

FAST TRACK REVISION NOTES OF LABOUR LAWS

(I) PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act, 1936 is one of the old enactments dealing with employer-employee relationship. The limited purpose of the Act is to ensure prompt and full payment of wages to persons employed in industry. The State of Maharashtra has extended the provisions of the Act to all establishments covered by the Bombay Shops and Establishments Act, 1948.

APPLICABILITY

- (a) Every person employed in any factory, upon a railway or through sub-contractor in a railway and any person employed in an industrial or other establishment.
- (b) The Appropriate Government may by notification extend the provision to any class of person employed in any establishment or class of establishments.

ELIGIBILITY OF EMPLOYEES

Every person who is employed in any of the above mentioned establishments and who is drawing less than ₹ 10,000/- per month is eligible under the benefits of Payment of Wages Act, 1936.

BENEFITS UNDER THE ACT

The Act provides for regular and timely payment of wages on or before the expiry of 7th day of every month in cases of establishments employing less than 1,000 employees and on or before the expiry of 10th day of every month in cases of establishments with greater than 1000 employees. It also provides for prevention of unauthorised deductions being made from wages and charges of arbitrary fines.

OTHER IMPORTANT ISSUES

- a. Wages are required to be paid in current coin or currency notes or in both but not in kind. The written authorisation of an employee is necessary for payment by Cheque/credit to Bank A/c.
- b. The total deductions cannot exceed 75% of wages for payment to Co-op. societies and 50% in other cases.
- c. Every employer is required to maintain registers/records in Form No. I, II, III, IV to be kept for 3 years from last entry.
- d. Every employer is required to file Annual Return in Form V (In Maharashtra) regarding persons drawing gross wages below Rs. 1,000/- p.m.
- e. The nomination facility has been extended to all the eligible employees by filing a declaration in Form-I to receive the wages standing to his credit at the time of his death.

PENALTIES FOR NON-COMPLIANCE

Penalties prescribed are from ₹ 1,500-7,500. Repeat offences attract 1 to 6 months imprisonment and fine from ₹ 3,750-22,500. Delayed wage payments attract penalty of ₹ 750 per day of delay.

(II) MINIMUM WAGES ACT, 1948

The reason for enactment of Minimum Wages Act, 1948 was poor bargaining power of workers' organization in the country. The need for having minimum wage fixing machinery was stressed by the International Labour Organisation long back in 1928. Like the Payment of Wages Act, 1936, this Act also is exhaustively amended by many states to widen its application and its scope.

APPLICABILITY

Any person who directly or through Contractor/Agency or other person whether for himself or for any other persons employees one or more employees in any schedule employment in respect of which minimum rates of wages have been fixed under this Act.

ELIGIBILITY OF EMPLOYEES

Any person who is employed for hire or reward to do any work in a schedule employment and include an outdoor worker to whom any articles or materials are given for doing some work either at home or any other premises.

BENEFITS UNDER THE ACT

The Act prescribes the minimum rates of wages payable to employees for different scheduled employments for different classes of work and for adults, adolescents, and apprentices depending upon different localities, for one or more wage periods, viz. by hours, by the day, month or other large period. The Act has been extended to cover employees in the unorganized sector.

OTHER IMPORTANT ISSUES

- a. The Act is a beneficial legislation and should be given widest meaning so long as the language is capable of bearing such a construction.
- b. Register of wages is required to be maintained at the place of work in prescribed forms by every employer. Such records are to be preserved for 3 years from the time of last entry made therein.
- c. An employee is prohibited from giving up any of his right or relinquishing or reducing his right to minimum wages under the Act.
- d. The normal working day for an adult constitutes of 9 hours including the intervals of rest with maximum of 48 hours of working in a week.

PENALTIES FOR NON-COMPLIANCE

Imprisonment up to 6 months and/or fine up to ₹ 500 is imposable for contravention.

(III) PAYMENT OF BONUS ACT, 1965

The Payment of Bonus Act, 1965, gives to the employees a statutory right to a share in the profits of his employer. The Act enables the employees to get a minimum bonus equivalent to one month's salary or wage (8.33% of annual earnings) whether the employer makes profit or not. But the Act also puts a ceiling on the Bonus and the maximum bonus payable under the Act is equivalent to 2½ months' salary or wage (20% of annual earnings).

APPLICABILITY

The Act applies to:

- a. Every factory (as defined in Factories Act), and
- b. Every other establishment in which 20 or more person are employed on any day during accounting year.
- c. Special provisions with respect to certain establishments are provided.
- d. Once the Act applies, it shall continue to be governed, notwithstanding the number of persons employed falls below 10 or 20 as the case may be.

ELIGIBILITY OF EMPLOYEES

- a. Employees (other than apprentice) who have worked for not less than 30 days in that Accounting year.
- b. Employees drawing salary/wages exceeding ₹ 10,000 are not employees.
- c. With the promulgation of the Ordinance, the salary ceiling has been increased to ₹ 10,000/- P.M. The entitlement for calculation of Bonus will be ₹ 3,500/- P.M.

Those employed through contractor on building operation have now been covered under the Payment of Bonus Act.

BENEFITS UNDER THE ACT

- a. Subject to provisions: minimum bonus shall be 8.33% of the salary/wages earned by the employees or ₹ 100 whichever is higher.
- b. If allocable surplus, as computed under the Act, exceeds the amount of minimum bonus, then bonus shall be payable at rate subject to a maximum 20% of salary/wages earned during the accounting year.

OTHER IMPORTANT ISSUES

- a. Computation of Bonus is to be worked out as per Schedules I to IV of the Act.
- b. Records in Form No. 'A', 'B' & 'C' are to be maintained.
- c. Annual Return in Form 'D' is required to be filed.
- d. Time limit for payment of Bonus is prescribed as within 8 (eight) months from the closing of Accounting year if there is no dispute. In the case of dispute in respect of Bonus pending before any authority, bonus must be paid within 30 days from the date on which such award becomes enforceable or the date of settlement.

PENALTIES FOR NON-COMPLIANCE

Imprisonment up to 6 months and/or fine up to ₹ 1,000/- or with both.

(IV) EMPLOYEE'S COMPENSATION ACT, 1923

The formerly known 'Workmen's Compensation Act, 1923,' is now known as 'Employee's Compensation Act, 1923, and is an important enactment as it introduced a kind of social security scheme for the workers of this country. It enables an employee in the case of injury and his dependents in the case of his death, to claim the compensation at the cost of his employer organisation for such employment injury/ death.

APPLICABILITY

The Act applies to every employer:

- i. Which includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer; AND
- ii. When the services of a employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him.

ELIGIBILITY OF EMPLOYEES

Every employee to whom a personal injury is caused by accident arising out of and in the course of employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II to the act.

BENEFITS UNDER THE ACT

Amount of compensation shall be payable by the employer:

- a. Where death results from injury 50% of monthly wages X relevant factor or ₹ 1,20,000 whichever is more. (relevant factor depends upon the age of employee)
- b. Where permanent total disablement results from the injury 60% of monthly wages X relevant factor or ₹ 1,40,000, whichever is more (relevant factor depends upon the age of an employee).
- c. Where permanent partial disablement or temporary disablement results from injury as per prescribed schedule.
- d. Where temporary disablement, total or partial, results from injury, a half monthly payment equivalent to 25% of monthly wage of workman.
- e. The funeral expenses have been increased to ₹ 5,000/-.

OTHER IMPORTANT ISSUES

- a. Any contract by an employee waiving his right to be compensated under this Act is null and void.
- b. The intention of the Legislature and the circumstances under which law was enacted is to be seen. It is interpreted in favour of the weak.
- c. Notice book is to be maintained. A statement, report return is to be filed when applicable.

PENALTIES FOR NON-COMPLIANCE

Compensation should be paid early — delay beyond 1 month, attract interest @6% p.a. and penalty of up to 50% of the compensation. Certain other offences attract fine up to ₹ 500.

(V) PAYMENT OF GRATUITY ACT, 1972

An employee expects and deserves, as a matter of right, some reward when he retires after a long meritorious service and the enactment of the Payment of Gratuity Act, 1972, has fulfilled this expectation of an employee.

APPLICABILITY

The Act applies to:

- a. Every factory (as defined in Factories Act), mine, oil, field plantations, port & Railway Company.
- b. Every shop or establishment in which TEN or more persons are/were employed.
- c. Such other establishment in which ten or more employees employed or were employed on any day of the preceding 12 months.

ELIGIBILITY OF EMPLOYEES

The following persons are entitled to the benefits under the Act.

- a. Any person [NOT Being an Apprentice] employed for wages in any kind of work (manual or otherwise) or in connection with work of factory, mine, plantation, oilfield, railway company, port or other establishment; and
- b. At the time of retirement, resignation/termination, an employee should have rendered continuous service of not less than 5 years.
- c. In case of death or disablement, the gratuity is payable, even if he has not completed 5 years of service.
- d. Family in relation to male employee.

BENEFITS UNDER THE ACT

- a. The quantum of gratuity is to be computed at the rate of 15 days' wages (7 days wages in case of seasonal establishment) at the rate of wages last drawn by the employee concerned for every completed year of service or a part thereof exceeding 6 months.
- b. "Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the term and conditions of this employment and which are paid or are payable to him in case and includes, dearness allowance but does not include any bonus, commission, H.R.A., O.T. wages and any other allowance.
- c. The total amount of gratuity payable shall not exceed ₹ 10,00,000/-
- d. In case where employer offers the higher benefits of gratuity scheme, the employee will be eligible for such higher benefits.

- e. In the case of monthly rated employees, per day wages shall be calculated by dividing monthly rate by 26 days.

OTHER IMPORTANT ISSUES

- a. Employers other than Central Govt. or State Govt. obliged to obtain insurance from LIC in prescribed manner for liability for payment of gratuity.
- b. Establishments to which Act applies must get registered with the Controlling Authority.
- c. Once Act applies, it continues to apply even if employment strength falls below 10.
- d. An employee who is eligible for payment of gratuity has to send a written application to the employer in Form I within 30 days from the date gratuity becomes payable.

PENALTIES FOR NON-COMPLIANCE

Non-payment of gratuity payable under the Act is punishable with imprisonment up to 2 years (minimum 6 months) and/or fine up to ₹ 20,000. Other contraventions/offences attract imprisonment up to 1 year and/or fine up to ₹ 10,000.

(VI) EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

The Employees Provident Funds and Miscellaneous Provisions Act, 1952, is enacted to provide a kind of social security to the industrial workers and it includes following:

- (i) Employees Provident Fund Scheme, 1952
- (ii) Employees, Pension Scheme, 1995
- (iii) E.D.L.I. Scheme, 1976

The security, however, differs from the kind of security provided under the Workmen's Compensation Act, 1923, or Employees' State Insurance Act, 1948, The Employees' Provident Funds and Miscellaneous Provisions Act mainly provides for the retirement or old age benefits, such as Provident Fund, Superannuation Pension, Invalidation Pension, Family Pension and Deposit Linked Insurance.

APPLICABILITY

The Act applies to:

- a. Every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed,
- b. Establishment engaged in manufacture, marketing servicing and usage of computer (as defined in clause (i) of sub-section (10) of section 2 of Information Technology Act, (21 of 2000) or deriving any form of output there from or employing it for any type of processing services including software product companies, internet and e-commerce companies, information technology services and remote maintenance companies, research and development companies, systems integrators, on-site service companies and offshore development companies; and

- c. Any other establishment employing 20 or more persons which Central Government may notify.
- d. Any establishment employing even less than 20 can be covered by a specific Central Government notification.
- e. A new category of 'International Employee' defined under the act bringing foreign nationals working in India under the umbrella of PF Act.
- f. Contributions under the act are required to be carried out unless he/she is an 'excluded employee' and/or the other country has a reciprocating social security agreement with India.

ELIGIBILITY OF EMPLOYEES

Any person who is employed for wages in any kind of work of an establishment or employed through contractor in or in connection with the work of an establishment. Present wage ceiling is ₹ 6,500/- p.m.

BENEFITS UNDER THE ACT

The following benefits are available to employees under the Act:

- (a) Final withdrawal at the time of Retirement/Leaving of service.
- (b) Advance for
 - (i) Purchase of House
 - (ii) Repair of House
 - (iii) LIC Premium
 - (iv) Marriage of son/daughter, etc.
- (c) Life-long Pension to the member and to his/her legal heirs after death.
- (d) Insurance Benefit on members death while in service
- (e) Interest @ 9.5% on deposits and the same is exempt from income tax.

OTHER IMPORTANT ISSUES

- (a) Once the Act applies, it continues to apply even if employment strength falls below 20.
- (b) Periodical returns have to be filed under the Act.
- (c) Inspection Note Book has to be maintained.

PENALTIES FOR NON-COMPLIANCE

Any person who contravenes any of the provisions of the Act is liable to be arrested without any warrant being issued in respect of a cognizable offence. Whereas defaults by employer in paying contributions or inspections, administration charges attract imprisonment up to 3 years and fines up to ₹ 5,000. In case if offence is repeated, imprisonment may be extended to 5 years but not less than 2.

(VII) BOMBAY SHOPS & ESTABLISHMENT ACT, 1948

Legislation to regulate the conditions of work in shops and commercial establishments has been in force in the State of Maharashtra for nearly 57 years. The Act is an improved version of The Shop Act, 1939, and has undergone several improvements since its enactment.

APPLICABILITY

It applies to commercial establishments, residential hotels, restaurants, eating houses, theatres, clubs, other places of public amusement or entertainment and other establishments which fall within Municipal and Local Authorities limits of Mumbai, Pune, Solapur, Nashik, etc.

ELIGIBILITY OF EMPLOYEES

Application of Minimum Wages Act, Payment of Gratuity Act, Payment of Bonus Act, Protection under Industrial Dispute Act continue to be applied to every worker employed in every such commercial establishment.

OBLIGATIONS UNDER THE ACT

The Act has prescribed Maintenance of registers and records, exemptions in certain areas, categories, etc., weekly holidays, spread over of duties and discipline to the employees.

OTHER IMPORTANT ISSUES

- i. An employee in a shop or commercial establishment cannot be required or allowed to work for more than 9 hours in a day or 48 hours in a week.
- ii. Every shop or commercial establishment must remain closed on one day of the week and no deduction can be made from the wages of an employee in a shop or commercial establishment on account of any day on which it has remained so closed.
- iii. Different working hours have been provided in cases of pan-beedi shops, restaurants and theatres.
- iv. The Act also provides for restrictions of working hours, O.T. Benefits, Leave Benefits etc.

PENALTIES FOR NON-COMPLIANCE

Contravention of certain provisions of Law, penalties for obstructions to the Inspector, non-compliance leading to the prosecution as provided under the Act.

(VIII) EMPLOYEES' STATE INSURANCE ACT, 1948

The Employees' State Insurance Act, 1948, provides to the workers not only accident benefits but also other benefits such as sickness benefits, maternity benefits and medical benefits. Under the Act, the workers are also required to contribute to a social insurance fund which is to be utilised for conferring benefits to them.

APPLICABILITY

The Act applies to:

- a. All factories excluding seasonal factories employing 10 or more persons;

- b. Any establishment including shop, hotel, restaurants, road motor transport establishments, cinemas including preview theaters, newspaper establishments, educational institutions (including public, private, aided or partially aided) run by an individual, trust, society or other organisations and medical institutions(including corporate, joint sector, trust, charitable and private ownership hospitals, nursing homes, diagnostic centres, pathological labs).
- c. Any establishment, which the Govt. may specifically notify as being covered.

ELIGIBILITY OF EMPLOYEES

- a. Any person employed for wages up to ₹ 15,000/- in or in connection with the work of a factory or establishment AND
- b. Any person who is directly employed by the employer in a factory or through his agent on work which is ordinarily part of the work of the factory or incidental to purpose of the factory.

Obligations of Employer

- a. Deduct ESI Contribution @ 1.75% from the wages of such employee regularly and deposit the same along with Employer's share of contribution @4.75% of the wages with the already specified banks.
- b. No contribution will be deducted from the employee whose daily wages are ₹ 50/- or less. Employer's contribution, however, is payable for all such employees.

BENEFITS UNDER THE ACT

- a. Free medical treatment is offered to employees at ESI hospital, dispensaries or other recognised shops by ESI.
- b. About 7/12th of employees normal wages will be payable to him by ESI as compensation during sickness.
- c. Maternity benefit for 12 weeks of which not more than 6 weeks should be preceding confinement.
- d. Injury during/in course of employment resulting in temporary/permanent disablement entitles the covered employee to a regular payment to substitute his lost wages.
- e. Death during the course of employment entitles specified dependents to a regular payment.
- f. One time payment of ₹ 1,000 to help meet funeral expenses.
- g. The Corporation has taken more steps to make the scheme more favourable and these include -
 - (i) Payment of Long Term benefits through Electronic Clearing Scheme (ECS)
 - (ii) Rates of Cash Benefits have been enhanced and entitlements have been enlarged.
 - (iii) Cashless provisions of super specialty services through network hospitals have been introduced.
 - (iv) Issue of smart cards called 'Pehchan' and networking of all ESI institutions for easy access.

(v) Improvement of work environment and facilities for Insured Persons (IPs) visiting ESIC Offices has been implemented.

OTHER IMPORTANT ISSUES

- a. Once the Act applies it continues to apply even if employment strength falls below 20.
- b. Register of Employees is to be maintained.
- c. Reports and Returns have to be filed as applicable.
- d. W.e.f. 1-4-2008, all employers employing more than 40 employees shall have to append a certificate duly certified by a Chartered Accountant in the revised format of Return of Contributions. Form 5 under Regulation 26 has been suitably amended.
- e. The Return of Contributions is to be submitted for half year ending 30th September and 31st March every year on or before 11th November and 12th May every year respectively.
- f. For every employer, where the number of employees is less than 40, the return is required to be furnished with self certification of the employer.
- g. The Certificate by Chartered Accountant requires that the return as filled in by the employer is verified from the records and registers of the employer and the same is found to be correct.
- h. The object of the amendment is to simplify and streamline the process of revenue enforcement and lay focus on registration and coverage of all coverable employees. Hence, Chartered Accountants should exercise proper care while certifying the above return.

PENALTIES FOR NON-COMPLIANCE

For Employees' Contribution, Imprisonment for 2 years to maximum 5 years and/ or fine of ₹ 25,000/- For Employers' Contribution Imprisonment for 6 months to maximum 3 years and/or fine of ₹ 10,000/-.

(IX) CONTRACT LABOUR (REGULATIONS & ABOLITIONS) ACT, 1970

The Contractor Labour (Regulations & Abolitions) Act, 1970, was passed to prevent exploitation of contract labour. The policy of the Act is to prohibit the employment of contract labour by regulating the same and wherever this is not possible, to improve the conditions of work of contract labour. Apart from providing for prohibition of employment of contract labour, the Act also provides for health and welfare of the contract labour.

APPLICABILITY

The Act applies to every establishment where the Contractor employs twenty or more contract employees. It also applies to the establishments in which the work is carried only on intermittent or casual nature or the seasonal character work exceeding 60 days.

ELIGIBILITY OF EMPLOYEES

- a. The contract workman/employee means any person employed in or in connection with the work of an establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward but does not include a person employed in a managerial or administrative capacity.
- b. They are entitled for the benefits either directly or through contractor for statutory benefits and protection.

BENEFITS UNDER THE ACT

- a. The contractor is required to provide canteens, rest-rooms, latrines, urinals, drinking water, washing facilities and first aid boxes for the use of contract labour.
- b. He is also required to make prompt payment of wages to contract labour.
- c. Principal employer is liable to pay wages and provide other amenities, if the contractor fails to do so.

OTHER IMPORTANT ISSUES

The contravention of the provisions regarding the employment of contract labour is a contravention under the Act for which the contractor will be liable to prosecutions and fines. The offences under the Act are cognizable offences.

PENALTIES FOR NON-COMPLIANCE

The contractor, for contravening any provisions, can be prosecuted under the Act and can be levied a fine. Contravention of any provisions of the Act shall be punishable with imprisonment to the extent of 3 months or with fine which may extend to ₹ 1,000/- or with both and in the case of continuing contravention, with an additional fine which may extend to ₹ 100/- per day.