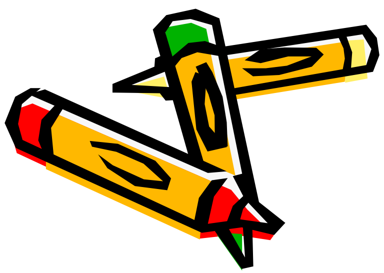
Payment of Bonus Act, 1965

As amended by The Payment of Bonus (Amendment) Ordinance, 2007

Applicability

- The Act applies to-
- (a) every factory; and
- (b) every other establishment in which twenty or more persons are employed on any day during an accounting year.



- . **Establishments to include departments, undertakings and branches**

- Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus :

- PROVIDED that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, for that year.

- Where an establishment is newly set up, the employees shall be entitled to be paid bonus under this Act
- In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, bonus shall be payable only in respect of the accounting year in which the employer derives profit and such bonus shall be calculated in accordance with the provisions of this Act in relation to that year but without applying the provisions of set on & set off.
- For the sixth and seventh accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of set on & set off shall apply.

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

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

ELIGIBIITY FOR BONUS

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

Salary Limit

- Where the salary or wages of an employee exceeds three thousand and five hundred rupees per month, the bonus payable to such employee shall be calculated as if his salary or wages were three thousand and five hundred rupees per month.

- Salary or Wages " means all remuneration (other than remuneration in respect of over-time work, which would, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance, but does not include,-

- (i) any other allowance which the employee is for the time being entitled to;

- (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

- (iii) any travelling concession;

  (iv) any bonus (including incentive, production and attendance bonus);

  (v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee

  (vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;

  (vii) any commission payable to the employee.

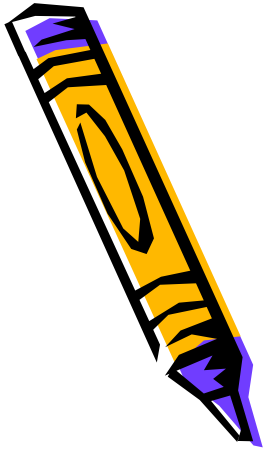
Computation of number of working days

- An employee shall be deemed to have worked in an establishment in any accounting year also on the days on which,-
- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

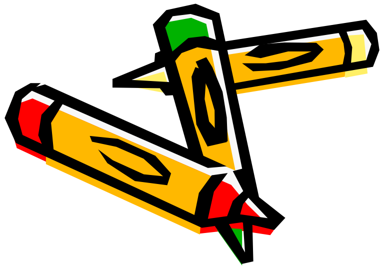
Computation of number of working days

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

DISQUALIFICATION FOR BONUS



- An employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for,-
- fraud; or
- riotous or violent behaviour while on the premises of the establishment; or
- theft, misappropriation or sabotage of any property of the establishment.



Deduction of certain amounts from bonus payable under the Act

- Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

MINIMUM AND MAXIMUM BONUS PAYABLE

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

MAXIMUM BONUS

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

TIME LIMIT FOR PAYMENT

- The bonus should be paid in cash within 8 months from the close of the accounting year or within one month from the date of enforcement of the award or coming into operation of a settlement following an industrial dispute regarding payment of bonus.
- However if there is sufficient cause extension may be applied for.

CALCULATION OF BONUS

- **CALCULATION OF BONUS**
- The method for calculation of annual bonus is as follows:

- Calculate the Available Surplus.

Available Surplus

- Available Surplus =
- Gross Profit – (deduct) the following :
- Depreciation admissible u/s 32 of the Income tax Act
- Development allowance

Available Surplus (Deductions)

- Direct taxes payable for the accounting year (calculated as per Sec.7) – Sums specified in the Third Schedule.
- Direct Taxes (calculated as per Sec. 7) in respect of gross profits for the immediately preceding accounting year

Calculate Allocable Surplus

- Allocable Surplus = 60% of Available Surplus, 67% in case of foreign companies.
- Make adjustment for 'Set-on' and 'Set-off'. For calculating the amount of bonus in respect of an accounting year, allocable surplus is computed after considering the amount of set on and set off from the previous years, as illustrated in Fourth Schedule.

Set On

- Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees, then, the excess shall, subject to a limit of twenty per cent of the total salary or wages of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus.

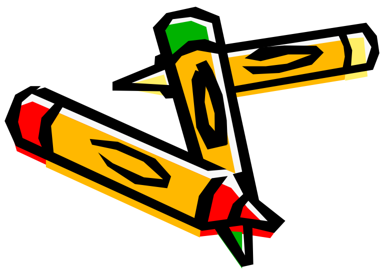
Set Off

- Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees, and there is no amount or sufficient amount carried forward and set on which could be utilised for the purpose of payment of the minimum bonus, then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year.

Set & Set Off

- Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

- The allocable surplus so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year.



- **DUTIES / RIGHTS OF EMPLOYER**
- **DUTIES**
- To calculate and pay the annual bonus as required under the Act
- To submit an annul return of bonus paid to employees during the year, in Form D, to the Inspector, within 30 days of the expiry of the time limit specified for payment of bonus.
- To co-operate with the Inspector, produce before him the registers/records maintained, and such other information as may be required by them.

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

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

- **RECOVERY OF BONUS DUE**
- Where any bonus is due to an employee by way of bonus, employee or any other person authorised by him can make an application to the appropriate government for recovery of the money due.
- If the government is satisfied that money is due to an employee by way of bonus, it shall issue a certificate for that amount to the collector who then recovers the money.

- Such application shall be made within one year from the date on which the money became due to the employee.
- However the application may be entertained after a year if the applicant shows that there was sufficient cause for not making the application within time.

- **OFFENCES AND PENALTIES**
- For contravention of the provisions of the Act or rules the penalty is imprisonment upto 6 months, or fine up to Rs.1000, or both.
- For failure to comply with the directions or requisitions made the penalty is imprisonment upto 6 months, or fine up to Rs.1000, or both.
- In case of offences by companies, firms, body corporate or association of individuals, its director, partner or a principal officer responsible for the conduct of its business, shall be deemed to be guilty of that offence, unless the person concerned proves that the offence was committed without his knowledge or that he exercised all due diligence