

A Practical Guide to Acts & Rules applicable to “Migrant Workers” in India

For Development Practitioners



Ver 1.0 | July 2020

Contents

PREFACE	6
1. THE MATERNITY BENEFIT ACT, 1961 AND 2017.....	8
1.1. IMAGINE A SCENARIO.....	8
1.2. BASIC FEATURES.....	9
1.3. BENEFITS UNDER THE ACT	10
1.4. HOW TO GENERATE CLAIM FOR MATERNITY BENEFIT AND PAYMENT?	11
1.5. PENALTIES.....	12
2. THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986.....	13
2.1. IMAGINE A SCENARIO.....	13
2.2. BASIC FEATURES.....	14
2.3. DUTIES OF THE OCCUPIER.....	16
2.4. DISPUTES REGARDING AGE OF THE CHILD	16
2.5. PENALTIES.....	16
3. THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970.....	18
3.1. IMAGINE A SCENARIO.....	18
3.2. BASIC FEATURES.....	19
3.3. REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABOUR.....	20
3.4. LICENSING OF CONTRACTORS.....	20
3.5. WELFARE AND HEALTH OF CONTRACT LABOUR.....	21
3.6. WHAT IS THE RESPONSIBILITY OF EMPLOYER FOR PAYMENT OF WAGES?	22
3.7. PENALTIES AND PROCEDURE.....	22
3.8. WHAT ARE THE RULES REGARDING HEALTH AND SAFETY OF THE CHILD?	23
4. THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946	24
4.1. IMAGINE A SCENARIO.....	24
4.2. BASIC FEATURES.....	25
4.3. STANDING ORDERS.....	26
4.4. PENALTIES.....	27
5. THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979	28
5.1. IMAGINE A SCENARIO.....	28
5.2. BASIC FEATURES.....	29
5.3. REGISTRATION OF ESTABLISHMENTS EMPLOYING INTER-STATE MIGRANT WORKMEN.....	29
5.4. LICENSING OF CONTRACTORS.....	30
5.5. DUTIES OF CONTRACTORS.....	31
5.6. WAGES, WELFARE AND OTHER FACILITIES	32



5.7. DUTIES OF PRINCIPAL EMPLOYER.....	32
5.8. PENALTIES & PROVISIONS.....	33
6. PAYMENT OF GRATUITY ACT, 1972 & 2018.....	34
6.1. IMAGINE A SCENARIO.....	34
6.2. BASIC FEATURES.....	35
6.3. WHEN IS GRATUITY PAYABLE?.....	36
6.4. CONTINUOUS SERVICE.....	37
6.5. DIFFERENT FORMS.....	38
6.6. GRATUITY AMOUNT CALCULATION.....	39
6.7. RULES & REGULATIONS.....	39
6.8. PENALTIES.....	41
6.9. NEW AMENDMENTS.....	41
7. TRADE UNION ACT, 1926.....	42
7.1. IMAGINE A SCENARIO.....	42
7.2. BASIC FEATURES.....	43
7.3. PROCESS FOR REGISTRATION OF TRADE UNIONS.....	43
7.4. RIGHTS & LIABILITIES OF REGISTERED TRADE UNIONS.....	45
7.5. PENALTIES.....	46
7.6. MISCELLANEOUS RULES & REGULATIONS.....	47
8. WAGE CODE, 2019.....	49
8.1. IMAGINE A SCENARIO.....	49
8.2. BASIC FEATURES.....	50
8.3. MINIMUM WAGES.....	51
8.4. PAYMENT OF WAGES.....	52
8.5. PAYMENT OF BONUS.....	54
8.6. REDUCTIONS.....	55
8.7. OTHER PROVISIONS.....	55
9. THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996.....	57
9.1. IMAGINE A SCENARIO.....	57
9.2. BASIC FEATURES.....	58
9.3. PENALTIES & PROVISIONS.....	59
9.4. Applicability of BOCW Act.....	59
10. WORKMEN'S COMPENSATION ACT, 1923.....	61
10.1. IMAGINE A SCENARIO.....	61
10.2. BASIC FEATURES.....	62
10.3. EMPLOYER'S LIABILITIES.....	63
10.4. COMPENSATION.....	63



10.5. DOCUMENTS	65
10.6. DUTIES.....	65
10.7. PENALTIES.....	65
10.8. OTHER PROVISIONS	66
10.9. AMENDMENTS	67
11. THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952.....	68
11.1. IMAGINE A SCENARIO	68
11.2. BASIC FEATURES	69
11.3. CONTRIBUTIONS.....	69
11.4. WITHDRAWALS FROM EPF ACCOUNT.....	69
11.5. BENEFITS	70
12. THE EMPLOYEES' STATE INSURANCE ACT, 1948.....	71
12.1. IMAGINE A SCENARIO.....	71
12.2. BASIC FEATURES.....	72
12.3. FINANCE & AUDIT.....	73
12.4. CONTRIBUTIONS.....	74
12.5. BENEFITS	74
13. FACTORIES ACT, 1948	76
13.1. IMAGINE A SCENARIO.....	76
13.2. BASIC FEATURES.....	77
13.3. REGISTRATION	78
13.4. DUTIES.....	79
13.5. HEALTH.....	79
13.6. SAFETY	82
13.7. PROVISIONS RELATING TO HAZARDOUS PROCESSES.....	83
13.8. WELFARE.....	85
13.9. WORKING HOURS OF ADULTS.....	85
13.10. EMPLOYMENT OF YOUNG PERSONS.....	86
13.11. ANNUAL LEAVE WITH WAGES.....	86
13.12. PENALTIES & PROCEDURES	87
14. INDUSTRIAL DISPUTES ACT, 1947.....	88
14.1. IMAGINE A SCENARIO	88
14.2. BASIC FEATURES.....	89
14.3. IMPORTANT CLARIFICATIONS	89
14.4. AUTHORITIES.....	89
14.5. NOTICE OF CHANGE	92
14.6. GRIEVANCE SETTLEMENT AUTHORITY.....	93



14.7. ARBITRATION 93

14.8. PAYMENT OF FULL WAGES TO WORKMAN PENDING PROCEEDINGS IN HIGHER COURTS 93

14.9. STRIKES..... 94

14.10. LOCKOUTS..... 95

14.11. LAY-OFFS..... 96

14.12. RETRENCHMENT 96

14.13. UNFAIR LABOUR PRACTICES 97

14.14. PENALTIES..... 99



PREFACE

Labour legislation in India has a long history of 125 years. Pre-independent India suppressed voices of workers who tried to seek better working conditions through campaigns and strikes. After Independence, the Constitution of India put together a series of fundamental labour rights which included laws focused mainly on the right to form and join trade unions, equality at work and decent working conditions. Labour laws today aim at establishing a legal system facilitating productive employment relationships. It also serves as a constant reminder of the fundamental rights of workers and the processes through which these rights can be exercised. Social dialogue is fundamental to solve issues between the labourer and the employer and this also finds its due place in the legislation.

In spite of the Constitution providing elaborate and exhaustive rights to workers, they are still exploited through various means. Forced labour and human trafficking for labour exploitation are pertinent issues in the country. Apart from that, labourers have to face constant trouble regarding wages, safety conditions at work, medical benefits, leaves, termination, insurance and the likes. We believe that a lot of exploitation is carried out by the employer due to low awareness of workers about the various rights enshrined upon them. Employers take benefit of this ignorance and exploit labour to work as per his terms and conditions. In many cases the employers, especially the smaller enterprises, themselves are unaware about the long term benefits of following these rules and are ignorant and therefore scared of government compliances.

Being a migrant adds to the woes. Migrant labourers do not have social capital and social support structure in their work cities. They have moved to a new environment where they have to face a lot of trouble adjusting. They are employed in hazardous jobs at lower wages as the local population of the state are developed enough to not take up such activities. The migrant workers are also employed for longer hours since they want to earn fast and get back to their native roots. This gives rise to increased health conditions which are not addressed. Proving their identity is one of the major hurdles faced by the migrants when they come to live and work in a new city. They do not have secure citizenship status and cannot benefit from the state welfare programs which are domicile based. Lack of identification proof means that these migrants do not get access to subsidized food, fuel, health services or education which is provided for the impoverished sections of the society. The migrants are also a major chunk of unbanked population. They fail to satisfy Know Your Customer (KYC) norms which are required to open bank accounts. This has severe implications on their savings and remittance behavior as well. Adding to this, their voices are unheard and suppressed as they do not contribute to the vote bank and thus are unable to get reforms and entitlements. To facilitate people seeking justice one needs to be aware of the existing laws and practices which is not feasible by the migrant population. They require support in terms of understanding the rules and also to voice their dissent.

This document is a compiled and abridged version of the major labour laws that exist in the country along with the recent amendments. Each law is preceded by a scenario which will allow the reader to connect further with the everyday issues faced by workers. For better understanding, readers should try to apply the major sections of the law to the scenario and develop their own understanding. The document is designed for perusal of development practitioners for whom understanding needs to be in a practical manner to be further disseminated through the community.

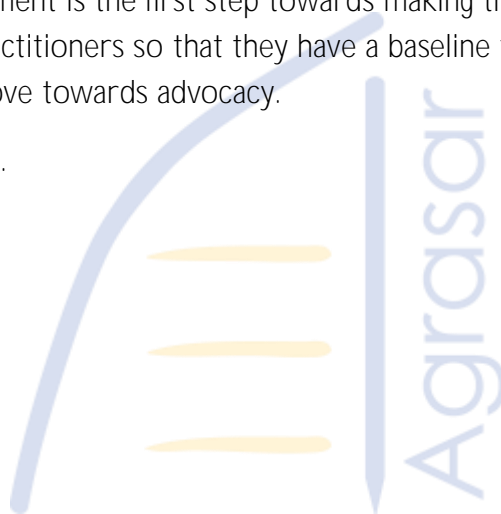


Developing this compendium has been a learning journey for me. Guidance and feedback from various members of Agrasar team has been quite helpful. Written in a simple manner without compromising with the content, I trust that this guide will add to the knowledge resources among practitioners irrespective of the ranks.

However, while consulting the document, one needs to be aware that these labour laws have been formulated for a different era and have mostly remained unchanged over decades. The stringent and archaic laws make it difficult for both the employer and the workers to comply. I have realized while working on this document that **even definitions do not have uniformity. The term “worker” and “wage”** have been defined in multiple ways which adds to ambiguity and confusion. It is extremely difficult for the employee to get their due benefits since the fulfillment requirements are never-ending. For example, the **“Workmen’s Compensation Act, 1923”** makes it necessary for the aggrieved employee to send a **“notice of accident”** to the Commissioner as soon as the happening thereof. The employee has to be first aware of such rules or else he will be denied the accident benefits he or his dependents are entitled to receive.

There is a need to make these archaic laws friendly for both the employer and the employee so that the whole system benefits. This document is the first step towards making the existing laws understandable and easy for our development practitioners so that they have a baseline to assess the laws, use them wherever possible and further move towards advocacy.

Feedback and Inputs are welcome.



Suchetana Adhikary
Team Member, Agrasar
info@agrassar.org



1. THE MATERNITY BENEFIT ACT, 1961 AND 2017

1.1. IMAGINE A SCENARIO

Lakshmi has just shifted from her ancestral home in Midnapore, West Bengal to Kolkata. Her husband, Ratan, had been working as a construction labourer in the city for the last two years. Lakshmi also started working along with her husband as a helper carrying the bricks and cement to various locations for further work. After 6 months of working, suddenly one day, she fell severely sick and was about to collapse. Everyone rushed in and Ratan took her to the nearby hospital. There they got to know that she is pregnant. Ratan broke the news to the contractor a few days later asking for permission to shift Lakshmi to some other easy jobs which did not require her to carry heavy weights. The contractor dismissed Ratan and was not interested in paying anymore heed to the request. Work carried on as usual since both Ratan and Lakshmi had no other means of earning. Unfortunately, due to the heavy workload and carrying weights, Lakshmi had a miscarriage. She was on complete bed rest in the hospital for a week as the mental and physical trauma was unbearable. However, the contractor gave an ultimatum to Ratan asking him to get his wife back to work as soon as possible or he might even deduct **money from Ratan's pay.**

That evening, Ratan had a discussion with Anup and his wife Lata who came to the city years **back for work. Listening to Ratan's horrific experience,** Lata recalled a similar story from the past. Being associated with an NGO had taught Lata the rules and provisions of the Maternity Benefit Act but when she got pregnant and asked for her due benefits from her employer, she was denied overtly. She was neither provided with the 26 weeks paid leave, nor a medical bonus. Instead when her employer got to know she was pregnant and unable to come to the factory, she was asked not to come from the very next day and was not even paid her wages due for that month.

After childbirth, Lata went back to work at the same place since there were no other jobs available. She recalled how difficult it was for her to leave her new-born baby with the neighbours while she had to go for work. There was no crèche facility available at the workshop. On few occasions, she also tried to take the child along with her but was not even permitted proper nursing breaks to cater to the child and she thus decided it was best if she kept the child at home.

What were the benefits denied to Lakshmi and Lata according to you? Can they do something about it?



1.2. BASIC FEATURES

- An Act to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits.
- The employers have to inform women in writing and electronically about the maternity benefits available under the Maternity Benefit Act upon their joining the workforce.
- The Act applies to every establishment being a factory, mine or plantation including establishments belonging to Government.
- It also applies to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances.
- The State Government with the approval of Central Government can bring other establishments into the Act with less than 2 **months' notice**.
- Every woman is entitled to maternity benefit at the rate of average daily wages. The employer is liable to pay the amount.
- Average daily wages- average of wages payable to woman employee for the days of work during the period of 3 calendar months immediately preceding the date of her absence owing to maternity or Re.1, whichever is higher
- The wage payment will be 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.

Case Snippet: Ms Neera Mathur was appointed by LIC on September 25, 1989. She was on probation for six months and was to be on confirmed payroll based on satisfactory work report. She applied for a maternity leave on December 27, 1989 (3 months after joining). But she was discharged from service instead during her probation period and the reason cited by LIC for her termination was that she had deliberately withheld information of pregnancy while filling up the declaration form prior to joining. Ms Mathur moved court and the SC asked LIC to reinstate her. The court was also shocked to realize that the company required women candidates to provide information about the dates of their menstrual cycles and past pregnancies. This was considered to be gross invasion of privacy and LIC was directed to remove those columns from their data.

In the above case, Neera had served the requisite 80 days period before availing the maternity benefit and was still denied. She was also discharged of her services which is unlawful.



1.3. BENEFITS UNDER THE ACT

The employer cannot deduct any wages from the normal and usual daily wages of a woman entitled to maternity benefit under the provisions of this Act under the reasons only of the nature of work assigned (section 4, subsection 3) or breaks for nursing the child allowed to her (section 11).

An employer cannot dismiss a woman for taking maternity leave and cannot serve a termination notice to a woman on maternity leave which expires before the maternity leave ends. **Also, an employer can't change the terms of service to the woman's disadvantage during her maternity leave.**

Also, maternity benefit and medical bonus will have to be paid to a woman who is discharged or dismissed during pregnancy unless it is for gross misconduct

The woman in turn can appeal to prescribed authority within sixty days from the date when deprivation order is received.

MISCELLANEOUS BENEFITS

OTHER RELATED PAYMENTS	OTHER LEAVES	OTHER BENEFITS
<ul style="list-style-type: none">• Every woman entitled to maternity benefit under this Act shall also be entitled to receive a medical bonus of twenty-five rupees, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.	<ul style="list-style-type: none">• Leave for miscarriage- On production of proof for miscarriage, the woman is entitled to leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage.• Leave for illness arising out of pregnancy, delivery, premature birth of child, or miscarriage- On production of proof for illness, can avail a leave for a maximum of one month over and above the period of absence allowed under section 6 or 9.	<ul style="list-style-type: none">• Nursing breaks- 2 breaks until child reaches the age of 15 months.• Crèche facility- every establishment with 50 or more employees need to have provision of crèche with a certain prescribed distance either separately or along with other common facilities.• Employee will be allowed 4 visits a day to the crèche facility including the rest interval allowed to her.



MINIMUM PERIOD OF EMPLOYMENT TO AVAIL THE BENEFITS

- To avail maternity benefits, the woman has to work in an establishment of the employer for not less than 80 days in the 12 months immediately preceding the date of her expected delivery.
- Exception: the minimum period of 80 days is not applicable to women who has immigrated into the State of Assam and was pregnant at the time of the immigration.

PERIOD OF AVAILING MATERNITY BENEFIT

- The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks (previously it was 12 weeks) of which not more than eight weeks will be substituted.
- If the woman has more than two surviving children, the maternity benefit is for 12 weeks only.
- If woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death.
- If woman dies after delivering the child, and leaves the child behind, the employer shall be liable or the maternity benefit for the entire period of six weeks immediately following the day of her delivery.
- If child also dies during delivery, then the employer is liable to pay benefits for the days up to and including the day of the death of the child.
- A woman who legally adopts a child of less than 3 months or a commissioning mother is also entitled to maternity benefit for twelve weeks from the date mother receives the child.
- Women undergoing a tubectomy operation (a medical procedure to stop future pregnancies) also get a paid leave of two weeks following the operation.
- If nature of work allows working from home, the employer may allow her to do so after providing the maternity benefit if both the woman and the employer agrees on the terms and conditions.

1.4. HOW TO GENERATE CLAIM FOR MATERNITY BENEFIT AND PAYMENT?

1. Any woman who is employed in an establishment and entitled to receive maternity benefits can write a notice to her employer stating:
 - the date from which she will be absent from work (not being a date earlier than six weeks from the date of expected delivery),
 - maternity benefits and other amounts she is entitled to under the Act which may be paid to her or someone she nominates in the notice



2. She is also prohibited to work in any other establishment during the period for which she is receiving maternity benefits.
3. Any woman who will fail to provide the notice during pregnancy, can provide the notice just after delivery. In cases where notice has not been served but the woman is entitled to receive maternity benefits, an Inspector either of his own motion or on an application made to him by the woman, order the payment of such benefit or amount within such period as may be specified in the order.
4. The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on the production of proof of pregnancy.
5. The due amount for the subsequent period shall be paid within 48 hours of production of proof of child birth.

1.5. PENALTIES

Inspectors can be appointed by the appropriate Government to ensure that the act is followed by establishments and to resolve conflicts when they arise (section 14-17).

1. If any employer fails to comply with the rules, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.
2. If the employer has not paid the appropriate maternity benefit amounts to the beneficiary, the court shall in addition recover such maternity benefit or amount as if it were a fine, and pay the same to the person entitled thereto.
3. The penalty for obstructing the inspector, not being able to provide required documents, concealing proofs, includes imprisonment which may extend to three months or a fine of five hundred rupees or both.
4. Prosecution for offense can only take place within a period of one year after which it is considered invalid.
5. No prosecution shall be instituted except by, or with the previous sanction of, the Inspector.

For further information:

<https://labour.gov.in/sites/default/files/TheMaternityBenefitAct1961.pdf>

<https://labour.gov.in/sites/default/files/Maternity%20Benefit%20Amendment%20Act%2C2017%20.pdf>

<https://www.latestlaws.com/articles/all-about-maternity-benefit-act-1961-by-sayali-diwadkar/>



2. THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

2.1. IMAGINE A SCENARIO

Sushil works at a tea stall in New Delhi. He was brought to the big city from a small village in Bihar by one of his relatives on the pretext of sending him to school. That has remained a dream and he now assists the same relative at his tea stall. His day starts at 9 am and continues till 7 pm. He is mainly responsible for washing glasses and serving tea to the customers. Even after being 13 years of age, he looks much older. There is no off days for him as the tea stall has to remain open for business all throughout the week. He gets an hour free in the afternoon when there are no customers.

“**This** is the time I have kept for myself. I look at the children going back home from the nearby locality school. In my village, there were no schools for higher studies so when given this offer to go to the big city for education, I was more than excited. Everything seems history **now.**”

Back home he has his elder brother supporting the family and Sushil now dreams of getting a better paid job so that he can also support them. He has heard about a firecracker unit in the outskirts of Delhi which is recruiting children to work in the factory. The pay is higher there and he is also promised a day off by the contractor.

At a very young age, when it was time to enjoy childhood, Sushil is burdened with a lot of responsibilities. His employers know very well that it is illegal for him to work in the tea-stall or even in the firecracker unit but nobody pays a heed. For Sushil, all that matters now is the well-being of his family and educating his youngest brother, Ravi.

Is it right for the employer to take advantage of Sushil’s vulnerability? What are the provisions of the act which are being violated in the above scenario?



2.2. BASIC FEATURES

WHAT IS THE ACT?	WHAT IS THE PERMISSIBLE HOUR AND PERIOD OF WORK?	WHAT ARE THE HOLIDAYS PROVIDED?
<ul style="list-style-type: none"> The Act prohibits the engagement of children in certain employments and regulates the work conditions of children in certain other employments. A child is someone below 14 years of age. Establishment includes a shop, commercial establishment, workshop farm, residential hotel, restaurant, eating house, theatre or other place of public amusement and entertainment. 	<ul style="list-style-type: none"> The period of work shall be fixed on each day and should not exceed three hours after which at least an hour of rest interval is permitted. Including rest period [under sub-section (2)], the period of work 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. 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. 	<ul style="list-style-type: none"> 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. The day so specified shall not be altered by the occupier more than once in three months. An “occupier” is a person who has the ultimate control over the affairs of the establishment or workshop.

Prohibition of employment of children in certain occupations and processes

No child shall be permitted to work in the following establishments.

Transport, catering or railway construction	Firecracker shop
Slaughter house	Automobile workshop/garages
Foundaries	Handloom/powerloom
Mines	Plastic units and fibreglass workshops
Domestic servants	Dhabas, Restaurants, hotels, motels, tea shops, resorts, spas
Carpet weaving	Cement manufacturing
Cloth printing, dyeing, weaving	Manufacturing of matches, explosives
Mica-cutting and splitting	Shellac manufacturing
Soap manufacturing	Building construction

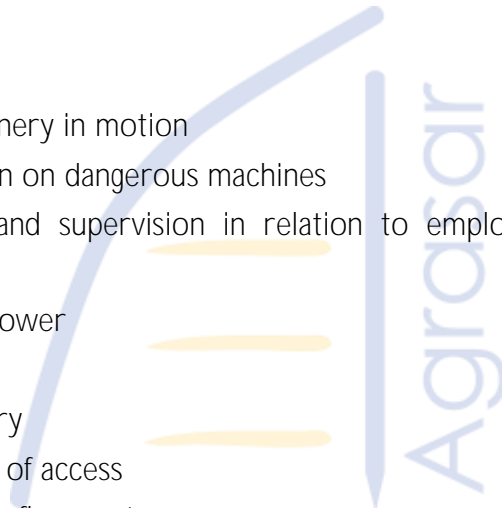


Gem cutting and polishing	Cotton industry
Manufacturing of pesticides and insecticides	Paper making
Oil refinery	

What are the rules regarding health and safety of the child?

Appropriate government can make rules regarding health and safety of the children employed on any of the following matters:

- cleanliness in the place of work and its freedom from nuisance
- disposal of wastes and effluents
- ventilation and temperature
- dust and fume
- artificial humidification
- lighting
- drinking water
- latrine and urinals
- spittoons
- fencing of machinery
- work at or near machinery in motion
- employment of children on dangerous machines
- instructions, training and supervision in relation to employment of children on dangerous machines
- device for cutting off power
- self-acting machines
- easing of new machinery
- floor, stairs and means of access
- Pits, sumps, openings in floors, etc.
- excessive weights
- protection of eyes
- Explosive or inflammable dust, gas, etc.
- precautions in case of fire
- maintenance of building
- safety of buildings and machinery



2.3. DUTIES OF THE OCCUPIER

NOTICE TO INSPECTOR

- Every occupier of an establishment in which a child was employed or permitted to work has to send a written notice to the inspector stating the following:
 - the name and situation of the establishment
 - the name of the person in actual management of the establishment
 - the address to which communications relating to the establishment should be sent
 - the nature of the occupation or process carried on in the establishment
- The above rule does not apply to any workshop carried on by the occupier with the aid of family and to any school established by Government or run through Government assistance.

DUTIES OF THE OCCUPIER

- A register has to be maintained by the occupier in respect of children employed or permitted to work in any establishment. This will be available for inspection by an Inspector at all times during working hours or when work is being carried out.
- The register shall contain
 - the name and date of birth of every child so employed or permitted to work
 - hours and periods of work of any such child and the intervals of rest to which he is entitled
 - the nature of work of any such child
 - such other particulars as may be prescribed
- Every railway administration, every port authority and every occupier shall display a notice in the local language and in the English language containing an abstract of sections 3 and 14 in an accessible place.

2.4. DISPUTES REGARDING AGE OF THE CHILD

If disputes arise between the Inspector and the occupier regarding the age of the child who has been employed and permitted to work in the establishment, the medical authority will make the decision in absence of a certificate.

2.5. PENALTIES

1. Whoever fails to comply with all the provisions of the Act 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. After being convicted once under section 3, if the person commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.
3. Whoever fails to provide notice, maintain a register, fails to display notice will be punishable with simple imprisonment which may extend up to one month or fine which may extend up to ten thousand rupees or both.

For further information:

https://labour.gov.in/sites/default/files/act_3.pdf



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

3.1. IMAGINE A SCENARIO

Rajendra works in a factory in Faridabad which manufactures two wheelers for the last 10 years as a contract labourer. He was brought to the city by the agent who promised that Rajendra will be absorbed in the company permanently after working for a few years but that has not happened since. There is a stark difference between the contractual labour force and the permanent labour force in the factory.

Rajendra observes, “Even if we work for the same hour, toiling hard, there is no reward. We are not paid for our overtime and neither our wages match the salaries of the permanent staff. They get holidays and leaves but no matter what happens to us, we have to come to the factory every day or else we get a pay cut.”

The union is also not supportive of these contract labourers and do not provide them with membership.

Since the last 10 years at the factory, Rajendra has not been provided with a valid company ID card. He recalls, “**One late night while going back from work, the policeman at the chowki stopped four of us and started inquiring our whereabouts. No matter how much we tried to make him believe that we were workers at the nearby factory, he kept on asking for company ID proofs. This is what we have to go through. There is no respect for our hard work. The company does not want to call us its own and we are left to fend for ourselves.**”

There has also been disputes regarding wages. For the last few months, the contractor was delaying the payment and when all the contract labourers approached the employer in the factory, they were dismissed by saying that the contract labourers were not on the payroll of the company and hence will get late payment.

Rajendra feels concerned about his future working in the factory. He hasn't learnt any other skills to work somewhere else and what is the guarantee that the next employer will be better?

Are Rajendra's worries valid? What can he do about it?



3.2. BASIC FEATURES

WHAT IS THE ACT?

- It regulates the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances.
- The act is to regulate the employment of contract labour and to bring them at par with directly employed labour with regard to the working conditions and other benefits and also to provide for the abolition of contract labour in certain cases.

WHERE DOES THE ACT APPLY?

- It is applicable to all establishments where twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour.
- It is also applicable to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

WHAT ARE THE LIMITATIONS ON APPLICABILITY OF THE ACT?

- The act does not apply to establishments in which work performed is only of an intermittent or casual nature.
- Work performed in an establishment shall not be deemed to be of an intermittent nature-
 - If it was performed for more than one hundred and twenty days in the preceding twelve months, or
 - If it is of a seasonal character and is performed for more than sixty days in a year
- Whether work is of intermittent or casual nature will be decided appropriate Government after consultation with the Central Board or a State Board, and its decision shall be final.



3.3. REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABOUR

APPOINTMENT OF REGISTERING OFFICERS	REGISTRATION	REVOCATION
<ul style="list-style-type: none"> • Appropriate Government may by an order notified in Official Gazette: • (A) appoint Gazetted officers fit to be registering officers • (B) define the limits within which registering officers shall exercise his powers 	<ul style="list-style-type: none"> • Principal employer of establishment to which the act applies within a period suggested by appropriate government in Official Gazette make an application to the registering officer to register the establishment. • If application for registration is complete in all respects , registering officer shall register the establishment & issue a certificate of registration to the principal employer containing particulars in prescribed format. 	<ul style="list-style-type: none"> • If registering officer is satisfied that the registration of any establishment has been obtained by misrepresentation or hiding of any material fact, the registration can get revoked. • The principal employer is given an opportunity by the registering officer to state his side after which registration can be revoked if explanation is not satisfactory.

3.4. LICENSING OF CONTRACTORS

APPOINTMENT OF LICENSING OFFICERS	<ul style="list-style-type: none"> • same as in appointment of registering officers
LICENSING OF CONTRACTORS	<ul style="list-style-type: none"> • No contractor to whom this act applies shall undertake or execute any work through contract labour without a license from the appropriate licensing officer • License may contain conditions- hours of work, fixation of wages, & other essential amenities in respect to contract labour as deemed fit by the appropriate government.
GRANT OF LICENSES	<ul style="list-style-type: none"> • Every application shall be made in prescribed format containing particulars- location of establishment, nature of process, operation or work for which contract labour is required • Licensing officer may make investigation in respect to application received. • License granted is valid for a specified period and may be renewed from time to time by payment through specified fees
REVOCATION, SUSPENSION, AMENDMENT OF LICENSES	<ul style="list-style-type: none"> • If licensing officer is satisfied that license granted under section 12 has been obtained through misrepresentation or hiding material facts or, • If license holder has failed to comply with conditions of the act, then license is revoked • License holder will be given an opportunity of showing cause • licensing officer may vary or amend the license granted instead of revoking.



3.5. WELFARE AND HEALTH OF CONTRACT LABOUR



CANTEEN

1. Shall be present in establishments wherein work requiring employment of contract labour is likely to continue for a prescribed period.
2. Shall be present in establishments where 100 or more contract workers are employed.
3. One or more canteens shall be provided and maintained by the contractor.



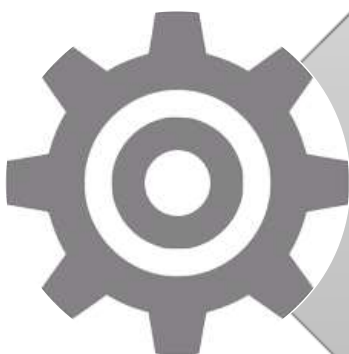
RESTROOMS

1. Shall be present in every place where contract labour is required to halt at night for work in the establishment.
2. Shall be provided by the contractor for contract labour who are working for a specific period of time.
3. Restrooms shall be sufficiently ventilated and lighted and shall be maintained in clean & comfortable condition.



FIRST-AID FACILITIES

1. Shall be provided and maintained by contractor so that it is easily accessible during all work hours.
2. A first-aid box shall be equipped with the prescribed contents at every place where contract labour is employed.



OTHER FACILITIES

1. A sufficient supply of wholesome drinking water for contract labour at convenient places.
2. Sufficient number of latrines and urinals of prescribed type which are accessible and convenient for use by contract labour in the establishment.
3. Washing facilities.

3.6. WHAT IS THE RESPONSIBILITY OF EMPLOYER FOR PAYMENT OF WAGES?

1. A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.
2. Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor.
3. It shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
4. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.
5. In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due.
6. The principal employer shall be entitled to recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

3.7. PENALTIES AND PROCEDURE

OBSTRUCTIONS	<ul style="list-style-type: none">• Obstructing an inspector in discharge of his duties• Wilfully neglecting to cooperate with the inspector for inspection, examination, inquiry or investigation authorized under the act• Punishable with imprisonment for a term which may extend up to 3 months or a fine which may extend up to Rs 500 or both
CONTRAVENTIONS OF PROVISIONS	<ul style="list-style-type: none">• Punishable with imprisonment for a term which may extend up to 3 months or a fine which may extend up to Rs 1000 or both• In case of continuing contravention, additional fine may extend up to Rs 100 for every day for which contravention occurs after the first such contravention
OTHER OFFENCES	<ul style="list-style-type: none">• Punishable with imprisonment for a term which may extend up to 3 months or a fine which may extend up to Rs 1000 or both
OFFENCES BY COMPANIES	<ul style="list-style-type: none">• Company and every person in charge of conducting business at the time of offence shall be liable to be proceeded against and punished•• If any such person proves that offence was committed without his knowledge or he exercised all due diligence to avoid any such offence, then he is not liable to be punished under this Act.



What are the limitations of prosecution?

1. No court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of, the inspector and no court inferior to that of a Presidency Magistrate or a magistrate of the first class shall try any offence punishable under this Act.
2. The complaint has to be made within three months from the date on which the alleged commission of the offence came to the knowledge of an inspector in order for the court to take cognizance.
3. If offence consists of disobeying a written order made by an inspector, complaint may be made within six months of the date on which the offence is alleged to have been committed.

3.8. WHAT ARE THE RULES REGARDING HEALTH AND SAFETY OF THE CHILD?

Appropriate government can make rules regarding health and safety of the children employed, in any of the following matters:

- cleanliness in the place of work and its freedom from nuisance
- disposal of wastes and effluents
- ventilation and temperature
- dust and fume
- artificial humidification
- lighting
- drinking water
- latrine and urinals
- spittoons
- fencing of machinery
- work at or near machinery in motion
- employment of children on dangerous machines
- instructions, training and supervision in relation to employment of children on dangerous machines
- device for cutting off power
- self-acting machines
- easing of new machinery
- floor, stairs and means of access
- Pits, sumps, openings in floors, etc.
- excessive weights
- protection of eyes
- Explosive or inflammable dust, gas, etc.
- precautions in case of fire
- maintenance of building
- safety of buildings and machinery

For further information:

http://labour.bih.nic.in/acts/contract_labour_regulation_and_abolition_act_1970.pdf



4. THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

4.1. IMAGINE A SCENARIO

A sugar manufacturing factory in Shirol, Maharashtra came under the lenses of law when the employees of the factory approached the court regarding multiple issues:

1. The retirement age for the factory was fixed at 55 years in their standing order for the last 2 decades and the employees wanted to increase the age of retirement to 58 years.
2. The factory terminated three employees who were on contractual basis. These employees further contended their termination stating that after providing uninterrupted service to the sugar factory for a period of more than 5 years, they were entitled to be on the permanent workforce of the factory.

Both these issues can be viewed separately taking in cognizance to The Industrial Employment (Standing Orders) Act.

The retirement age is supposed to be fixed with agreement between the employer and the workmen. In cases where agreement cannot be reached, the retirement age is fixed at 58 years. The employer stated that the age of 55 years is fixed because the type of work performed in the factory requires good precision and visual skills which starts eroding after the age of 55 years. The employer also stated that if the age of retirement is increased from 55 years to 58 years, the factory will face productivity issues and losses.

The court was of a different opinion. It observed that the claim of reduced productivity is not valid and since the employees will receive pension only after attaining the age of 58 years, it is unfair to restrict the age of retirement to 55. However, the employer after checking the medical fitness of an employee can decide whether to terminate his services or not.

The second issue of firing of contractual employees was dealt swiftly since the court observed that if any employee has provided his uninterrupted service for a period of 240 days, he is entitled to be a part of the permanent workforce under the Bombay Amendment Act.

Here, the employees were working for a period of 5 years and should have been under the permanent payroll. The judgement was thus passed to reinstate these employees into the permanent workforce with prescribed salaries and benefits.



4.2. BASIC FEATURES

What is the Act?

It is an Act that requires employers in industrial establishments to formally define conditions of employment under them

STANDING ORDERS	MATTERS TO BE PROVIDED IN STANDING ORDERS	ADDITIONAL MATTERS
<ul style="list-style-type: none">• Section 2(g) of the Act defines “Standing Orders” as rules of conduct for workmen employed in industrial establishments.	<ul style="list-style-type: none">• Classification of workmen into permanent, temporary, apprentices, probationers, or badlis.• Manner of intimating workmen about periods and hours of work, holidays, pay-days and wage rates.• Shift working• Attendance and late coming• Conditions of, procedures in applying for, and authority which may grant leave and holidays.• Requirement to enter premises through certain gates and liability to search.• Closing and re-opening of sections of the industrial establishments and temporary stoppages of work and the right and liabilities of employer and workmen.• Termination of employment and the notice thereof to be given by the employer and workmen.• Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.• Means of redressal for workmen against unfair treatment or wrongful exactions by the employer or his agents.	<ul style="list-style-type: none">• Service record: matters relating to service cards, token tickets, certification of service, change of residential address of workers, record of age, confirmation age of retirement, medical aid in case of accident and medical examination secrecy.



APPLICABILITY OF THE ACT

- Every industrial establishment wherein 100 or more (in many states it is 50 or more) employees are employed.
- Any industry covered in Bombay Industrial Relations Act, 1946.
- Industrial establishment covered by M.P Industrial Employment (Standing Orders) Act, 1961.

NON APPLICABILITY OF THE ACT

- Nothing in this Act shall apply to an industrial establishment to whom:
 - Fundamental and Supplementary Rules,
 - Civil Services (Classification, Control and Appeal) Rules,
 - Civil Services (Temporary Services) Rules,
 - Revised Leave Rules,
 - Civil Service Regulations,
 - Civilians in Defence Service (Classification, Control and Appeal) Rules,
 - Indian Railway Establishment Code, or,
 - Other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette

4.3. STANDING ORDERS

SUBMISSION OF DRAFT STANDING ORDERS

- Within 6 months from the date the Act becomes applicable to an industrial establishment, five copies of the draft standing orders are to be submitted to the Certifying Officer under the act.

PROCEDURE FOR CERTIFICATION OF STANDING ORDERS

- Certifying Officer to forward a copy of draft standing orders to the trade union or to the workmen (in case of absence of trade union). The trade union or the other representatives are to be heard.

DATE OF OPERATION OF STANDING ORDERS

- On the date of expiry of 30 days from certification or on the expiry of 7 days from authentication of standing orders.

POSTING OF STANDING ORDERS

- The text of standing orders as finally certified shall prominently be posted in English or in the language understood by majority of workmen on special board at or near the entrance for majority of workers.

TEMPORARY APPLICATION OF MODEL STANDING ORDERS

- This shall be deemed to be adopted till the standing orders as submitted are certified.

PAYMENT OF SUBSISTENCE ALLOWANCE TO THE SUSPENDED WORKERS:

- At the rate of 50% of the wages of the workman which he was entitled to till the time of his suspension.
- At the rate of 75% of wages for the remaining period of suspension if delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.



4.4. PENALTIES

1. Failure of employer to submit draft standing order will ensure a fine of Rs 5000 and Rs 200 for each day on continuation of offence.
2. Fine of Rs 100 will be levied on the contravention and on continuance of contravention, a fine of Rs 25 will be charged per day.

For further information:

<http://legislative.gov.in/sites/default/files/A1946-20.pdf>

<https://blog.ipleaders.in/industrial-employment-standing-orders-act-1946/>



5. THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

5.1. IMAGINE A SCENARIO

Ganganagar in Rajasthan has the highest number of brick kiln units in the state. There are hordes of migrant workers from nearby villages staying in makeshift tents near the brick kilns. The time from December to June sees major manufacturing activities taking place. The area at this time is bustling with workers going about manufacturing bricks and transport trucks making multiple rounds.

Manohar and his wife also started working in one of these brick kilns since the last 2 years. With monsoons failing and increasing mouths to feed, Manohar approached the village contractor to land him a seasonal job in the factories.

He and his wife reached Ganganagar on cycle since availing any other mode of transport would've costed them a lot. The contractor met them after 2 days and employed them in the brick firing unit at the kiln. They were not informed about their wage rates or overtime and were asked to find an accommodation on their own. While working in the firing unit, Manohar was badly injured one day since there were no safety equipment provided to the workers. He was admitted to the hospital and had to pay a sum of INR 5000 as medical fees none of which was compensated by the contractor or the employer.

What are the legal injustices faced by Manohar and his wife in the hands of the contractor?



5.2. BASIC FEATURES

What is the Act?

It is an Act to regulate the employment of inter-State migrant workmen and to provide for their conditions of service and for matters connected therewith.

Who is an inter-state migrant workman?

1. Any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State.
2. The recruitment may be with or without the knowledge of the principal employer in relation to such establishment.

5.3. REGISTRATION OF ESTABLISHMENTS EMPLOYING INTER-STATE MIGRANT WORKMEN

APPOINTMENT OF REGISTERING OFFICERS

- Appropriate Government shall be entitled to appoint Registering officers.
- It shall also be entitled to define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

REGISTRATION

- Every principal employer of establishments to which this act applies have to make an application to the Registering Officer in a prescribed form, within a specified time period.
- The registering officer may entertain any such application for registration after the expiry of the period fixed if the reason for delay is satisfactory to him.
- Within one month after the receipt of an application for registration, registering officer shall:
 - if the application is complete in all respects, register the establishment and issue to the principal employer of the establishment a certificate of registration
 - if the application is not so complete, return the application to the principal employer of the establishment

REVOCAION OF REGISTRATION

- The registering officer after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke by order in writing the registration and communicate the order to the principal employer.
- Revocation will happen if the registering officer is satisfied that the registration of any establishment has been obtained by:
 - misrepresentation or suppression of any material fact or,
 - if the registration has become useless or ineffective.



5.4. LICENSING OF CONTRACTORS

APPOINTMENT OF LICENSING OFFICERS

- same as for registering officers

LICENSING

- No contractor is allowed to recruit any person in a state for the purpose of employing him in another state until the contractor has a license for the same.
- License may contain the terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities in respect of the inter-State migrant workmen, as the appropriate Government may deem fit to impose in accordance with the rules.
- The licensing officer may further ask the contractor to furnish security for the due performance of the conditions of the licence.

GRANT OF LICENSES

- Every application for the grant of a licence shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which inter-State migrant workmen are to be employed etc.
- The licensing officer may investigate in respect of the application received.
- A licence granted shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

REVOCATION, SUSPENSION, AMENDMENT OF LICENSES

- If the licensing officer is satisfied that,
 - a licence granted has been obtained by misrepresentation or suppression of any material fact, or
 - the holder of a licence has, without reasonable cause, failed to comply with the conditions subject of the act, or has contravened any of the provisions of this Act,
- then, without prejudice to any other penalty the licensing officer may, after giving the holder of the licence an opportunity to be heard, by order in writing, revoke the licence or forfeit the security furnished by him



Prohibition against employment of inter-State migrant workmen without registration:

1. Principal employer of establishments to which the act is applicable cannot employ inter-state migrant workmen in the establishment unless he has a certificate of registration for the establishment.
2. However, if registration applied is pending at the end of the registering officer, the principal employer may employ inter-state migrant workmen in his establishment.

5.5. DUTIES OF CONTRACTORS

It is the duty of every contractor

1. To furnish particulars to the authorities of source state and destination state of the inter-state migrant workman employed under him. The details must be furnished within 15 days of recruitment.
2. To issue to every inter-State migrant workman, a pass book affixed with a passport size photograph of the workman and indicating in Hindi and English languages or any other language of known to the workman-
 - the name and place of the establishment wherein the workman is employed
 - the period of employment
 - the proposed rates and modes of payment of wages
 - the displacement allowance payable
 - the return fare payable to the workman on the expiry of the period of his employment or other contingencies
 - deductions made
3. The contractor shall maintain the pass book up-to-date and cause it to be retained with the inter-State migrant workman concerned.
4. To ensure regular payment of wages to such workmen
5. To ensure equal pay for equal work irrespective of sex
6. To ensure suitable conditions of work to such workmen
7. To provide and maintain suitable residential accommodation to such workmen during the period of their employment
8. To provide the prescribed medical facilities to the workmen, free of charge
9. To provide such protective clothing to the workmen as may be prescribed
10. In case of fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the States and also the next of kin of the workman.



5.6. WAGES, WELFARE AND OTHER FACILITIES

WAGES	<ul style="list-style-type: none">•An inter-State migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948
DISPLACEMENT ALLOWANCE	<ul style="list-style-type: none">•This shall be paid by the contractor to every inter-State migrant workman at the time of recruitment.•It should be equal to 50% of the monthly wages payable to him or seventy-five rupees, whichever is higher.
JOURNEY ALLOWANCE	<ul style="list-style-type: none">•A journey allowance of a sum not less than the fare from the place of residence of the inter-State migrant workman in his State to the place of work in the other State shall be payable by the contractor to the workman both for the outward and return journeys.•Such workman shall be entitled to payment of wages during the period of such journeys as if he were on duty.

5.7. DUTIES OF PRINCIPAL EMPLOYER

1. If any allowance required to be paid to an inter-State migrant workman employed in an establishment to which this Act applies is not paid by the contractor or if any facility (section 16) is not provided for the benefit of such workman, such allowance shall be paid, or, the facility shall be provided, by the principal employer within stipulated time.
2. All the allowances paid by the principal employer or all the expenses incurred by him in providing the facility to the inter-state migrant workman may be recovered by him from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

NOTE:

It shall be the duty of every contractor or principal employer to ensure that any loan given by such contractor or principal employer to any inter-State migrant workman does not remain outstanding after the completion of the period of employment of the workman.

If loan amount remains outstanding after period of employment, it will not be recoverable under law.



5.8. PENALTIES & PROVISIONS

CONTRAVENTION OF PROVISIONS	OTHER OFFENCES	OFFENCES BY COMPANIES
<ul style="list-style-type: none">•Punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.•Continuing contravention, additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.	<ul style="list-style-type: none">•Punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.	<ul style="list-style-type: none">•Every person who, at the time the offence, was in charge of the company for the conduct of the business 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.

For further information:

https://www.indiacode.nic.in/bitstream/123456789/7735/1/the_inter-state_migrant_workmen_%28regulation_of_employment.pdf#:~:text=THE%20INTER-STATE%20MIGRANT%20WORKMEN%20%28REGULATION%20OF%20EMPLOYMENT%20AND,conditions%20of%20service%20and%20for%20matters%20connected%20therewith.



6. PAYMENT OF GRATUITY ACT, 1972 & 2018

6.1. IMAGINE A SCENARIO

At the age of 60 years, Gopal retired from the bank in which he had served as a peon over all 35 years. When he first came to the city, he had started with a basic salary of Rs 700 per month which now stood at Rs 3500.

While returning home that night, Gopal remembered about the gratuity which he will be paid and made a quick calculation in his head. He had served the bank for a period of 35 years and his last drawn salary was Rs 5000 (basic salary + dearness allowance). Thus the gratuity amount will stand at:

$$(15 * 5000 * 35) / 26 = \text{Rs. } 1,00,961$$

Gopal is really happy as now he can return to his ancestral village and spend the rest of his life in leisure and peace.

He files application for gratuity in the next 10 days taking help from his neighbor. However, to his dismay, he does not receive the payment even after 2 months. He tries to contact the company and also tries to seek help from his son. Till now, Gopal has made several rounds to the bank with his gratuity application but has always been sent back on pretext of some issue or other. He is extremely disheartened and does not know who else to approach.



6.2. BASIC FEATURES

WHAT IS GRATUITY?

- Gratuity is a defined benefit plan paid by the employer to employee for rendering his services for a continuous period of 5 years or more.
- It is a monetary benefit to provide social security to employees after retirement.
- Retirement can be a result of superannuation, or physical disablement or impairment of body parts.

WHAT IS THE ACT?

- An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for other connected matters and circumstances.
- The Payment of Gratuity Act, 1972 applies to the establishments employing 10 or more persons

WHO IS THE CONTROLLING AUTHORITY?

- The appropriate government may by notification appoint an officer as the controlling authority who shall be responsible for the administration of this Act.
- Different controlling authorities may be appointed for different areas.



6.3. WHEN IS GRATUITY PAYABLE?

5 YEARS OF SERVICE	REASON FOR TERMINATION	NOMINEE/ LEGAL HEIR
<ul style="list-style-type: none">• Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years.• Completion of continuous service of five years shall not be necessary where the termination of the employment is due to death or disablement	<ul style="list-style-type: none">• Termination of employment can be due to:<ul style="list-style-type: none">• Superannuation• Retirement or resignation, or• Death or disablement due to accident or disease	<ul style="list-style-type: none">• In case of death of employee, gratuity payable to him shall be paid to his nominee• If no nomination has been made, to his heirs and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of the minor in State Bank of India or other Nationalised banks as a term deposit, until minor attains majority



6.4. CONTINUOUS SERVICE

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 due to

1. Sickness
2. Accident
3. Leave
4. Absence from duty without leave
5. Lay off
6. Strike or lock-out, or
7. Cessation of work

If the interruption in service was not the fault of the employee, he shall be entitled to gratuity whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

If an employee (exception: employee in seasonal establishment) is not in continuous service of the employer for a period of 1 year or 6 months, he shall be deemed to be in continuous service of the employer if he for the 12 calendar months have worked for

1. 190 days (for a mine or in an establishment which works for less than six days in a week)
2. 240 days (for other cases)

For said period of 6 months, employee should have worked for

1. 95 days (for a mine or in an establishment which works for less than six days in a week)
2. 126 days (for other cases)



6.5. DIFFERENT FORMS

Form Name	Use of Form
Form I	Application for the payment of gratuity
Form J	Used by the nominee to make application for payment of gratuity
Form K	Used by legal heir to make application for the payment of gratuity
Form F	To make nomination
Form G	To make fresh nomination
Form H	Modification of nomination
Form L	Issued by the employer to employee stating amount and date of payment
Form M	Issued by the employer stating the reason for the rejection of gratuity
Form N	Application made to the labour commission by an employee
Form O	Issued by the authority to appear for case hearing
Form P	Summons issued by authority to be present for hearing
Form R	Issued by the authority directing to make gratuity payment



6.6. GRATUITY AMOUNT CALCULATION

HOW IS YOUR GRATUITY AMOUNT CALCULATED?

- For completion of a year of service or excess of 6 months, the employee shall be entitled to gratuity at the rate of 15 days wages based on the rate of wages last drawn by the employee.
- For employees employed under piece-rate basis, daily wages shall be computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment. The wages paid for any overtime work shall not be taken into account for calculation.
- For employee employed in seasonal establishment, who has worked throughout the year, shall be paid gratuity at the rate of 7 days wages for each season.
- Amount of gratuity payable to an employee shall not exceed INR 3, 50,000

CAN YOUR GRATUITY BE FORFEITED?

- If an employee has been terminated for his own wilful negligence or other fault causing losses and damages, the gratuity payable shall be forfeited to the extent of damage or losses caused.
- Full amount of gratuity can be forfeited if an **employee's service has been terminated due to his riotous or disorderly conduct or if he has committed an offence involving moral turpitude.**

6.7. RULES & REGULATIONS

What are the rules to be followed at the time of payment of gratuity?

1. Once employee becomes eligible to receive gratuity, he can apply within 30 days from the date it becomes payable. If the date of retirement or superannuation is known, the application can be made before 30 days.
2. An employee can make the application after 30 days and if delay happened due to valid reason, the employer cannot reject the application.
3. No claim for gratuity is invalid merely because claimant has not filed his application within the specified period.
4. An employer shall be liable to specify amount payable and mention date of payment within 15 days of receipt of application. Payment must be made within 30 days of receipt of application.
5. If employer rejects the claimant's application, then he is liable to state reasons for rejection.
6. If claim is made by nominee or legal heir, the employer may ask for a witness or evidence deemed **relevant for establishing the claimant's** identity to ensure that claim is genuine. In such cases, the



employer will accept the claim for gratuity payment from the date such witness or evidence is furnished.

7. Payment of gratuity can be made in cash, demand draft or by cheque.

NOTE: *Gratuity shall still be payable even if employer goes bankrupt.*

What are the procedures in case of dispute?

1. If there is any dispute regarding the amount of gratuity to be payable or the admissibility of the claim, the employer shall deposit the gratuity amount which he thinks appropriate with the controlling authority.
2. The employer or employee can make application to the controlling authority raising the dispute.
3. The controlling authority after due inquiry and giving equal opportunity to both parties to be heard will decide on the matter. If as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, such amount may be reduced from the amount already deposited by the employer.
4. A nominee or legal heir can also complain to the controlling authority in case:
 - Employer refuses to accept application filed for gratuity payment.
 - Amount of gratuity paid is less than what an employees feel should be paid.
 - If after receiving application, employer fails to specify amount payable to the claimant and/or fails to make payment within specified time.
5. Any complaint has to be made with the assistant labour commissioner within 90 days from when the event occurred. The commissioner is also liable to accept complaint after the expiry of 90 days if reason for delay is justified.

NOTE: You need to be present at the time and venue fixed by the commissioner after filing a complaint since your absence can lead to dismissal of the complaint. If your reason for absence was genuine, then you can apply for a review within 30 days of the re-hearing. However, if employer fails to be present on the specified date, time and venue, the commissioner may proceed with the hearing for your benefit.



6.8. PENALTIES

PENALTIES

- If employer or whoever liable to pay the gratuity amount avoids the payment knowingly then he is punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both.
- An employer who contravenes, or makes default in complying with, any of the provisions of this Act or any rule is 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.

EXEMPTIONS

- If employer proves that someone else is the main offender and he has used due diligence to enforce execution of the act and that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act.
- The employer has to provide a notice in not less than three clear days. The notice should in writing state his intention and have any other person whom he charges of the actual offence.

6.9. NEW AMENDMENTS

1. **Ceiling Limit:** Ceiling limit of the maximum amount of gratuity payable has been removed. The amendment empowers the Central Government to notify the ceiling proposed so that the limit can be revised from time to time keeping in view the increase in wage and inflation, and future Pay Commissions.
2. **Maternity Leave:** The amendment has modified the maternity leave period from 'twelve weeks' to 'twenty-six weeks' 'in order to keep the Act in tune with the recently amended Maternity Benefit Act. This also resolves calculation of continuous service for the payment of gratuity to employees who are on maternity leave.

For further information:

<https://clc.gov.in/clc/sites/default/files/PaymentofGratuityAct.pdf>

<https://www.mondaq.com/india/employee-benefits-compensation/768716/key-amendments-in-payment-of-gratuity-act#:~:text=Gratuity%20payable%20as%20per%20the,Ministry%20of%20Labour%20and%20Employment.>

<https://economictimes.indiatimes.com/wealth/earn/what-are-the-gratuity-payment-rules/articleshow/62334282.cms?from=mdr>



7. TRADE UNION ACT, 1926

7.1. IMAGINE A SCENARIO

Durgapur in West Bengal hosts a lot of cement manufacturing plants working 24 hours a shift making the town a busy industrial hub. However, the last few days have not seen much activity in the premises of one of the factories due to labour strikes. The workers in the factory demanded the constitution of an independent labour union to which the management opposed vehemently. The workers were threatened to be terminated from their jobs if they got affiliated with any such activities.

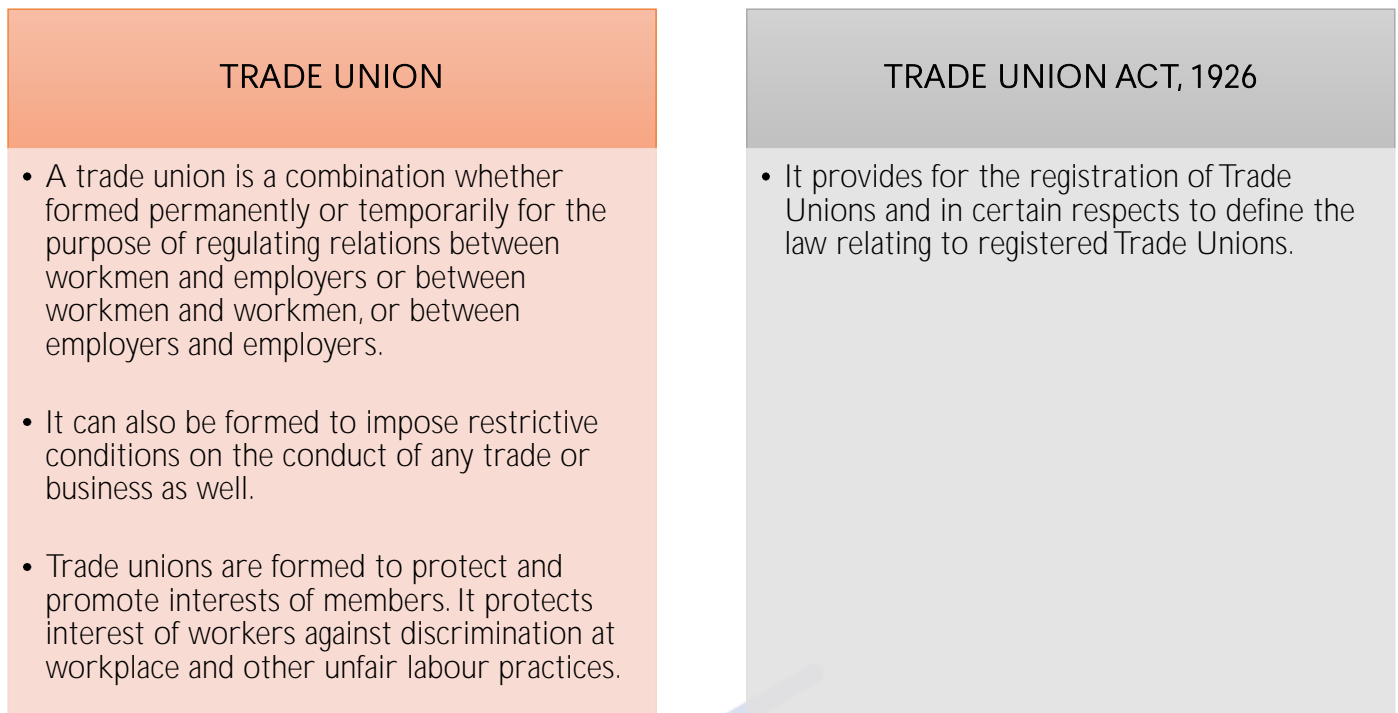
But this time, the voice of dissent was stronger. Since years, workers have been demanding a wage hike and better working conditions in the factory and have made multiple written applications to the existing trade union but to no avail.

Raju, a worker in the factory stated, **“The existing trade union is a puppet of the management.** There has not been a single fair election held over the last 3 years for the union. How can you expect that they will listen to the problems of the workers? Thus we are demanding to form a new union.”

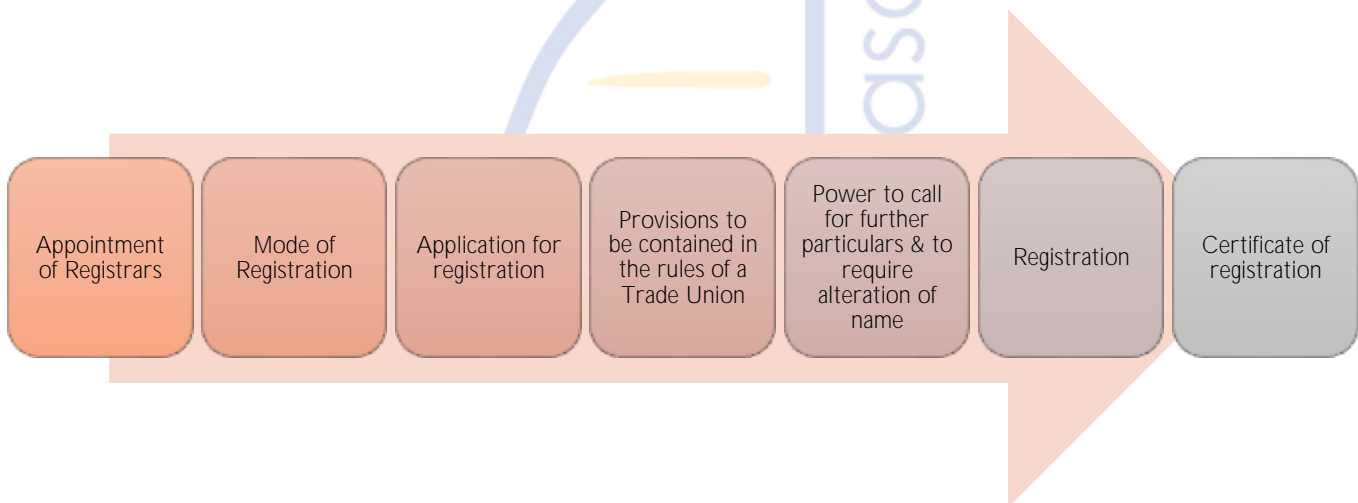
When the management failed to stop its workers to go on strike, they resorted to other hard measures. 15 employees including the head of the new union were terminated from their service without payment.



7.2. BASIC FEATURES



7.3. PROCESS FOR REGISTRATION OF TRADE UNIONS



Appointment of Registrars

1. Appropriate Government shall appoint a person to be the Registrar of Trade Unions for each State.
2. Appropriate Government can also appoint as many Additional and Deputy Registrars of trade unions as it thinks fit for the purpose of exercising and discharging the act.
3. The appropriate government shall also be liable to specify and define the local limits within which any such Additional or Deputy Registrar shall exercise and discharge the powers and functions so specified.

Mode of Registration

1. Any 7 or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by complying with the provisions of this Act with respect to registration, apply for registration.



2. At any time after the date of the application, but before the registration of the Trade Union, if some members (not exceeding half of the total number of persons who made the application) leaves the group, the application remains valid.

Application for Registration

1. Application shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:
 - names, occupations and addresses of the members making the application
 - name of the Trade Union and the address of its head office
 - titles, names, ages, addresses and occupations of the office-bearers of the Trade Union
2. If a Trade Union has been in existence for more than a year before applying for registration, then along with the application, a general statement of assets and liabilities of the Trade Union has to be submitted to the Registrar in a prescribed form.

Provisions to be contained in rules of Trade Union

1. Name of the Trade Union
2. Whole of the objects for which the Trade Union has been established
3. Whole of the purposes (lawfully applicable under the Act) for which the general funds of the Trade Union shall be applicable
4. Maintenance of a list of the members of the Trade Union and adequate facilities for the inspection
5. Admission of ordinary members who shall be persons actually engaged or employed in an industry with which the Trade Union is connected
6. Admission of the number of honorary or temporary members
7. Conditions under which any member shall be entitled to any benefit assured by the rules and under which any fine or forfeiture may be imposed on the members
8. Manner in which the rules shall be amended, varied or rescinded
9. Manner in which the members of the executive and the other office-bearers of the Trade Union shall be appointed and removed
10. Safe custody of the funds of the Trade Union, an annual audit, as may be prescribed, and adequate facilities for the inspection of the account books
11. Manner in which the Trade Union may be dissolved

Power to call for further particulars and to require alteration of name

Registrar shall require the persons applying for registration to alter the name of the Trade Union stated in the application, and shall refuse to register the Union until such alteration has been made if Trade Union proposed to be registered is identical to:

- any other existing Trade Union that has been registered
- in the opinion of the Registrar, nearly resembles such name as to be likely to deceive the public or the members of either Trade Union

Registration



The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register.

The registration shall happen within a period of 60 days from the date of compliance.

Certificate of registration

The Registrar shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act.

NOTE: Cancellation of registration:

If the Registrar is satisfied that the:

- Certificate has been obtained by fraud or mistake
- Trade Union has ceased to exist
- Trade Union has wilfully and after notice from the Registrar contravened any provision of this Act
- **2 month's previous** notice has to be provided by the Registrar to the trade union before withdrawing the certificate

Which acts do not apply to register a trade union?

- The Societies Registration Act, 1860
- The Co-operative Societies Act, 1912
- The Companies Act, 1956

7.4. RIGHTS & LIABILITIES OF REGISTERED TRADE UNIONS

1. Objects on which general funds may be spent:

General funds may be spent on only the following objects-

- Payment of salaries, allowances, expenses
- Payment for administration expenses (audit of accounts)
- Prosecution or defence of any legal proceeding which benefits the Trade Union
- Conduct of trade disputes
- Compensation for members for loss out of trade disputes
- Allowances to members or their dependents on account of death, disability, sickness, old age, accidents, unemployment
- Provision of educational, social or religious benefits for members
- Upkeep of a periodical
- Contributions to any cause intended to benefit workmen



2. Constitution of a separate fund for political purposes:

A separate fund may be made for the for the promotion of the civic and political interests of its members and other objects-

- Payment of expenses incurred by candidate for election
- Holding of meeting or distribution of literature or document to support such candidate
- Maintenance of any person who is a member of legislative body
- Registration of electors
- Holding political meetings

3. Criminal conspiracy in trade disputes

4. Immunity from civil suit in certain cases

5. Enforceability of agreements

6. Right to inspect books of Trade Union:

7. Rights of minors to membership to Trade Unions:

Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union.

7.5. PENALTIES

- Failure to submit returns – It is punishable, with fine which may extend to five rupees and, in the case of a continuing default, with an additional fine which may extend to five rupees for each week after the first during which the default continues. The aggregate fine shall not exceed INR 50.
- If any person wilfully makes or omits any false entry from the general statement, he shall be punishable with fine which may extend to five hundred rupees.
- Supplying false information regarding Trade Unions – It is punishable with fine which may extend to two hundred rupees.



7.6. MISCELLANEOUS RULES & REGULATIONS

Can a trade union change its name after registration?

- Any registered Trade Union may, with the consent of not less than two-thirds of the total number of its members and subject to the provisions of section 25, change its name.

Can trade unions amalgamate?

- Any two or more registered Trade Unions may become amalgamated together as one Trade Union.
- This can be with or without dissolution or division of the funds of such Trade Unions.
- Provided that votes of at least 50% of the members of each or every such trade Union entitled to vote are recorded, and that at least 60% of the votes recorded are in favour of the proposal.

What to do in case of dissolution of trade union?

- When a registered Trade Union is dissolved, notice of the dissolution signed by seven members and by the Secretary of the Trade Union shall, within fourteen days of the dissolution, be sent to the Registrar.
- If Registrar is satisfied with the dissolution then he shall register the notice and dissolve the trade union.
- If rules of the Trade Union do not provide for the distribution of funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the members as prescribed.

What is the rate of subscription of Union members?

- Payment for minimum subscription by member shall not be less than:
 - INR 1 per annum for rural worker
 - INR 3 per annum for workers in other un-recognized sectors
 - INR 12 for workers in other cases



Case Snippet: The Jet Lag

In 2008, Jet Airways sacked 1900 cabin crew members across all categories and departments justifying the action as an attempt to switch to leaner, cost-effective business models.

The then executive director, B Saroj Datta stated, “It is an unfortunate decision which all of us in the company regret. A total of 1900 people are being served separation notice. 800 have already been served notice. In the next few days, others will also be served notice. It is an attempt to save jobs of remaining 11,100 employees.”

The company faced a severe backlash from the employees, government, political parties and regulatory bodies. A day later, the founder, Naresh Goyal reinstated the employees stating that he was not aware of the decision of retrenchment.

The National Aviators Guild was formed after this incident to protect the interests of the employees.

For further information:

http://labour.bih.nic.in/Acts/trade_unions_act_1926.pdf

<https://blog.ipleaders.in/trade-unions-act-1926/>



8. WAGE CODE, 2019

8.1. IMAGINE A SCENARIO

Mukesh has been working in a spinning mill in Gurgaon for the last 7 years. He is from a small village of Muzaffarpur in Bihar. In the last 7 years, Mukesh has been home for only one time as taking holidays leads to pay cuts.

Mukesh is unhappy with the wage situation for many reasons-

1. He is paid by the mill owner on a piece rate basis but the wages are always delayed.
2. At the beginning, he was promised a Diwali bonus but even that has ceased to exist in the last 4 years.
3. At certain times there are bulk orders coming in and Mukesh along with other workers have to put in overtime to complete those orders. He is paid INR 400 for the overtime work which is very less according to him.
4. **“The mill owner calculates every** single penny of our wages on the number of yarns we have spun but the same is not the case for overtime. It is my hard earned money if I am **putting in extra time and effort.**” – Mukesh thinks.
5. Sometimes orders get cancelled and the workers in the mill had random deductions in their wages. When they collectively went to the owner, they were dismissed by stating the law that if losses occurred to the employer in terms of goods, then the workers will have a wage cut.



8.2. BASIC FEATURES

WHAT ARE THE DIFFERENT TYPES OF WAGES?

- **Minimum Wage:** It is defined as “the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective **agreement or an individual contract**” (International Labour Organisation)
- The minimum wage includes the bare needs of life like food, shelter, and clothing.
- **Living Wage:** It is the wage needed to provide the minimum income necessary to pay for basic needs based on the cost of living in a specific community.
- **In addition to bare needs, a ‘living wage’** includes education, health, insurance, etc.
- **Fair Wage:** A ‘fair wage’ is a mean between ‘living wage’ and ‘minimum wage’.
- **Starvation Wage:** It refers to the wages which are insufficient to provide the ordinary necessities of life.

WHAT IS THE ACT?

- The Code on Wages is an act to amend and consolidate the laws relating to wages and bonus and other related matters.
- The Act has replaced 4 labour legislations- the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976.

INCLUDES

- Basic pay
- Dearness allowance
- Retaining allowance, if any

DOES NOT INCLUDE

- Statutory bonus
- Value of house accommodation & utilities
- Employer contribution towards provident fund/pension
- Conveyance allowance/ travelling concession
- Sum paid to defray special work expenses
- House rent allowance
- Remuneration payable under settlement
- Overtime allowance
- Gratuity
- Commission
- Retrenchment compensation



What are the changes vis a vis previous acts?

1. Expanded the definition of 'employer' and 'employee' and is now applicable to employees in both organised and unorganised sectors.
2. The Minimum Wages Act and the Payment of Wages Act applied to only those who earned below a certain ceiling and were working in scheduled employments only. Under the Wage Code, these acts now cover all establishments, employees and employers (exception: member of Armed Forces of the Union and apprentice engaged under the Apprentice Act, 1961 are excluded from the definition of 'employee').
3. Unification of the definition of wages. The definition is segregated into three parts- the inclusion, specified exclusions and conditions which limit the quantum of exclusions.
4. The specified exclusions may not exceed 50 percent of all remuneration and if it exceeds, the excess amount shall be deemed as remuneration and considered as wages. This step is to ensure that companies do not adopt compensation structures where wages contribute to less than 50 percent of the total remuneration.
5. Equal remuneration states that no discrimination will be allowed on the basis of gender of the employee. This is wider than the previous laws which specified no discrimination between men and women.
6. Settlement period for monthly wages has been fixed to the 7th of the succeeding month instead of the 10th of the succeeding month which was prescribed earlier. The new code also specifies timeline in case of resignation, removal or retrenchment of employees which was not mentioned previously.

8.3. MINIMUM WAGES

Can an employer pay an employee wages less than the minimum rate of wages notified by the appropriate Government?

No.

How will minimum wages be fixed?

1. Appropriate government shall fix the minimum wages payable to employees (Section 8, 9)
2. Minimum rate of wages shall be fixed:
 - For time work, or
 - For piece work
3. The minimum rate of wages on time work basis may be fixed in accordance to either by the hour/ by the day/ by the month.
4. The appropriate government shall take into account skill of workers, arduousness of work (temperature, humidity, hazardous work conditions) while fixing minimum wage rate.
5. The Central government has the responsibility to national floor rate for wages after considering the minimum living standards of workers varying across geographical areas. Different floor wage may be fixed for different geographical areas. In cases where existing minimum wages are higher than floor wages, the former shall be retained.



6. State governments will further fix minimum wages for their region which has to be higher than national floor rate for wages.
7. There will be review/ revision of minimum wages at intervals less than 5 years
8. Rate of wages for overtime work shall not be less than twice the rate for normal wages.

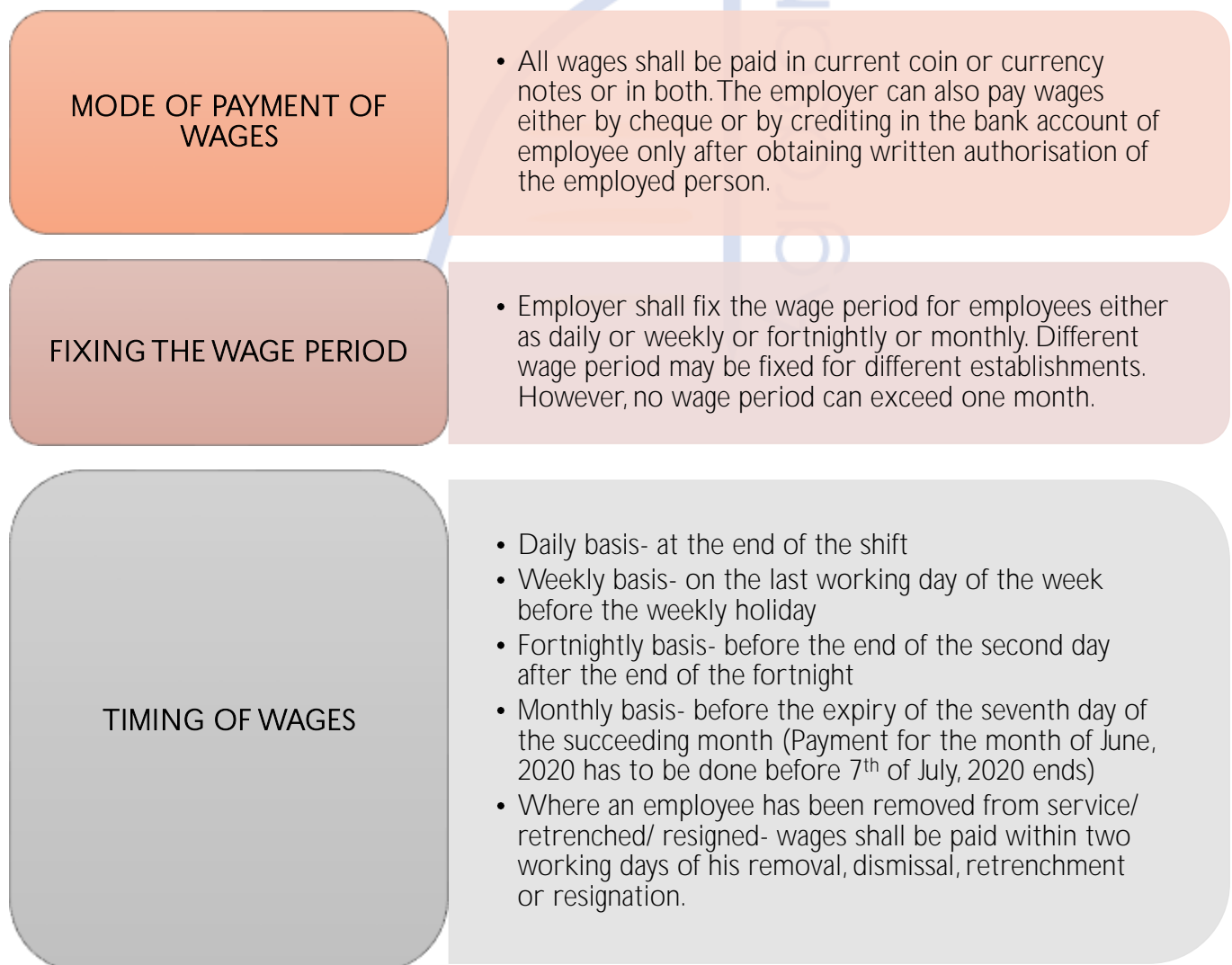
What will be the wages for employees working for less than normal working day?

1. An employee whose minimum wages have been fixed under the code will receive full payment as if he has worked for a full normal working day even if he was employed for a lesser time period.
2. Exceptions: the employee is not entitled to receive wages for a full normal working day if the failure to work was due to the unwillingness of the employee and it was not the fault of the employer to provide him with work.

What is the wage structure when employee is involved in 2 or more classes of work?

If each of those classes of work have a different minimum wage rate, appropriation of wages will take place w.r.t the amount of time spent in each work. The employer shall pay the employee wages not less than the minimum wage based on the time he has worked on the particular class of work.

8.4. PAYMENT OF WAGES



What deductions can be made from the wages?

- Deductions may be made for the following purposes:
- Fines imposed
- Absence from duty
- Damage to or loss of goods under the supervision of the employee, Loss of money which employee is accountable for, Losses which can be directly attributed to the neglect of the employee
- House accommodation
- Amenities & services provided by the employer which do not include equipment required for service purpose
- Advances, over adjustment of wages
- Recovery of loans
- Recovery of losses made by the employee

Total amount of deductions under sub-section (2) in any wage period from the wages of an employee shall not exceed fifty percent of such wages.



8.5. PAYMENT OF BONUS

ELIGIBILITY	<ul style="list-style-type: none">• Applies to only those establishments employing at least 20 employees on any day in that accounting year.• Shall be paid to every employee who has put in atleast 30 days of work in the accounting period
BONUS CALCULATION & PAYMENT	<ul style="list-style-type: none">• Drawing wages shall not exceed such amount per month. In such cases, the bonus is calculated at the rate of $8\frac{1}{3}$ percent of the wages earned by the employee or one hundred rupees, whichever is higher.•• In cases where wage of the employee exceeds such amount per month, bonus payable is calculated as if his wage were such amount, or the minimum wage fixed by the appropriate Government, whichever is higher.• The bonus shall be paid out of the allocable surplus which shall be an amount equal to sixty percent of available surplus for a banking company and sixty-seven percent of available surplus for other establishment.• Available surplus will be calculated in accordance to section 33.
TIME LIMIT	<ul style="list-style-type: none">• Bonus shall be paid by crediting it to the bank account of the employee within a period of eight months from the close of the accounting year.

What will happen if higher bonus is demanded by the employee?

A higher demand for bonus by the employee on the basis of higher production or productivity in an accounting year shall be determined by an agreement between the employer and the employees. This is in consideration to the fact that the total bonus including annual minimum bonus [sub-section (1)] shall not exceed 20 percent of the wages earned by the employee in the accounting year.



8.6. REDUCTIONS

What are the possible reductions that can take place?

1. If the employee has not worked for all the working days in an accounting year, and if the minimum bonus is higher than eight and one third percent of the salary or wage of the days such employee has worked in that accounting year, then bonus shall be proportionately reduced.
2. If an employer has paid any puja bonus or other customary bonus to the employee; or has paid a part of the bonus payable under this Code to an employee before the date of actual payment, then, the employer can deduct the amount of bonus so paid from the amount of bonus payable to the employee in respect of that accounting year. The employee shall receive only the balance.
3. In any accounting year if an employee is found guilty of misconduct causing financial loss to the employer, then, the employer can deduct the amount of loss from the amount of bonus payable by him to the employee only for that particular accounting year. The employee shall receive the balance if any.

8.7. OTHER PROVISIONS

When will an employee be disqualified from receiving bonus?

An employee is disqualified from receiving bonus if he is dismissed from service for-

- Fraud
- Riotous or violent behaviour while on the premises of the establishment
- Theft, misappropriation or sabotage of any property of the establishment; or
- Conviction for sexual harassment

What will happen in case of dispute over the quantum of bonus?

The appropriate government will notify the authority who will then call upon the employer to produce the balance sheet before it. The authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

Who are not covered under this Act?

1. Employees of Life Insurance Corporation of India
2. Seamen [clause (42) of section 3 of the Merchant Shipping Act, 1958]
3. Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers
4. Employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority
5. Employees employed by:
 - the Indian Red Cross Society or any other institution of a like nature including its branches
 - universities and other educational institutions
 - institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit
6. Employees employed by the Reserve Bank of India



7. Employees employed by public sector financial institution other than a banking company
8. Employees employed by inland water transport establishments operating on routes passing through any other country
9. Employees of any other establishment which the appropriate Government may, by notification, exempt from the Act

What are the other provisions under this Act?

1. The appropriate government is entitled to appoint Inspectors-cum-Facilitators to carry out inspections. The Inspectors-cum-Facilitators can advise employers and employees to comply with all rules and regulations.
2. The quantum of penalty is high under the code and it varies as per the nature of offence.
3. The maximum penalty is imprisonment for 3 months and/or a fine up to INR 1, 00,000.

For further information:

<http://egazette.nic.in/WriteReadData/2019/210356.pdf>



9. THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996

9.1. IMAGINE A SCENARIO

Shilpa and her husband have been construction workers since the last 9 years. Shilpa noted, “We prefer construction work as it is available regularly and wages are also better.” Last month, her husband had an accident at the site and had paralysed his left arm. The medical charges were huge and Shilpa asked her employer for assistance. Unfortunately, she was dismissed.

Finding no other option, she approached the Trade Union who took the matter up further. Conversing with the workers at the Union, Shilpa got to know about “The Building and Other Construction Workers Welfare Cess Act, 1996” which mandates employer to provide benefits including pension, assistance in case of accident, housing loan, education, group insurance premium, medical expenses, maternity benefit etc.

The Union further escalated the matter with the employer and finally workers were registered under the BOCW act and everyone was provided with a card to avail benefits in need.

Is it mandatory for every employer to be under the BOCW Act? Why do you think that construction workers are not provided with due benefits even after such protective laws are in place?



9.2. BASIC FEATURES

What is the Act?

It is an Act to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting **the resources of the Building and Other Construction Workers' Welfare Boards** constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

COLLECTION OF CESS

- The rate shall not exceed 2% but shall not be less than 1% of the cost of construction incurred by an employer.
- The Central Government may, by notification in the Official Gazette, from time to time shall specify the rates.
- The cess levied shall be collected from every employer at specific time and manner and will include deduction at source in relation to:
 - a building or other construction work of a Government or,
 - of a public sector undertaking or,
 - advance collection through a local authority where an approval of such building or other construction work by such local authority is required
- Proceeds of the cess collected shall be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding 1% of the amount collected.
- The cess levied under this Act shall be collected at a uniform rate as prescribed on the basis of the quantum of the building or other construction work involved.

FURNISHING OF RETURNS

- Every employer shall furnish return to the officer or authority, in prescribed time and manner.
- If any person liable to pay the cess (section 3), fails to furnish any return, the officer or the authority shall give a notice requiring such person to furnish such return before the date prescribed in the notice.

ASSESSMENT OF CESS

- The officer or authority to whom the return has been furnished after making inquiry and satisfying himself that the particulars stated in the return are correct, assess the amount of cess payable by the employer.
- If the return has not been furnished to the officer or authority, he shall assess the amount of cess payable by the employer after inquiry.
- An order of assessment shall specify the date within which the cess shall be paid by the employer.



9.3. PENALTIES & PROVISIONS

INTEREST PAYABLE ON DELAY IN PAYMENT OF CESS

- The employer who will fail to pay the cess within the specified time shall be liable to pay interest on the amount to be paid at the rate of 2% for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

PENALTY FOR NON-PAYMENT OF CESS

- Punishable with imprisonment which may extend to six months, or with fine, or with both.

PENALTY FOR NON-PAYMENT OF CESS WITHIN THE SPECIFIED TIME

- The authority prescribed may, after making such inquiry as it deems fit, impose on defaulting employer a penalty not exceeding the amount of cess.
- Before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing, the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

FILING FALSE RETURNS

- Punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

9.4. Applicability of BOCW Act

1. The establishments / premises registered under the Factories Act employing construction workers in the construction of factory premises were not excluded from the application of the BOCW Act in terms of the exclusion clause, Section 2(1)(d) of the BOCW Act, which defines “building or other construction work” and excludes any building or other construction work to which the provisions of the Factories Act or the Mines Act, 1952 apply.
2. A premise / establishment registered under the Factories Act would not constitute a factory by itself in the absence of any manufacturing activity.



3. The SC while coming to this judgement gave importance to the superior purpose under the BOCW act which is the welfare of the unorganised labour class involved in construction activity.

For further information:

http://legislative.gov.in/sites/default/files/A1996-28_0.pdf

<https://www.mondaq.com/india/construction-planning/551172/sc-clears-the-air-on-the-application-of-the-building-and-other-constructions-workers-regulation-of-employment-and-conditions-of-service-act-1996>



10. WORKMEN'S COMPENSATION ACT, 1923

10.1. IMAGINE A SCENARIO

Romon worked as building painter in a construction company in Kolkata. He had been in the business for the last several years. Unfortunately, Romon had a horrific accident last year when he was painting the roof of one of the buildings and had fallen down breaking his spine. He has lost both his legs in the accident and have been in complete bed rest for the past 6 months.

When Romon's wife approached the employer for compensation with the "notice of accident", she was initially sent back stating that it was Romon's fault that he did not take proper care while working and thus the employer had no liability. When Romon's friends from the same construction unit staged protest and coerced the employer, a meagre sum of Rs. 10,000 was paid to Romon's wife.

The medical charges have stripped Romon and his family of all their savings. With him being restricted to bed just at the age of 30, and losing all his ability to earn, Romon's wife does not know how to make ends meet.

How much compensation should the employer have paid to Romon under the Act? What can Romon and his wife do to get back his legitimate dues?



10.2. BASIC FEATURES

WHAT IS THE ACT?

- It provides for payment by certain classes of employers to their workmen of compensation for injury by accident.
- It aims at providing financial protection to workmen and the **dependents** in case of accidental injury.

WHO IS A DEPENDENT?

- A dependent includes any of the following relatives of a deceased workman:
 - A widow, a minor legitimate or adopted son and unmarried legitimate or adopted daughter or a widowed mother
 - If wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm
 - If wholly or in part dependent on the earnings of the workman at the time of his death-
 - A widower
 - A parent other than the widowed mother
 - A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and minor
 - a minor brother, an unmarried or widowed sister
 - a widowed daughter-in-law
 - a minor child of a pre-deceased son
 - a minor child of a pre-deceased daughter where no parents are alive
 - a paternal grandparent if no parent of the workman is alive

BENEFICIARIES

- Every employee (including ones employed through a contractor but excluding the casual employees) who is engaged for the purposes **of employer's business and** suffers injury in an accident at workplace or related to work is entitled for compensation under the Act.
- Workers employed in any capacity specified in Schedule II of the Act.
- The Act extends to whole of India excluding states/ union territories of Arunachal Pradesh, Mizoram, Nagaland, Sikkim and Daman & Diu and Lakshwadeep.
- The act also covers cooks employed in hotels and restaurants.
- The Act does not apply to members of the Armed Forces of the union and workmen covered by the ESI act.



10.3. EMPLOYER'S LIABILITIES

What are the employer's liabilities for compensation?

The employer is liable to pay the employee in case of:

- Death
- Permanent total disablement
- Permanent partial disablement
- Temporary disablement whether total or partial
- An occupational disease contracted by the employee

What is not considered as employer's liability for compensation?

The employer is not liable:

1. If injury does not result in total or partial disablement of the workman for a period exceeding 4 days
2. If injury does not lead to death caused by an accident which is directly attributable to-
 - The workman being under influence of drink or drugs during the time of accident
 - The workman disobeying rules, laws and safety regulations stated clearly by the authority
 - The wilful disobedience of the workman of safety devices which he knows is provided for securing safety of the workman
3. The burden of proving intentional disobedience by the employee lies on the employer
4. If employee has contracted a disease not directly attributed to specific injury caused by accident or to the occupation
5. If employee has filed a suit for damages against employer or any other person in Civil court.

10.4 COMPENSATION

What is the amount of compensation?

1. Death from injury to a workman – amount shown in the second column of Schedule IV
2. Total disablement of permanent nature results from injury to a workman – amount shown in the third column of Schedule IV
3. Permanent partial disablement results from the injury-
 - Injury specified in Schedule I: percentage of the loss of earning capacity caused by that injury
 - Injury not specified in Schedule I: proportionate to the loss of earning capacity permanently caused by the injury
4. If more injuries are caused then compensation payable under each head is aggregated but it must not exceed the amount payable if permanent total disablement had resulted from injuries



Example: Compensation for Death:

In case of death resulting from injury, the amount of compensation shall be equal to 50% of monthly wages of the deceased workman multiplied by the relevant factor (mentioned in Schedule IV of the Act), or an amount of 80,000 whichever is higher.

Kishan works in a factory at a monthly wage of Rs. 4000. While working, he met with an accident which resulted in his death. He was 25 years old at the time of his death.

The amount of compensation payable to his dependent will be:

$$\frac{50 * \text{monthly wages} * \text{relevant factor at age 25}}{100}$$

Or, 80,000 whichever is higher.

$$\frac{50 * 4000 * 216.91}{100}$$

=4, 33,820 (Which is higher than 80,000 and shall be paid as compensation to the workman)

LIMITATIONS TO MAXIMUM COMPENSATION	CONDITIONS FOR RECEIVING COMPENSATION FOR PERSONAL INJURY	MODE OF PAYMENT OF COMPENSATION TO CONTRACT LABOUR
<ul style="list-style-type: none">Fatal injury = Rs. 4,57,080Permanent total disablement = Rs. 5,48,496Permanent partial disablement = According to incapacity causedTemporary disablement = Rs 2000 per month up to a period of 5 years	<ul style="list-style-type: none">There are three tests for determining whether accident arose out of employment leading to injury:<ul style="list-style-type: none">At the time of injury, workman must have been engaged in the business of the employer and must not be doing something for personal benefitThe accident occurred at the place where workman was performing his dutiesInjury must have resulted from some risk incidental to the duties of the service or inherent in the nature or condition of employment.	<ul style="list-style-type: none">The principal employer is liable to pay compensation to contract labour in the same manner which he would have been liable to pay if the workman was directly employed under him.The principal employer shall be entitled to be indemnified by the contractor and the right to and amount of any such shall, in default of agreement, be settled by the Commissioner.The principal employer shall not however be liable to pay any interest or penalty leviable under the Act.



10.5. DOCUMENTS

What is an accident report?

1. The employer should send a report to the Commissioner in case of accident resulting in death or serious bodily injuries within 7 days of the accident in a prescribed format.
2. The accident report shall state the circumstances attending the death or serious bodily injuries.

What is a “notice of accident”?

1. A ‘notice of accident’ should be sent to the Commissioner by the concerned employee as soon as practicable after the happening thereof.
2. The notice should contain-
 - Name and address of person injured
 - Date and cause of such accident
3. A copy of notice shall be sent to the establishment wherein he was employed.
4. The notice may either be served personally or by registered post or by means of entry in the notice-book maintained by employer.

10.6. DUTIES

EMPLOYERS	WORKMEN
<ul style="list-style-type: none">•Pay compensation for accident suffered by employee in accordance to the rules of the act.•Submit a statement to the Commissioner within 30 days of the happening in prescribed format.•Submit accident report to Commissioner within 7 days of the happening in prescribed format.•Maintain a notice book in prescribed form at a place which is readily accessible to the workman.•Submit an annual return of accidents specifying the number of injuries for which compensation has been paid during the year.•Send agreement memorandum to the Commissioner stating the amount payable as compensation. The commissioner on being satisfied about the genuineness of the amount will record the memorandum in a registered manner.	<ul style="list-style-type: none">•Send notice of accident to Commissioner in prescribed format as soon as practicable for him.•Present himself for medical examination if and when required by the employer.

10.7. PENALTIES

Employer is liable to pay a fine which starts from Rs 1000 and may extend up to Rs 5000, if he:

1. Fails to maintain a notice book [subsection (3) of section 10]
2. Fails to send to the Commissioner a statement which he is required to send [subsection (1) of section 10A]



3. Fails to send a report [section 10B]
4. Fails to make a return [section 16]
5. Or, fails to affix the abstracts of this Act and of the rules [section 10-D]

10.8. OTHER PROVISIONS

What if employee contracts occupational disease?

1. A workman contracting occupational disease is considered to have suffered an accident out of and in course of employment and the employer is liable to pay compensation for the same.
2. Occupational diseases are categorized in Parts A, B, and C of Schedule III.
3. When workman contracts disease specified in Part B while in service under the employer for a continuous period of 6 months, the employer is liable to pay compensation to the employee.
4. When workman contracts disease specified in Part C while in service under one or more employers for a specified period, proportionate compensation will be paid by each employer.
5. If workman after the completion of his service period, has contracted any disease specified in Part A, B or C as an occupational disease peculiar to employment then he shall be entitled to receive compensation.

What if the employer is insolvent?

1. If employer has entered into a contract with insurers under this Act to pay compensation to workmen if need arises then if the employer (can also be a company) becomes insolvent, then the insurer is liable to pay the compensation to the workmen. However, the insurers do not have the same liabilities as the employer.
2. If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.
3. If the contract with the insurer is void or voidable by reason of non-compliance in part of the employer, the provisions of sub-section (1) is applicable and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman.

What are the proceedings in case of dispute of age of the workman?

A valid certificate granted in respect of the workman under section 12 or section 52 of the Factories Act, 1934 before the occurrence of the injury shall be conclusive proof of the age of such person.

What medical examinations will be carried out on the workman?

1. The employer may get the concerned workman examined by a qualified medical practitioner free of charge within 3 days of receiving “notice of accident”.
2. If the workman is not examined free of charge as aforesaid, he may get himself examined by a qualified medical practitioner and the expenses of such medical examination shall be reimbursed to the workman by the employer.
3. The workman shall present himself for such examination otherwise he shall lose his right for compensation.
4. Failure to have the employer medically examined does not debar him from challenging the medical certificate produced by the workman.



Is the dependent entitled to any funeral expenses?

Yes, an amount of Rs 2500 shall be paid to the dependent or anyone who incurs the expense of the deceased workman as funeral expenses by the employer.

What if employer has contract with workman to not pay any compensation in case of accident at workplace?

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

10.9. AMENDMENTS

What are the new changes in the act?

1. Now known as “Employee’s Compensation Act”.
2. Throughout the Act wherever, ‘workmen’ and ‘workman’ occur, ‘employees’ and ‘employee’ will be substituted.
3. Clerical employees have been included in the definition of ‘employee’.
4. Compensation for death has been increased from Rs 80,000 to Rs 1, 20,000.
5. Compensation for permanent total disablement has been raised from Rs 90,000 to Rs. 1,40,000.
6. New subscription is added for medical reimbursement.
7. Funeral expenses amount is increased from Rs. 2500 to not less than Rs. 5000.
8. There has been no changes in definition of ‘wages’.
9. It reserves the right for Central Government to enhance the amount of compensation.

For further information:

[https://labour.gov.in/sites/default/files/TheWorkmenAct1923\(1\).pdf](https://labour.gov.in/sites/default/files/TheWorkmenAct1923(1).pdf)



11. THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

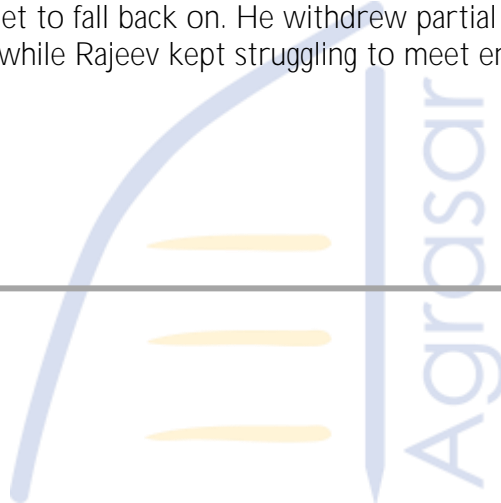
11.1. IMAGINE A SCENARIO

Ajay had been working in a garment factory for a period of 5 years now. He had gotten enrolled in the EPF scheme after the trade union intervened last year and coaxed the employer to enrol everyone under EPF. He was informed that a certain amount of money would be deducted from his salary every month as employee contribution and a matching sum will be paid by the employer in his account. He was also informed about all the benefits to be accrued once he enrolled in EPF.

One of his friends Rajiv had been working in a nearby textile mill and has no idea about EPF. He says, **“Why should I allow my employer to deduct any money from my earnings? I do not know when I will be able to get benefits from this scheme. It is better I get paid in full right now.”**

Sometime even Ajay felt that his friend was better off but situations changed once both of them lost their jobs during lockdown and went back to their village. The money left with them got exhausted to meet their daily needs and they had to face hardships to find new jobs as well. However, Ajay had a safety net to fall back on. He withdrew partial amount from his EPF account to survive through the crisis while Rajeev kept struggling to meet ends.

Is EPF necessary?



11.2. BASIC FEATURES

WHAT IS THE ACT?

- It is An Act to provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments.
- It covers every establishment employing 20 or more people.
- Employer and employee both contribute a predetermined percentage from salary to make up this fund.
- The interest rate fixed depends upon the **employee's basic pay along with the dearness allowance** in his salary.

WHO CAN AVAIL?

- It is mandatory for any individual with a salary below Rs. 15000 per month. Above which, the scheme is voluntary.
- Any organization employing a minimum of 20 workers is liable to give EPF benefits to the workers.

11.3. CONTRIBUTIONS

1. The contribution paid by the employer is 12% of basic wages+ dearness allowance+ retaining allowance.
2. An equal contribution is payable by the employee.
3. In case of establishments employing less than 20 employees, or meet certain other conditions notified by EPFO, the contribution percentage is limited to 10%.
4. It is mostly calculated on basic salary for employees working in private sectors.
5. **Out of 12% of employer's contribution, 8.33% moves to Employee's Pension Scheme.** This is calculated on Rs 15,000. The balance is retained in EPF scheme.
6. **On retirement, the employee gets his full share plus the balance of employer's share retained in EPF account.**

Can there be higher contribution to EPF by employee?

1. The employee can voluntarily pay higher contribution above the statutory rate of 12% of basic pay.
2. This Voluntary Provident Fund is accounted for separately which also earns a tax-free interest.
3. The employer is not liable to match the voluntary contribution.

Can someone contribute to EPF after one stops working?

No. Any contribution by member shall **be matched with employer's share of contribution.**

11.4. WITHDRAWALS FROM EPF ACCOUNT

1. Final PF settlement will happen after the person retires from service at the age of 55 years.
2. The total EPF balance consist of both employers and employees contribution along with the interest earned.
3. One can also partially withdraw the money on nearing retirement.



4. Anyone over 54 years of age can withdraw 90% of the amount.
5. If someone wants to quit job before attaining 55 years of age, he can now withdraw 75% of EPF corpus after remaining unemployed for a month. The balance 25% can be withdrawn after he has remained unemployed for 60 consecutive days or more.
6. To withdraw, one can use **UAN based Form 19** and can bypass the requirement of employer signature.
7. Claim can be submitted online on Member e-Sewa portal.

Is EPF withdrawal taxable?

1. The EPF withdrawal is not taxable if employee has completed 5 years of continuous service with the employer.
2. If one has switched jobs but have transferred the EPF under new employer, then it is considered to be a continuous service.

What is the tax deducted on early withdrawals?

1. **The total employer's contribution along with the interest earned will get taxable in the year of withdrawal.**
2. The amount of deduction claimed under Section 80C on **one's own contribution will be added to one's own income in the year** of withdrawal.
3. **The interest earned on one's contribution will also be taxable.**
4. Tax deducted at source has been introduced on PF withdrawals.
5. TDS is not applicable in case of PF transfer from one account to another.
6. TDS is applicable at the rate of 10% provided PAN card is submitted.

11.5. BENEFITS

1. 12% contribution by employee & equal share by employer into EPF
2. Interest rate- 8.5% for 2019-20
3. When unemployed, an employee can withdraw 75% of EPF corpus after a month and remaining 25% after 2 months of unemployment.
4. Interest rate earned exempted from income tax
5. No tax deduction if withdrawal is after 5years of service.
6. 8.33% of basic salary by employer into Employee Pension Scheme
7. Insurance coverage up to Rs. 6 lakhs in case of death during service period under Employees deposit linked insurance (EDLI)

For further information:

https://www.epfindia.gov.in/site_docs/PDFs/Downloads_PDFs/EPFAct1952.pdf



12. THE EMPLOYEES' STATE INSURANCE ACT, 1948

12.1. IMAGINE A SCENARIO

Naveen had been working in an auto parts manufacturing factory on the outskirts of Faridabad. Last month, one of the machines started malfunctioning as its maintenance was due for long. **While trying to fix the issue, Naveen's hand got stuck in the machine and he faced brutal injuries.** His right hand had to be amputated from the elbow and now he is sitting unemployed at home. The hospital expenses have also put a dent in his savings. When asked about benefits received under the ESI Act, he observed that the employer has never provided him with any ESI card and he himself was unaware of any such schemes. He had asked his employer for assistance when he was injured but to no avail.

Naveen faces a lot of uncertainty. Earlier he was earning Rs 7000 a month in the factory. But now, he does not even know how to find work.

“If the machine had been maintained in proper condition, this would never have happened. We were also not given any training regarding operation of machines. I learnt it by observing. Even getting admitted to the hospital took time since they were constantly demanding for the ESIC card.” Naveen observed.

Learning more about the scheme, Naveen understood that employer is also liable to provide certain need-based benefits like vocational training, unemployment allowance, and physical rehabilitation which can all provide support to him at this moment of crisis. However, he has not been entitled to any such benefits by the employer.

What could have Naveen done differently to ensure that he was insured from such accidents and uncertainties?



12.2. BASIC FEATURES

WHAT IS THE ACT?

- It is an Act to provide for certain benefits to employees in case of sickness, maternity and **'employment injury'** and to make provision for certain other matters in relation thereto.
- It is tailored to provide socio-economic protection to worker population and their dependants covered under the scheme.

APPLICABILITY

- The Act is applicable to non-seasonal factories employing 10 or more persons. [Sec 2(12)]
- The Scheme has been extended to shops, hotels, and restaurants, cinemas including preview theatres, road-motor transport undertakings and newspaper establishments employing 10 or more persons. [Sec 1(5)]
- The Scheme has been extended to Private Medical and Educational institutions employing 10 or more persons in certain States/UTs.
- The threshold for coverage of establishments is still 20 Employees in Maharashtra and Chandigarh.
- The existing wage limit for coverage under the Act is Rs.21,000/- per month.
- The scheme is yet to be implemented in Arunachal Pradesh and Lakshadweep.

WHO CAN AVAIL?

- To avail the scheme, salary should not exceed Rs 21000 or Rs 25000 for persons with disability.



12.3. FINANCE & AUDIT

WHO FINANCES THE SCHEME?

- ESI Scheme is a self-financing health insurance scheme.
- Contributions are raised from covered employees and their employers as a fixed percentage of wages.
- The State Governments, as per provisions of the Act, contribute 1/8th of the expenditure of medical benefit within a per capita ceiling of Rs. 1500/- per Insured Person per annum.
- Any additional expenditure incurred by the State Governments, over and above the ceiling and not falling within the shareable pool, is borne by the State Governments concerned.

WHAT IS THE EMPLOYEE'S STATE INSURANCE FUND?

- All contributions paid under this Act and all other moneys received on behalf of the Corporation **shall be paid into a fund called the Employees' State Insurance Fund** which shall be held and administered by the Corporation.
- **Employees' State Insurance Fund shall be** expended only for the following purposes:
- Payment of benefits and provision of medical treatment and attendance to insured persons or their families (as case may be).
- Payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils
- Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services
- Establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons or their families
- Payment of contributions to any State Government, local authority or private body towards the cost of medical treatment and attendance provided to insured persons or their families
- Defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities
- Defraying the cost (including all expenses) of the **Employees' Insurance Courts set up under this Act**
- Payment of any sums under any contract entered into for the purposes of this Act
- payment of sums under any decree, order or award of and Court or Tribunal against the Corporation or any of its officers or servants
- Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act
- Defraying expenditure on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured



12.4. CONTRIBUTIONS

1. All the employees in the factories or establishments to which the Act applies shall be insured in a manner provided by the Act.
2. The contribution payable to the Corporation in respect of an employee shall comprise of employer's contribution and employee's contribution at a specified rate.
3. The rates are revised from time to time.
4. An employer is liable to pay his contribution in respect of every employee and deduct **employees' contribution from wages bill and shall pay these contributions at the above specified rates** to the Corporation within 15 days of the last day of the Calendar month in which the contributions fall due.
5. There are two contribution periods each of six months duration and two corresponding benefit periods also of six months duration.

12.5. BENEFITS

1. **Medical Benefit:** Full medical care is provided to an insured person and his family members from the day he enters insurable employment. There is no ceiling on expenditure on the treatment of an Insured Person or his family member. Medical care is also provided to retired and permanently disabled insured persons and their spouses on payment of a token annual premium of Rs.120/- .
2. **Sickness Benefit:** Sickness Benefit in the form of cash compensation at the rate of 70% of wages is payable to insured workers during the periods of certified sickness for a maximum of 91 days in a year. In order to qualify for sickness benefit the insured worker is required to contribute 78 days of work in a period of 6 months.
3. **Extended Sickness Benefit:** Sickness benefit extendable up to two years in the case of 34 malignant and long-term diseases at an enhanced rate of 80% of wages.
4. **Enhanced Sickness Benefit:** Full wage is payable to insured persons undergoing sterilization for 7 days and 14 days for male and female workers respectively.
5. **Maternity Benefit:** Maternity Benefit for confinement/pregnancy is payable for 26 weeks, which is extendable by further one month on medical advice at the rate of full wage subject to contribution for 70 days in the preceding two Contribution Periods.
6. **Disablement Benefit**
 - Temporary disablement benefit: From day one of entering insurable employment & irrespective of having paid any contribution in case of employment injury. Temporary Disablement Benefit at the rate of 90% of wage is payable so long as disability continues.
 - Permanent disablement benefit: The benefit is paid at the rate of 90% of wage in the form of monthly payment depending upon the extent of loss of earning capacity as certified by a Medical Board.
7. **Dependants Benefit:** Paid at the rate of 90% of wage in the form of monthly payment to the dependants of a deceased Insured person in cases where death occurs due to employment injury or occupational hazards.



8. Other Benefits

- Funeral Expenses: An amount of Rs.15,000/- is payable to the dependents or to the person who performs last rites from day one of entering insurable employment.
- Confinement Expenses: An Insured Women or an I.P. in respect of his wife in case confinement occurs at a place where necessary medical facilities under ESI Scheme are not available.

9. Need based benefits

- Vocational Rehabilitation: To permanently disabled insured Person for undergoing VR Training at VRS.
- Physical Rehabilitation: In case of physical disablement due to employment injury.
- Old Age Medical Care : For Insured Person retiring on attaining the age of superannuation or under VRS/ERS and person having to leave service due to permanent disability insured person & spouse on payment of Rs. 120/- per annum.
- Rajiv Gandhi Shramik Kalyan Yojana: An Insured Person who become unemployed after being insured three or more years, due to closure of factory/establishment, retrenchment or permanent invalidity are entitled to :-
 - a) Unemployment Allowance equal to 50% of wage for a maximum period of up to 2 Years.
 - b) Medical care for self and family from ESI Hospitals/Dispensaries during the period IP receives unemployment allowance.
 - c) Vocational Training provided for upgrading skills
 - d) Incentive to employers in the Private Sector for providing regular employment to the persons with disability.

For further information:

<https://www.esic.nic.in/Tender/ESIAct1948Amendedupto010610.pdf>

<https://blog.ipleaders.in/employees-state-insurance-act-1948/>



13. FACTORIES ACT, 1948

13.1. IMAGINE A SCENARIO

The Patparganj Industrial area in New Delhi hosts a lot of pharmaceutical factories. Tragedy struck to one of them when a metal reactor in the factory blasted killing 10 workers and injuring many others. The residents of the nearby area were also affected by the blast. When inquiry started, it came to light that the workers since a few months have been intimidating the management about the poor condition of the reactors which needed fixing.

The management however turned a blind eye and did not take up the issue further. Ritu, the wife **of one of the workers who died in the accident** said, **“My husband started working in the factory since the past 1 year. The working conditions were horrible. There were no proper urinals and latrines and neither clean drinking water. Working in the dingy workroom made him suffocated but he did it just to feed our family. With him gone, I don’t know what will happen to us.”**

When asked about the compensation that the employer is liable to pay, another worker who was **not on duty that night** said, **“The employer is thrifty about paying our wage. We don’t get sufficient for the overtime we do. There are no medical benefits or bonuses. Getting compensation from such a person seems impossible.”**

It has been 4 months since the tragic incident and yet none of the families have received any sort of compensation. The earning members of the family have either lost their lives or have been



13.2. BASIC FEATURES

WHAT IS THE ACT?

- It is an act to consolidate and amend the law regulating labour in factories.

WHAT IS A FACTORY?

- "Factory" means any premises
- Wherein 10 or more workers are working, OR were working on any day of the preceding 12 months, AND it is a place where manufacturing process is being carried on with the aid of power. OR
- Wherein 20 or more workers are working, OR were working on any day of the preceding twelve months, AND it is a place where manufacturing process is being carried on without the aid of power.
 - Does not include a mine which is under Mines Act, 1952.
 - Does not include a unit of the armed forces of the union.
 - Does not include a railway running shed or a hotel, restaurant or eating place.
 - For computing number of workers, all workers working in different shifts in a day are taken into account.

WHO IS AN OCCUPIER?

- An occupier of the factory is the person who has ultimate control over the affairs of the factory.
- In case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier.
- In case of a company, any one of the directors shall be deemed to be the occupier.
- In case of a factory owned or controlled by the Central Government/State Government/local authority, the person or persons appointed to manage the affairs of the factory shall be deemed to be the occupier.

Reference to time of day

1. It is in reference to Indian Standard Time which is five and a half hours ahead of Greenwich Mean Time.
2. For states which do not follow Indian Standard Time, the specific state governments can make rules
 - specifying the area
 - defining the local mean time ordinarily observed therein, and
 - Permitting such time to be observed in all or any of the factories situated in the area.

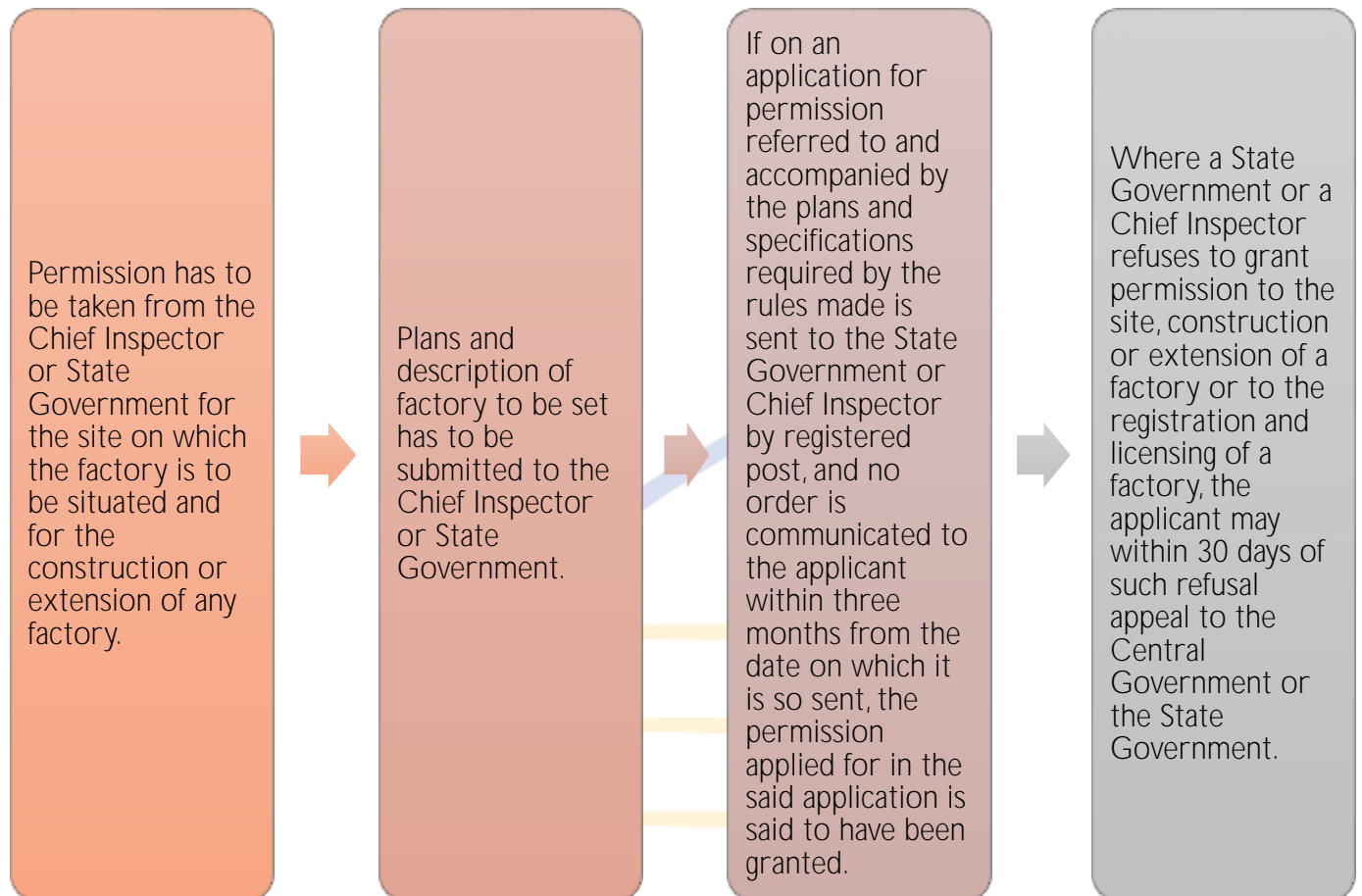


Power to exempt

In any case of public emergency the State Government may, by notification in the Official Gazette, exempt any factory or factories from all or any of the provisions of this Act, for a specified time period.

13.3. REGISTRATION

Approval, Licensing & Registration of Factories



Notice by occupier

1. The occupier has to send a written notice to the Chief Inspector 15 days before the factory premises are occupied and manufacturing process starts.
2. The notice shall contain
 - name and situation of the factory
 - name and address of the occupier
 - name and address of the owner of the premises or building
 - address to which communications relating to the factory may be sent
 - nature of the manufacturing process
 - total rated horse power installed or to be installed in the factory (not including horse power of any separate stand-by plant)
 - name of the manager of the factory



- number of workers likely to be employed in the factory
 - average number of workers per day employed during the last twelve months
3. If a factory engaged in a manufacturing process which is ordinarily carried on for less than 180 working days in the year resumes working, the occupier has to send the notice atleast 30 days prior to commencement of work.
 4. Whenever a new manager is appointed, the occupier has to send a notice to the Chief Inspector within 7 days of the joining of the new manager.

13.4. DUTIES

DUTIES OF THE OCCUPIER	DUTIES OF MANUFACTURERS
<ul style="list-style-type: none"> • Ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory. • Provide and maintain plant and systems of work in the factory that are safe and without risks to health. • Provide information, instruction, training and supervision necessary to ensure the health and safety of all workers at work. • Maintain all places of work in the factory in a condition that is safe without risks to health and provide and maintain entry and exit from such places without risk. • Every occupier shall prepare and revise as necessary a written statement of general policy with respect to the health and safety of the workers at work. Such statements and further revisions shall be brought to notice of all workers. 	<ul style="list-style-type: none"> • Ensure that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used. • Carry out or arrange for the carrying out of tests and examination necessary for the effective implementation of the provisions of above clause. • Make adequate information available in connection with the use of the article in any factory, about the use for which it is designed and tested and about any conditions necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers.

13.5. HEALTH

Cleanliness

1. Every factory shall be kept clean and free from harmful odour and discharge arising from any drain, privy or other nuisance.
2. In particular, accumulation of dirt and refuse shall be removed daily from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner.
3. The floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method.
4. Effective means of drainage shall be provided and maintained.
5. All inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall be:



- Re-painted or re-varnished once in every 5 years in case they were already painted and varnished.
 - Washed at least once in every 6 months if they are painted with washable paint and repainted with at least one coat of such paint at least once in every period of 3 years.
 - Cleaned at least once in every period of fourteen months if they have smooth impervious surfaces.
 - Kept whitewashed or colour washed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months for all other cases.
6. All doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished. Painting and varnishing shall be done at least once in every 5 years.

Disposal of waste and effluents

1. Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on so that when released, these wastes are not harmful to the environment.
2. The State Government may make further provisions under this.

Ventilation and temperature

1. Adequate ventilation by the circulation of fresh air shall be maintained in every workroom of the factory.
2. A comfortable temperature which does not cause injury to workers shall be maintained at all times.
3. Walls and roofs of the factory shall be of such material and so designed that temperature shall be kept as low as practicable.
4. In work processes where excessive temperature is reached, workers shall be protected by keeping workroom insulated and separated from such high temperature work areas.

Dust and fume

1. In every factory which produces dust and fume from the manufacturing process carried on, effective measures shall be taken to prevent its inhalation and accumulation in any workroom.
2. In any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air, and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent accumulation of fumes which are injurious to the health of workers.

Artificial humidification

1. Prescribe standards of humidification.
2. Regulate the methods used for artificially increasing the humidity of the air.
3. Direct prescribed tests for determining the humidity of the air to be correctly carried out and recorded.
4. Prescribe methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.



5. In any factory in which the humidity of the air is artificially increased, the water used for the purpose shall be taken from a public supply, or other source of drinking water, or shall be effectively purified before it is so used.

Overcrowding

1. No room in any factory shall be overcrowded to an extent injurious to the health of the workers employed.
2. There shall be a notice specifying the maximum number of workers who may be employed in the room posted in each workroom if the Chief Inspector orders so.

Lighting

1. In every part of a factory where workers are working, sufficient and suitable lighting shall be provided.
2. In every factory all glazed windows and skylights used for the lighting of the workrooms shall be kept clean on both the inner and outer surfaces and kept free from any obstructions.

Drinking Water

1. In every factory effective arrangements shall be made to provide sufficient supply of wholesome drinking water to workers.
2. These points shall be located conveniently and accessible to all workers. These points shall also be **marked legibly as 'drinking water' in a language understood by majority of workers.**
3. In every factory where more than 250 workers are ordinarily employed, provision shall be made for cooling drinking water during hot weather.

Latrines and urinals

1. Sufficient latrine and urinal accommodation of prescribed types shall be provided and made accessible to workers at all times while they are at the factory.
2. Separate enclosed accommodation shall be provided for male and female workers.
3. Such accommodation shall be adequately lighted and ventilated, and maintained in a clean and sanitary condition at all times.
4. Sweepers shall be employed whose primary duty would be to keep clean latrines, urinals and washing places.

Spittoons

1. In every factory a sufficient number of spittoons in convenient places shall be provided and they shall be maintained in a clean and hygienic condition.
2. The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in the factory.
3. No person shall spit within the premises of a factory except in the spittoons provided for the purposes.
4. Whoever spits in contravention of sub-section shall be punishable with fine not exceeding Rs. 5.



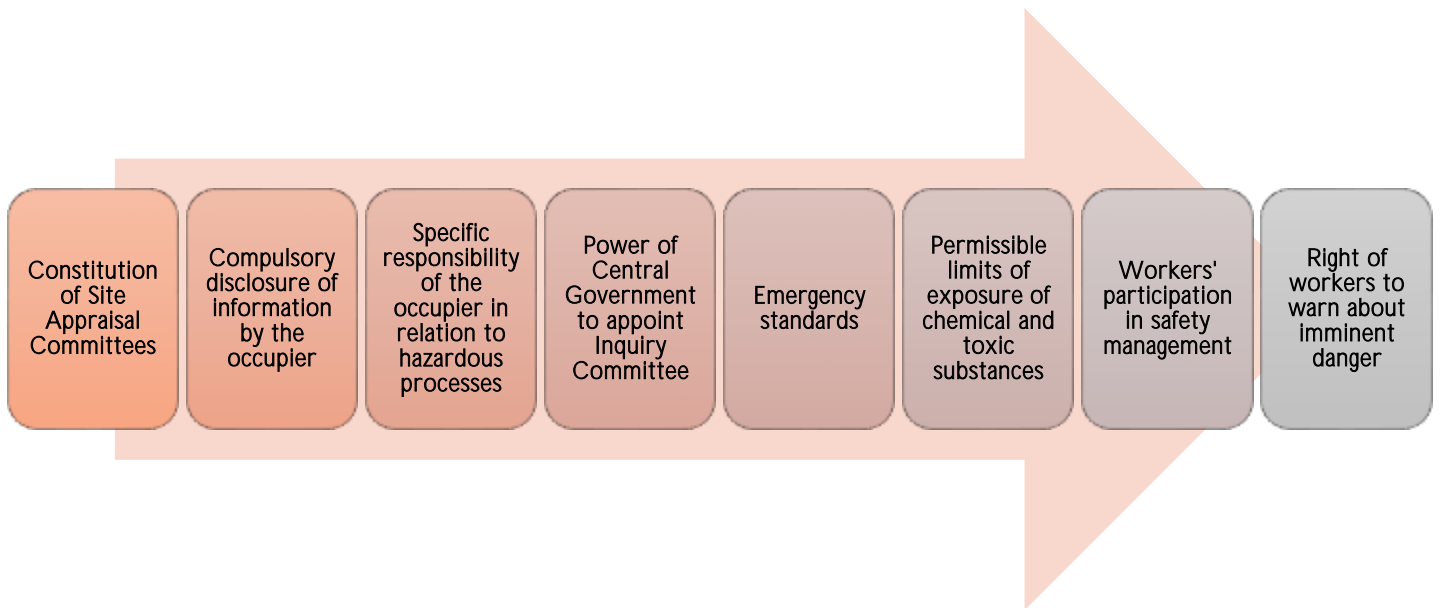
13.6. SAFETY

Safety in factory is in relation to:

1. Fencing of machinery
2. Work on or near machinery which is in motion
3. The State Government may, by notification in the Official Gazette, prohibit, in any specified factory the cleaning, lubricating or adjusting by any person of specified parts of machinery when those parts are in motion.
4. Employment of young persons on dangerous machines
5. Striking gear and devices for cutting off power
6. Casing of new machinery
7. Prohibition of employment of women and children near cotton-openers
8. Hoists and lifts- shall be of good mechanical construction, sound material and adequate strength. Shall be properly maintained, and thoroughly examined by a competent person at least once in every 6 months.
9. Lifting machines, chains, ropes and lifting tackles- no lifting machine and no chain, rope or lifting tackle shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark.
10. Revolving machinery- In factory where grinding is carried on, it shall be permanently affixed to or placed near each machine.
11. Pressure plant- If in any factory, any plant or machinery or any part thereof is operated at a pressure above atmospheric pressure, effective measures shall be taken to ensure that the safe working pressure of such plant or machinery or part is not exceeded.
12. Floors, stairs and means of access- shall be of sound construction and properly maintained.
13. Pits, sumps, openings in floors- shall be either securely covered or securely fenced.
14. Excessive weights- No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury.
15. Protection of eyes
16. Precautions against dangerous fumes, gases etc.
17. Precautions regarding the use of portable electric light.
18. Explosive or inflammable dust, gas, etc.
19. Precautions in case of fire.
20. Power to require specifications of defective parts or tests of stability.
21. Safety of buildings and machinery.
22. Maintenance of buildings.
23. Safety Officers- shall be appointed in every factory where more than 1000 workers are employed ordinarily



13.7. PROVISIONS RELATING TO HAZARDOUS PROCESSES



Constitution of Site Appraisal Committees

1. The State Government may form a site appraisal committee consisting of:
 - the Chief Inspector of the State who shall be its Chairman
 - a representative of the Central Board for the Prevention and Control of Water Pollution
 - a representative of the Central Board for the Prevention and Control of Air Pollution
 - a representative of the State Board appointed under section 4 of the Water (Prevention and Control of Pollution) Act, 1974
 - a representative of the State Board for the Prevention and Control of Air Pollution
 - a representative of the Department of Environment in the State
 - a representative of the Meteorological Department of the Government of India
 - an expert in the field of occupational health, **AND**
 - a representative of the Town Planning Department of the State Government
 - Not more than 5 persons can be co-opted by the State Government.
2. The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of 90 days of the receipt of such applications in the prescribed form.
3. The Site Appraisal Committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

Compulsory disclosure of information by the occupier

1. The occupier of every factory involving a hazardous process shall disclose all information regarding dangers, and measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacturing, transportation, storage and other processes.
2. The information has to be disclosed in prescribed form to the workers employed in the factory, the Chief Inspector, the local authority and the general public in the vicinity.



3. The occupier shall, at the time of registering the factory involving a hazardous process lay down a detailed policy with respect to the health and safety of the workers employed.
4. The occupier shall inform the Chief Inspector and local authority about such a policy and also mention the changes made in the policy thereafter.
5. Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory.
6. He should also inform the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.
7. Where any occupier of a factory contravenes the provisions, the licence issued under section 6 to such factory be liable for cancellation.
8. The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and publicise them in the manner prescribed among the workers and the general public living in the vicinity.

Specific responsibility of the occupier in relation to hazardous processes

Every occupier of a factory involving any hazardous process shall:

1. Maintain accurate and up-to-date health records or medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported. Such reports shall be accessible to the workers subject to such conditions.
2. Appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory.
3. Provide for medical examination of every worker before taking up such hazardous activities, during the performance of such activities and after the completion.

Power of Central Government to appoint Inquiry Committee

1. The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory.
2. The Committee appointed shall consist of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its member shall be determined by the Central Government according to the requirements of the situation.
3. The recommendations of the Committee shall be advisory in nature.

Emergency standards

Where the Central Government is satisfied that no standards of safety have been prescribed in respect of hazardous processes, or where the standards so prescribed are inadequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any specialised institution to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

Permissible limits of exposure of chemical and toxic substances



The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule.

Workers' participation in safety management

1. A Safety Committee has to be set up with equal representation of workers and management in factories where hazardous processes are carried out or hazardous materials are handled.
2. The composition of the Safety Committee, the tenure of office of its members and their rights and duties shall be such as may be prescribed.

Right of workers to warn about imminent danger

1. Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.
2. It shall be the duty of such occupier, agent, manager or the person in-charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger.
3. If the occupier, agent, manager or the person in-charge is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

13.8. WELFARE

In every factory, the following facilities shall be made available to the workers employed.

1. Washing facilities
2. Facilities for storing and drying clothes
3. Facilities for sitting
4. First-aid appliances
5. Canteens
6. Shelters, rest rooms and lunch rooms
7. Creches
8. Welfare officers shall be employed in factories employing more than 500 workers.

13.9. WORKING HOURS OF ADULTS

1. Weekly hours- Not more than 48 hours in any week.
2. Weekly holidays- first day of the week (see site for exceptions)
3. Compensatory holidays- If a worker is deprived of any of the weekly holidays for which provision is made he shall be allowed, within the month in which the holidays were due to him or within the



two months immediately following that month, compensatory holidays of equal number of the holidays so lost.

4. Daily hours- Not more than 9 hours in any day.
5. Intervals for rest- Every 5 hours of working will be followed by at least half an hour of rest.
6. Spreadover- Period of work and rest shall be spread in such a manner so as to not exceed 10 and a half hours in any day.
7. Night shifts- shall be followed with a holiday of 24 consecutive hours
8. Prohibition of overlapping shifts
9. Extra wages for overtime- Where a worker works in a factory for more than nine hours in any day or for more than forty- eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.
10. Restriction on double employment- No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory.

13.10. EMPLOYMENT OF YOUNG PERSONS

1. No child who has not completed his fourteenth year shall be required or allowed to work in any factory.
2. A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless a certificate of fitness granted to him is in the custody of the manager of the factory, and such child or adolescent carries a token giving a reference to such certificate while he is at work.
3. No female or male adolescent who has not attained the age of 17 years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 A.M. and 7 P.M.
4. No child shall be employed or permitted to work in any factory for more than four and a half hours in any day. No night shifts are allowed.
5. The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory.

13.11. ANNUAL LEAVE WITH WAGES

1. Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a specific number of days.
2. The number of days shall be calculated at the rate of-
 - 1 day for every 20 days of work performed by him during the previous calendar year (Adult)
 - 1 day for every 15 days of work performed by him during the previous calendar year (Child)
3. The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave.
4. A worker may at any time apply in writing to the manager of a factory not less than 15 days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year.



5. A worker who has been allowed leave for not less than four days, in the case of an adult, and five days, in the case of a child shall, before his leave begins, be paid the wages due for the period of the leave allowed.

13.12. PENALTIES & PROCEDURES

1. **General penalty for offences-** Punishable with imprisonment for a term which may extend to 2 years or with fine which may extend to INR 1, 00, 000 or with both. If the contravention is continued after conviction, a further fine which may extend to INR 1000 for each day on which the contravention is so continued.
2. If contravention of provisions have led to accident causing death or serious bodily injury, the fine shall not be less than INR 25, 000 in the case of an accident causing death, and INR 5000 in the case of an accident causing serious bodily injury.
3. **Enhanced penalty after previous conviction-** Punishable on a subsequent conviction with imprisonment for a term which may extend to 3 years or with fine which shall not be less than INR 10, 000 but which may extend to INR 2, 00, 000 or with both.
4. **Penalty for obstructing Inspector-** Punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to INR 10, 000 or with both.
5. **Penalty for wrongfully disclosing results of analysis under section 91-** Punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to INR 10, 000 or with both.
6. **Offences by workers-** Punishable with a fine which may extend to INR 500.
7. **Penalty for using false certificate of fitness-** Punishable with imprisonment for a term which may extend to 2 months or with fine which may extend to INR 1000 or with both.
8. **Penalty for permitting double employment of child-** Punishable with fine which may extend to INR 1000 unless it appears to the Court that the child so worked without the consent or connivance of such parent, guardian or person.

For further information:

<https://labour.gov.in/sites/default/files/TheFactoriesAct1948.pdf>



14. INDUSTRIAL DISPUTES ACT, 1947

14.1. IMAGINE A SCENARIO

One of the 2-wheeler manufacturing plants in Gurgaon faced a month long strike by the contractual workers. The plant appointed contract worker at a salary of Rs 7000 per month while a permanent worker got Rs 45000 for the same amount of work. Apart from this, there were medical benefits, leaves and other employment benefits while the contract worker is not even provided with a pay slip or a company ID card.

The contract worker went on a strike after issuing a notice to the employer demanding wage hike, extra casual leave and medical benefits at par with the permanent workers. Their demand also consisted of bringing them into the permanent pay roll since they have been associated with the same establishment for the last 10 years.

The production at the plant was paralyzed due to the strike and the company faced a major financial loss.

To solve the matter, a tripartite meeting was convened and an agreement was signed between the representatives of the workers and the employer. Some of the demands like a 10% wage hike, casual leaves and medical benefits were accepted by the management.

Do you think the issues between management and workers could have been solved without a strike?



14.2. BASIC FEATURES

WHAT IS THE ACT?

- The Industrial Disputes Act aims to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations.
- This act also deals with the retrenchment process of the employees, procedure for layoff, procedure and rules for strikes and lockouts of the company.

WHAT IS AN INDUSTRIAL DISPUTE?

- Any dispute or difference connected with the employment, non-employment or terms of employment or with the conditions of labour, of any person between-
 - employers and employers OR,
 - employers and workmen, OR,
 - workmen and workmen
- A discontent labour force with grievances and resentments is not efficient and will have very low industrial morale. Thus the Act was passed as a curative and preventive measure.

14.3. IMPORTANT CLARIFICATIONS

1. Industry- It has attained wider meaning than defined except for domestic employment. Now it covers barber shops to big steel companies. Refer Sec 2(I).
2. Works Committee- Joint Committee formed from representation of workers and employer for discussion of certain common problems. Refer Sec 3.
3. Conciliation- It is an attempt by a third party to settle disputes. Refer Sec 4.
4. Adjudication- Labour Court, Industrial Tribunal, or National Tribunal to hear and decide the dispute. Refer Sec 7, 7A & 7B.

14.4. AUTHORITIES

The various dispute settlement authorities under the act are:

1. Works Committee;
2. Conciliation Officer;
3. Conciliation Board;
4. Court of Enquiry;
5. Labour Court;
6. Industrial Tribunal;
7. National Tribunal;
8. Arbitrators;
9. Grievances Settlement Authority.

Few of them have been explained in greater details.



Works Committee

1. In industrial establishments employing more than 100 workers on any day preceding the 12 months, the employer is liable to constitute a Works Committee.
2. It shall include representatives of the employer and workmen working in the industry. Number of representatives of workmen shall not be less than that of the employer.
3. It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen.
4. It shall also be the duty to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

Conciliation Officers

CONCILIATION OFFICERS	DUTIES OF CONCILIATION OFFICERS
<ul style="list-style-type: none">• Shall be appointed by the appropriate government.• They shall be charged with the duty of mediating in and promoting the settlement of industrial disputes.• A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries.• They may be employed either permanently or for a limited period.	<ul style="list-style-type: none">• Hold conciliation proceedings relating to Strikes and lockouts procedural matters of public utility services.• Investigate the matters of the disputes.• Conciliation officers shall induce the parties to come to a fair and amicable settlement of the dispute.• Duty to send the report of settlement of dispute and memorandum of the settlement signed by the parties to the dispute to the government or his superior.• In case of failure of settlement of dispute in between parties, duty to send them to the government or his superior, report of facts and circumstances relating to the disputes and in his opinion, a settlement could not be arrived at.• Duty to send the report to the government or his superior within 14 days from the commencement of the proceeding, or within such shorter period as may be fixed by the appropriate Government .



Boards of Conciliation

BOARD OF CONCILIATION

- Appointed by appropriate government.
- A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit.
- The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute.
- Any person appointed to represent a party shall be appointed on the recommendation of that party.

DUTIES OF BOARD

- It shall be the duty of the Board to bring about a settlement of dispute.
- Investigate the matters relating to the dispute between parties and inducing the parties to come to a fair and amicable settlement of the dispute.
- In case of failure of settlement of dispute in between parties, duty to send to the government the report of facts and circumstances relating to the disputes and board opinion, a settlement could not be arrived at.
- The Board shall submit its report under this section within 2 months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government.

Courts of Inquiry

1. A Court may consist of one independent person or of such number of independent persons as the appropriate Government may think fit.
2. Where a Court consists of two or more members, one of them shall be appointed as the chairman.

Labour Courts

1. A Labour Court shall consist of one person only to be appointed by the appropriate Government.
2. A person shall be qualified for appointment as the presiding officer of a Labour Court if-
 - He is, or has been, a Judge of a High Court, OR
 - He has, for a period of not less than 3 years, been a District Judge or an Additional District Judge, OR
 - He has held any judicial office in India for not less than 7 years, OR
 - He has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than 5 years.



What is deemed to be an industrial dispute?

1. Difference between employer and workmen can be termed as industrial dispute if it is due to-
 - Dismissal of workman
 - Discharge of workman
 - Retrenchment of the workman
 - Termination of workman from his services
2. Workman having disputes can make an application to the conciliation officer to settle the dispute. If the conciliation officer fails to settle the dispute after 3 months of application, workman can make a direct application to labour courts or tribunals for adjudication.
3. Workman should make an application to labour courts or tribunals for adjudication before 3 years from the date of discharge, dismissal, retrenchment or otherwise termination of service of the workman.

14.5. NOTICE OF CHANGE

To effect any change in the conditions of service applicable to any workman by the employer, the workman shall be provided with a notice in prescribed manner. Any change shall not be effected before 21 days of giving such notice.

Conditions of Service for Change of which notice is to be given:

1. Wages, including the period and mode of payment
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force
3. Compensatory and other allowances
4. Hours of work and rest intervals
5. Leave with wages and holidays
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders
7. Classification by grades
8. Withdrawal of any customary concession or privilege or change in usage
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders
10. Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift.



14.6. GRIEVANCE SETTLEMENT AUTHORITY

1. In industrial establishments where 50 or more workers are employed, the employer shall constitute a Grievance Settlement Authority for the settlement of industrial disputes connected with an individual workman employed in the establishment.
2. Every industrial establishment employing 20 or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.
3. The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.
4. The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.
5. The total number of members of the Grievance Redressal Committee shall not exceed more than 6.
6. The Grievance Redressal Committee may complete its proceedings within 45 days on receipt of a written application by or on behalf of the aggrieved party.
7. The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose the same and send a copy of his decision to the workman concerned.
8. Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned.

14.7. ARBITRATION

Voluntary reference of disputes to arbitration-

1. An arbitrator is appointed by the Government.
2. Whether the dispute is before Labour Court, or Industrial Tribunal or National Tribunal, the parties can go to arbitration by written agreement.
3. The arbitrators conduct the investigation on dispute matters and give final decision or settlement or decree.
4. If an industrial dispute exists or is apprehended and the employer and the workman agree to refer the dispute to an arbitration, they may refer the dispute to an arbitration.
5. Such reference shall be made before the dispute has been referred under Sec. 19 to a Labour Court or Tribunal or National Tribunal by a written agreement.
6. The arbitrator may be appointed singly or more than one in number.
7. The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

14.8. PAYMENT OF FULL WAGES TO WORKMAN PENDING PROCEEDINGS IN HIGHER COURTS

1. Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a



High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him.

2. The employer is liable if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court.
3. If it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period, the Court shall order that no wages shall be payable under this section by the employer.

14.9. STRIKES

WHAT IS A STRIKE?

- Strike means "a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal under a common understanding of any number of persons who are or have been so employed, to continue to work or to accept employment". Mere stoppage of work does not come within the meaning of strike unless it can be shown that such stoppage of work was a concerted action for the enforcement of an industrial demand.

WHAT IS THE PROCEDURE OF STRIKES?

- No person employed in a public utility service shall go on strike-
 - without giving a notice of strike to the employer within 6 weeks before striking, OR,
 - within 14 days of giving such notice, OR,
 - before the expiry of the date of strike specified in any such notice as aforesaid, OR,
 - during the pendency of any conciliation proceedings before a conciliation officer and 7 days after the conclusion of such proceedings.

Case Snippet - Air India

In May 2012, Air India pilots were called for a strike which continued till July 3. It caused a loss of Rs. 600 crores to Air India Management. The reasons for strike by Air India pilots were irregularities and non-payment of salaries to pilots by Air India management. The Management dismissed few pilots from their services for not attending their duties to run flights and causing loss to the management. The Air India management approached the Delhi High Court requesting it to consider the strike by pilots as illegal. Delhi High Court supported Air India management and declared it as an illegal strike on the grounds of not following the procedure of strike.



Is threat to go on strike illegal?

No. It is not illegal. (*State of Bihar v. Deodhar Jha, 1958*)

14.10. LOCKOUTS

What is a lockout?

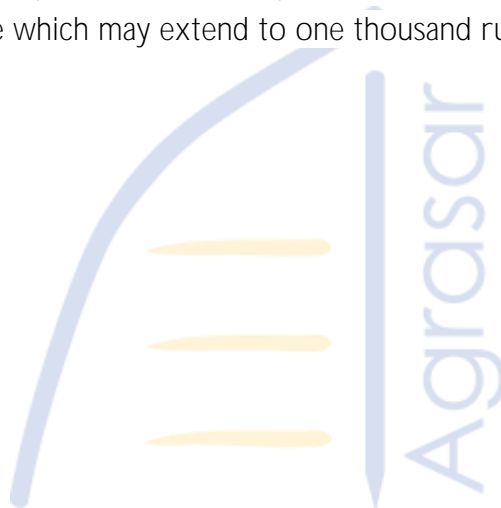
Lockout means “the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him”.

What is the procedure of lockout?

It is the same as that for strikes.

What are the penalties for illegal strikes and lockouts?

1. A workman shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.
2. An employer shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.



14.11. LAY-OFFS

APPLICABILITY	CONDITIONS FOR AVAILING LAY-OFF COMPENSATION	DOES THE EMPLOYER REQUIRE PERMISSION TO LAY OFF WORKMEN?
<ul style="list-style-type: none">• The lay-off provisions do not apply to industrial establishments in which less than 50 workmen are employed, on an average per working day.• The lay-off provisions also do not apply to industrial establishments which are of a seasonal character and in which work is performed only intermittently.• Employees employed in above establishments are not entitled to receive lay-off compensation until it is stated and agreed between the employer and the workers separately.	<ul style="list-style-type: none">• Name of workman should be on muster rolls of the establishment and he/she should not be a badli workman or a casual workman• The workman should have completed not less than one year continuous service (Sec 25b)• The workman should have been laid-off, continuously or intermittently• Then the workman shall be entitled to lay-off compensation for all days during which he was so laid-off• However, the workman shall not be paid lay-off compensation for such weekly holidays as may intervene the period of lay-off.• The lay-off compensation is equal to 50% of the total of the basic wages and dearness allowance that would have been payable to him, if he had not been laid off.	<ul style="list-style-type: none">• For Industrial establishments in which not less than 100 workmen are employed on an average working day and the workers are not of seasonal character, the employer has to seek prior permission from competent authority to layoff workman.• If the employer does not apply to seek prior permission or if permission is refused by the competent authority and still the workman is laid-off, it shall be considered illegal and the workman laid-off shall be entitled to all benefits as if they have not been laid-off.

14.12. RETRENCHMENT

What is retrenchment of employee?

It means termination of workman by the employer for any reason whatsoever, other than as a punishment inflicted by way of disciplinary action.

It does not include-

- voluntary retirement of the workman
- retirement of the workman on reaching the age of superannuation



- termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman
- termination of the service of a workman on the ground of continued ill-health

What is the procedure for retrenchment?

1. Last come, first go- The employer shall ordinarily retrench the workman who was the last person to be employed in that category.
2. Re-employment of retrenched workmen.
3. The employer shall **provide one month's notice in writing indicating the reasons for** retrenchment to the workmen.
4. The employer shall pay the workman wages for the period of notice.
5. The workman shall be paid, at the time of retrenchment, compensation which shall be equivalent to **fifteen days' average pay.**

What is the penalty for lay-off and retrenchment without previous permission?

1. Applicable to industrial establishment where no less than 100 workers are employed on average per working day and the establishment is not of seasonal character.
2. Any employer who contravenes the provisions of section 25M or section 25N shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

14.13. UNFAIR LABOUR PRACTICES

On the part of employers and trade union of employers:

1. Trade Union Organisation
 - threatening workmen with discharge or dismissal, if they join a trade union;
 - threatening a lock-out or closure, if a trade union is organised
 - granting wage increase to workmen at crucial periods of trade union organisation in order to undermine the efforts of the trade union at organisation.
2. Support to Trade Union
 - an employer taking an active interest in organising a trade, union of his workmen
 - an employer showing partiality or granting favour to one of several trade unions
3. To establish employer-sponsored trade unions of workmen
4. Discrimination against workmen to join Trade Unions
 - discharging or punishing a workman, because he urged other workmen to join or organise a trade union
 - discharging or dismissing a workman for taking part in any strike which is legal
 - changing seniority rating of workmen because of trade union activities
 - refusing to promote workmen to higher posts on account of their trade union activities
 - giving unmerited promotions to certain workmen with a view to creating discord amongst other workmen, or to undermine the strength of their trade union



- discharging office bearers or active members of the trade union on account of their trade union activities.
5. Unfair labour practices are also when workmen are discharged or dismissed
 - by way of victimisation
 - not in good faith, but in the colourable exercise of the employer's rights
 - by falsely implicating a workman in a criminal case for patently false reasons
 - on untrue or trumpet up allegations of absence without leave
 - in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste
 - for misconduct of a 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 a disproportionate punishment
 6. Giving work which was previously done by workmen to contractors in order to break strikes.
 7. To transfer workmen in bad faith from one place to another.
 8. To coerce workmen striking to sign a good conduct contract before resuming work
 9. To show 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 years, with the object of depriving them of the status and privileges of permanent workmen.
 11. To discharge or discriminate against any workman for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.
 12. Failure to implement award, settlement or agreement.
 13. To indulge in acts of force or violence.
 14. To refuse to bargain collectively, in good faith with the recognised trade unions.
 15. Proposing or continuing a lock-out deemed to be illegal under this Act.

On the part of workmen and trade union of workmen:

1. To advise or actively support or instigate any strike deemed to be illegal under this Act.
2. To coerce workmen in the exercise of their right to self-organisation or to join a trade union or refrain from joining any trade union.
3. For a recognised union to refuse to bargain collectively in good faith with the employer.
4. To indulge in coercive activities against certification of bargaining representative.
5. To stage, encourage or instigate such forms of coercive actions as wilful "go slow", squatting on the work premises after working hours or "gherao" of any of the members of the managerial or other staff.
6. To stage demonstrations at the residences of the employers or the managerial staff members.
7. To incite or indulge in wilful damage to employer's property connected with the industry.
8. To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.



14.14. PENALTIES

Illegal Strikes	Punishable with imprisonment for a term which may extend to one month, or with fine which may extend to 50/- rupees, or with both.
Illegal Lock-Outs	Punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one 1000/- rupees, or with both.
Unfair labour practice	Punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to 1000/- rupees or with both.
Any person instigating or inciting people to take part in illegal strikes and lock-outs	Punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to one 1000/- rupees, or with both.
Giving Financial Aid To Illegal Strikes And Lock-Outs	Punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 1000/- rupees, or with both.
Disclosing Confidential Information	Punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 1000/- rupees, or with both.
Closure of establishment Without Notice	Punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 5000/- rupees, or with both.
Contravention of provisions of section 33	Punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 1000/- rupees, or with both.

For further information:

https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES_ACT1947_0.pdf



www.agrasar.org

info@agrasar.org

