)** – The Labour Enforcement officer (C) have been declared inspectors under all the above enactments in the industries / establishments in the Central Sphere. All officers having independent offices are also Conciliation officers under section 4 of Industrial Disputes Act, 1947. They have also been declared supervisors of the railways employees, as per the provisions of the Indian Railways Act.
- iii. **Joint Chief Labour Commissioner(C)**- The Jt. CLC(C) handles important Industrial Disputes of all India nature. He is also appellate authority under Industrial Employment (Standing Orders) Act.
- iv. **Deputy Chief Labour Commissioner(C)** - The Dy. CLCs(C), besides, coordinating, monitoring and supervising the activities of the regional offices, also handle important Industrial Disputes referred to or apprehended in the zone effectively. Dy. CLC(C)s as appellate authority under IE(SOs) Act, dispose of appeals arising out of certification of standing orders by RLC(C)s. The Dy.CLCs(C) are authority for deciding cases of same or similar nature of work and condition of wages of contract labour under Rule 25 (2)(v)(a) and 25(2) (v) (b) of CL(R&A) (Central) Rules respectively.
- v. **Regional Labour Commissioner** - RLC(C)s are the Authority under Minimum Wages Act. They decide cases of payment of wages less than minimum rate of wages fixed, filed before them, as provided under sec. 20 of the Minimum Wages Act. They are

certifying officers, under Industrial Employment Standing Orders Act for certification of the Draft Standing Orders, submitted under the Act. They are the appellate authority under Payment of Gratuity Act, 1972 and Equal remuneration Act, 1976. They have also been declared inspectors under all the enactments enumerated in column (4), above, except Equal remuneration Act and Payment of Gratuity Act. The RLCs(C) being the head of the region is not only in charge of day-to-day administration but also has to discharge many statutory duties relating to enforcement and industrial relations, including those of Conciliation Officer under the Industrial Disputes Act.

3. **Labour Courts / Industrial Tribunals**

Most of the labour disputes are referred to the Labour Courts/Industrial Tribunals through the Department of Labour under the respective State Government. The process for labour dispute starts with filing of a petition before Labour Conciliation Officer and in case no compromise is possible, the said officer sends a failure report to the Government. After consideration of the said report, the Government may send a reference to the Labour Court/Industrial Tribunal. In certain matters, the labour dispute can be directly filed in the court concerned.

Labour Courts These courts are found in every district and they form the courts of original jurisdiction under which various labour laws and rules are enforced.

Appellate Labour Courts These courts hear only the Appeals and revisions originating from the judgements and orders of the subordinate original labour courts and officers, under the provisions of various labour and related laws.

- a) When an industrial dispute has been referred to a Labour Court for adjudication, it is the duty of the Labour Court to
 - (i) Hold proceedings expeditiously, and
 - (ii) To submit its award to the appropriate Government soon after the conclusion of the proceedings.
- b) However, no deadline has been laid down with respect to the time within which the completion of proceedings has to be done. Nonetheless, it is expected that these Courts hold their proceedings without getting into the technicalities of a Civil Court.

- c) It has been held that the provisions of Article 137 of the Limitation Act do not apply to reference of disputes to the Labour Courts. These Courts can change the relief granted by refusing payment of back wages or directing payment of past wages too.

Court Fee

No Court fee is payable on the petitions filed before Labour Courts and Industrial Tribunals.

Matters that fall within the jurisdiction of Industrial Tribunals

1. Wages, including the period and mode of payment
2. Compensatory and other allowances
3. Hours of work and rest intervals
4. Leave with wages and holidays
5. Bonus, profit sharing, provident fund and gratuity
6. Shift working otherwise than in accordance with standing orders
7. Classification by grades
8. Rules of discipline
9. Retrenchment of workmen and closure of establishment

Matters that fall within the jurisdiction of Labour Courts

1. The propriety or legality of an order passed by an employer under the standing orders
2. The application and interpretation of standing order
3. Discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed.
4. Withdrawal of any customary concession or privilege
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those being referred to Industrial Tribunals.

Stages of adjudication in labour or industrial disputes

The first is receiving a reference from the appropriate Government or filing of the labour dispute in the Labour Court. The next step is sending notice to the Management and after filing of the response by them, the matter is fixed for adjudication. The fourth step is recording the evidence of the parties and hearing the arguments.

The final conclusion of the dispute

After hearing the parties, the Labour Court/Industrial Tribunal decides the dispute and the said final decision is called an Award. A copy of the award is to be published by the Labour Department as per rules. Copies of the same are also sent to the parties concerned.

Execution of Awards

In case the management does not comply with the terms of the award, the workman may pray for its execution by moving an application before the concerned Conciliation Officer.

14. LABOUR LEGISLATIONS ACROSS THE WORLD

1. Australia

Australian labour law has had a unique development that distinguishes it from other English speaking jurisdictions.

In 1904 the Conciliation and Arbitration Act was passed mandating "Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State". In 2005, the WorkChoices Act removed unfair dismissal laws, removed the "no disadvantage test", and made it possible for workers to submit their certified agreements directly to Workplace Authority rather than going through the Australian Industrial Relations Commission. There were also clauses in WorkChoices that made it harder for workers to strike, made it easier for employers to force their employees onto individual workplace agreements rather than collective agreements, and banning clauses from workplace agreements which supported trade unions.

The Workplace Relations Act 1996, as amended by the Workplace Relations Amendment Act 2005, or WorkChoices, which came into effect in March 2006, was a comprehensive change to industrial relations in Australia.

2. United Kingdom

United Kingdom labour law is that body of law which regulates the rights, and obligations of trade unions, workers and employers in the United Kingdom. Labour law, often also referred to as "employment law" has developed rapidly over the past forty years, due to a historically strong trades union movement and the United Kingdom's membership of the European Union (since 1973). In its current form, it is largely a creature of statute rather than Common Law. Leading employment law statutes include the Employment Rights Act 1996, the Employment Act 2002 and various legislative provisions outlawing discrimination on the grounds of sex, race, disability, sexual orientation, and religion and from 2006, age.

The operation of the Employment Law system is broadly similar across the whole of the UK, although there are some differences in the common law between England & Wales and Scotland and, in addition, Northern Ireland has extra anti-discrimination legislation dealing with discrimination on the grounds of religion, community affiliation or political affiliation, which is quite distinct from the laws on religious discrimination in Great Britain. The labour related laws of UK are

- Employment Rights Act, 1996
- Health and Safety at Work etc. Act, 1974
- National Minimum Wage Act, 1998
- Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- Equality Act, 2006
- Sex Discrimination Act 1975
- Equal Pay Act 1970
- Employment Equality (Religion or Belief) Regulations, 2003
- Disability Discrimination Act, 1995
- Trade Union Act 1871
- Trade Union and Labour Relations (Consolidation) Act 1992
- Employment Equality (Age) Regulations 2006

3. China

Labour Law in the People's Republic of China has become a very hot issue with the soaring numbers of factories and the fast pace of urbanization. The basic labour laws are the Labour Law of People's Republic of China (promulgated on 5 July 1994) and the Law of the People's Republic of China on Employment Contracts (Adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on June 29, 2007, Effective from January 1, 2008). The administrative regulations enacted by the State Council, the ministerial rules and the judicial explanations of the Supreme People's Court stipulate detailed rules concerning the various aspects of the employment relationship. Labour Union in China is controlled by the government through the All China Federation of Trade Unions, which is also the sole legal labour union in Mainland China. Strike is formally legal, but in fact is strictly forbidden.

According to the new 98-article-long "Labor Contract Law", employees of at least 10 years standing are entitled to contracts that protect them from being dismissed without cause. The new law also requires employers to contribute to employees' social security accounts and sets wage standards for employees on probation and working overtime.

China's new labor contract law targets, primarily domestic companies that do not have labor contracts and that generally fail to comply with China's old laws. Foreign companies have had a stronger track record of signing contracts with employees and bringing to China their global work rules and environmental, health and safety practices.

4. France

In France the first labour laws were Waldeck Rousseau's laws passed in 1884. Between 1936 and 1938 the Popular Front enacted a law mandating 12 days (2 weeks) each year of paid vacation for workers, and a law limiting the work week to 40 hours, excluding overtime. The Grenelle accords negotiated on May 25 and 26th in the middle of the May 1968 crisis, reduced the working week to 44 hours and created trade union sections in each enterprise. The minimum wage was also increased by 25%. In 2000 Lionel Jospin's government then enacted the 35-hour workweek, down from 39 hours. Five years later, conservative prime minister Dominique de Villepin enacted the New Employment Contract (CNE). Addressing the demands of employers asking for more flexibility in French labour laws, the CNE sparked criticism from trade unions and opponents claiming it was lending favour to contingent work. In 2006 he then attempted to pass the First Employment Contract (CPE) through a

vote by emergency procedure, but that it was met by students and unions' protests. President Jacques Chirac finally had no choice but to repeal it.

5. United States of America

United States labour law is a heterogeneous collection of state and federal laws. Federal law not only sets the standards that govern workers' rights to organize in the private sector, but overrides most state and local laws that attempt to regulate this area. Federal law also provides more limited rights for employees of the federal government. These federal laws do not, on the other hand, apply to employees of state and local governments, agricultural workers or domestic employees; any statutory protections those workers have derived from state law.

Both federal and state laws protect workers from employment discrimination. In most areas these two bodies of law overlap; as an example, federal law permits state to enact their own statutes barring discrimination on the basis of race, gender, religion, national origin and age, so long as the state law does not provide less protections than federal law would. Federal law, on the other hand, preempts most state statutes that would bar employers from discriminating against employees to prevent them from obtaining pensions or other benefits or retaliating against them for asserting those rights.

Federal law does not provide employees of state and local governments with the right to organize or engage in union activities, except to the extent that the United States Constitution protects their rights to freedom of speech and freedom of association. The Constitution provides even less protection for governmental employees' right to engage in collective bargaining: while it bars public employers from retaliating against employees for forming a union, it does not require those employers to recognize that union, much less bargain with it.

The Fair Labor Standards Act of 1938 (FLSA) establishes minimum wage and overtime rights for most private sector workers, with a number of exemptions and exceptions. Congress amended the Act in 1974 to cover governmental employees.

The Employee Retirement Income Security Act establishes standards for the funding and operation of pension and health care plans provided by employers to their employees.

The Family and Medical Leave Act, passed in 1993, requires employers to provide workers with twelve weeks of unpaid medical leave and continuing medical benefit coverage in order to attend to certain medical conditions of close relatives or themselves.

The Occupational Safety and Health Act, signed into law in 1970 by President Richard Nixon, creates specific standards for workplace safety. The Act also provides for protection for "whistleblowers" who complain to governmental authorities about unsafe conditions while allowing workers the right to refuse to work under unsafe conditions in certain circumstances. The Act allows states to take over the administration of OSHA in their jurisdictions, so long as they adopt state laws at least as protective of workers' rights as under federal law.

The Immigration Reform and Control Act of 1986 provides narrow prohibitions against certain types of employment discrimination based on immigration status.

The Worker Adjustment and Retraining Notification Act, better known by its acronym as the WARN Act, requires private sector employers to give sixty days' notice of large-scale layoffs and plant closures; it allows a number of exceptions for unforeseen emergencies and other cases.

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- viii. Child and Women Labour Division: <http://labour.nic.in/cwl/welcome.html>
- ix. Directorate General, Labour Welfare : <http://labour.nic.in/dglw/welcome.html>
- x. Economic and Statistics Division
- xi. International Labour Affairs Section: <http://labour.nic.in/ilas/welcome.html>
- xii. Labour Conference Section: <http://labour.nic.in/lc/welcome.html>

B. Attached Offices

- v. Office of the Chief Labour Commissioner (Central), New Delhi (Also known as Central Industrial Relations Machinery) : <http://labour.nic.in/clc/welcome.html>
- vi. Directorate General, Employment and Training, New Delhi : <http://www.dget.nic.in/>
- vii. Labour Bureau, Chandigarh : <http://labourbureau.nic.in/>
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 - vii. V.V.Giri National Labour Institute, NOIDA, (U.P)
 - viii. Central Board for Workers' Education, Nagpur
- 2. International Labour Organisation (ILO) : <http://www.ilo.org/global/lang--en/index.htm>**

16a.

AGREEMENT FOR EMPLOYMENT

An AGREEMENT made on this ----- day of ----- BETWEEN -----represented by its Managing Director ----- (hereinafter called the ‘Employer’ of the One Part and ----- (hereinafter called the “Employee” of the Other Part.

1. The Employer is engaged in the business of training and maintains business premises at -----
-----.
2. The employer wants to appoint a suitable person to work as ----- for his business concern;
3. The Employee, the party of the Other Part, has agreed to serve as ----- for the business concern on the terms and conditions hereinafter set forth.

NOW this agreement witnesseth and the parties hereto and hereby agree as follows:

1. AGREEMENT TO EMPLOY AND BE EMPLOYED

The Employer hereby employs the Employee as----- at ----- and the Employee hereby accepts and agrees to such employment.

2. DESCRIPTION OF EMPLOYEE’S DUTIES

Subject to the supervision and pursuant to the orders, advice, and direction of the Employer, the Employee shall perform such duties as are customarily performed by one holding such position in business concern. The Employee shall additionally render such other and unrelated services and duties as may be assigned to him from time to time by employer

3. MANNER OF PERFORMANCE OF EMPLOYEE’S DUTIES

The Employee shall at all times faithfully, industriously, and to the best of his/her ability, experience, and talent, perform all duties that may be required of and from him/her pursuant to the express and implicit terms hereof, to the reasonable satisfaction of employer. Such duties shall be rendered at the abovementioned premises and at such other place or places as employer shall in good faith require or as the interests, needs, business, and opportunities of employer shall require or make advisable.

4. DURATION OF EMPLOYMENT

The term of employment shall commence on ----- and continue till such date the Employee works in the business concern subject, however, to prior termination as provided in Clause 9 hereof or by resignation by the Employee. In case of resignation, the Employee shall give one month prior notice to the Employer and on failure to do so, shall forego his salary for the notice period.

5. REMUNERATION

The Employer shall pay a salary of ----- to the Employee for the services rendered to the business concern. The details of the salary are mentioned in Annexure A of the document. In addition to the foregoing, the employer shall also reimburse the expenses incurred by the Employee while travelling for and on behalf of the Employer pursuant to the employer's direction.

6. EMPLOYEE'S LOYALTY TO EMPLOYER'S INTEREST

The Employee shall devote all his time, attention, knowledge, and skill solely and exclusively to the business and interests of the Employer, and the Employer shall be entitled to all benefits, emoluments, profits, or other issues arising from or incident to any and all work, services, and advice of the Employee. The Employee expressly agrees that during the term hereof he will not be interested, directly or indirectly, in any form, or manner, as partner, officer, director, stockholder, advisor, employee, or in any other form or capacity, in any other business similar to the employer's business or any allied trade, except that nothing herein contained shall be deemed to prevent or limit the right of employee to invest any of his surplus funds in the capital stock or other securities of any corporation whose stock or securities are publicly owned or are regularly traded on any public exchange.

7. NON-DISCLOSURE OF BUSINESS INFORMATION

The Employee will not at any time, in any form or manner, either directly or indirectly divulge, disclose, or communicate to any person, firm, or corporation in any manner whatsoever any information of any kind, nature, or description concerning any matters affecting or relating to the business of employer, including, without limitation, the names of any its customers, the prices it obtains or has obtained, or at which it sells or has sold its products, or any other information concerning the business of employer, its manner of operation, or its plans, processes, or other data of any kind, nature, or description without

regard to whether any or all of the foregoing matters would be deemed confidential, material, or important.

The parties hereby stipulate that, as between them, the foregoing matters are important, material, and confidential, and gravely affect the effective and successful conduct of the business of employer, and its good will, and that any breach of the terms of this section is a material breach of this agreement

8. LEAVE

The Employee will be entitled for one day leave for a completed month of service. Apart from this the employee will also be entitled to medical leave of 15 days in a year subject to submission of medical certificate in case the medical leave period exceeds three days.

9. TERMINATION OF SERVICE

- i. The Employer shall terminate the services of the Employee without any previous notice, if the employer is satisfied based on medical evidence that the employee is unfit and is likely for considerable period to continue to be unfit by reason of ill health for discharge of his/her duties.
- ii. The Employer shall terminate the services of the Employee without any previous notice, if the Employee is found guilty of any in-subordination, intemperance, moral turpitude or other misconduct or of any breach or non performance of any of the provisions of these conditions, or if otherwise found unsuitable for the efficient performance of his /her duties.

10. SETTLEMENT OF DISPUTE

Any claim or controversy that arises out of or relates to this agreement, or the breach of it, shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and relevant labour legislations.

11. WAIVER OR MODIFICATION EFFECTIVE ONLY IN WRITING

No waiver or modification of this agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties

arising out of or affecting this agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid.

12. AGREEMENT GOVERNED BY LAW

This agreement and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of -----, India.

13. BINDING EFFECT OF AGREEMENT

This agreement shall be binding on and inure to the benefit of the respective parties and their respective heirs, legal representatives, successors, and assigns.

IN WITNESS WHEREOF

On behalf of the party of the ONE PART and by the party of the OTHER PART have hereto and hereby set their hands the day, month and year above mentioned:

1. Signature of the Party of the ONE PART (Employer)

2. Signature of the Party of the OTHER PART (Employee)

In the presence of

1. ----- (Name, designation and address)

2. ----- (Name, designation and address)

16b. **FORM FOR AGREEMENT BETWEEN THE EMPLOYER AND EMPLOYEES FOR REFERENCE OF**

DISPUTES TO ARBITRATION

AGREEMENT

BETWEEN

Names of the Parties;

Representing employers:

Representing workmen/workman:

It is hereby agreed between the parties to refer the following dispute to the arbitration of
..... [here specify the name(s) and addressees) of the arbitrator(s)]:

- (i) Specific matters in dispute;
- (ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved;
- (iii) Name of the workman in case he himself is involved in the dispute or the name of the Union, if any, representing the workmen or workman in question;
- (iv) Total number of workmen employed in the undertaking affected;
- (v) Estimated number of workmen affected or likely to be affected by the dispute.

We further agree that the majority decisions of the arbitrator(s) be binding on us. In case the arbitrators are equally divided in their opinion, that they shall appoint another person as umpire whose award shall be binding on us.

The arbitrator(s) shall make his (their) award within a period of (here specify the period agreed upon by the parties) or within such further time as is extended by mutual agreement between us in writing. In case the award is not made within the period aforementioned, the reference to arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

Signature of the parties.

Representing employer.

Workman/Representing WORKMAN

/ WORKMEN WITNESSES;

(1)

(2)

Copy to:

- (i) The Assistant Labour Commissioner (Central), (here enter office address of the Conciliation Officer in local area concerned).
- (ii) The Regional Labour Commissioner (Central).....
- (iii) The Chief Labour Commissioner (Central), New Delhi.
- (iv) The Secretary to the Government of India, Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), New Delhi.