

INDUSTRIAL LEGISLATIONS (18 MBA 403C)

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Module-1

Introduction:

The term 'Labour Legislation' is - used to cover all the laws which have been enacted to deal with "employment and non-employment" wages, working conditions, industrial relations, social security and welfare of persons employed in industries.

The term 'labour legislation' in India is treated as an arm of the State for the regulation of working and living conditions of workers. Organized industry in a planned economy, calls for the spirit of co-operation and mutual dependence for attaining the common purpose of greater, better and cheaper production. Since this has not been happening voluntarily, there is the need for State intervention.

Need for labour legislation in India:

The need for labour legislation may be summarized as under:

- Necessary for the health, safety, and welfare of workers;
- Necessary
- to protect workers against oppressive terms as individual worker is economically weak and has little bargaining power;
- To encourage and facilitate the workers in the organization;
- To deal with industrial disputes;
- To enforce social insurance and labour welfare schemes.

Objectives:

The objectives of labour legislations are two-fold:

- Preservation of the health, safety and welfare of workers; and
- Maintenance of good relations between employers and employees.

Principles of labour legislation:

Social Justice:

- The essence of democracy is ensuring social justice to all sections of the community.
- This demands the protection of those who cannot protect themselves.
- In modern industrial set-up, workers, left to themselves, are unable to protect their interest.
- Therefore, the State has to intervene to help them by granting them freedom of association, the power of collective bargaining and by providing for mediation or arbitration in the case of industrial conflict.

Social Equity:

- Legislation based on this principle provides for achievement of definite standards.
- Standards in terms of living, position in society etc. of the working population.

- These standards for the working class can be achieved by bringing about changes in the Law of our land.
- Power to change the Law is exercised by the government.
- Existing laws may be amended to meet the changed standards.

National Economy:

Measures have to be provided through legislation to:

- Ensure normal growth of industry for the benefit of the nation as a whole;
- Satisfy the physical and intellectual needs of the citizens;
- Ensure the growth of industrial efficiency such as to adjust the wage system with a view to increase the productivity and prosperity of the workers.

International Uniformity:

- Since its inception, securing minimum standards (for the working population – worldwide) on a uniform basis in respect of all labour matters has been the main objective of ILO.
- To this end, conventions are passed at the conferences of ILO.
- As a member of the ILO, adopting these conventions would require appropriate legislation to be brought about.
- The influence of international labour conventions has been significant in shaping the course of labour legislation in India.

Labor and Employment laws in India

The law relating to labour and employment in India is primarily known under the broad category of "Industrial Law". Industrial law in this country is of recent vintage and has developed in respect to the vastly increased awakening of the workers of their rights, particularly after the advent of Independence. Industrial relations embrace a complex of relationships between the workers, employers and government, basically concerned with the determination of the terms of employment and conditions of labour of the workers. Escalating expectations of the workers, the hopes extended by Welfare State, uncertainties caused by tremendous structural developments in industry, the decline of authority, the waning attraction of the work ethics and political activism in the industrial field, all seem to have played some role.

Historical Background

The history of labour legislation in India is naturally interwoven with the history of British colonialism. The industrial/labour legislations enacted by the British were primarily intended to protect the interests of the British employers. Considerations of British political economy were naturally paramount in shaping some of these early laws. The earliest Indian statute to regulate the relationship between employer and his workmen was the Trade Dispute Act, 1929 (Act 7 of 1929). Provisions were made in this Act for restraining the rights of strike and lock out but no machinery was provided to take care of disputes.

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

Disputes Act (the Act) brought into force on 01.04.1947 repealing the Trade Disputes Act 1929 has since remained on statute book.

Object of the Act

The Industrial Disputes Act, 1947, is, therefore, the matrix, the charter, as it were, to the industrial law. The Act and other analogous State statutes provide the machinery for regulating the rights of the employers and employees for investigation and settlement of industrial disputes in peaceful and harmonious atmosphere by providing scope for collective bargaining by negotiations and mediation and, failing that, by voluntary arbitration or compulsory adjudication by the authorities created under these statutes with the active participation of the trade unions. With the aid of this machinery, industrial law covers a comprehensive canvas of state intervention of social control through law to protect directly the claims of workers to wages, bonus, retiral benefits such as gratuity, provident fund and pension, claims, social security measures such as workmen's compensation, insurance, maternity benefits, safety welfare and protection of minimum of economic well-being. Job security has been particularly protected by providing industrial adjudication of unfair discharges and dismissals and ensuring reinstatement of illegally discharged or dismissed workmen. Protection has gone still further by laying down conditions of service in specified industries and establishments and limiting the hours of work. By and large, all these subjects are "connected with employment or non-employment or terms of employment or with the conditions of labour" of industrial employees. In other words, these matters are the subject matter of industrial disputes, which can be investigated and settled with the aid of the machinery provided under the Act or analogous State statutes.

Mechanism of Disputes Settlement

The principal techniques of dispute settlement provided in the I.D. Act are collective bargaining, mediation and conciliation, investigation, arbitration, adjudication and other purposes.

Collective bargaining

Collective bargaining is a technique by which disputes of employment are resolved amicably, peacefully and voluntarily by settlement between labour unions and managements. The method of collective bargaining in resolving the Industrial dispute, while maintaining industrial peace has been recognized as the bed rock of the Act. Under the provision of the Act, the settlement arrived at by process of collective bargaining with the employer has been given a statutory recognition under Section 18 of the Act. Under the Act two types of settlement have been recognised:

1. Settlement arrived in the course of conciliation proceeding before the authority. Such settlements not only bind the member of the signatory union but also non-members as well as all the present and future employees of the management.
2. Settlement not arrived in the course of conciliation proceedings but signed independently by the parties to the settlement binds only such members who are signatory or party to the settlement.

Section 19 of the Act prescribes the period of operation inter alia of such a settlement and envisage the continuation of the validity of such a settlement unless the same is not replaced by another set of settlement, while Section 29 prescribes the penalty for the breach of such a settlement.

Mediation and Conciliation -

Under the Act, an effective conciliation machinery has been provided which can take cognizance of the existing as well as apprehended dispute, either on its own or on being approached by either of the parties to the dispute. The Act further makes conciliation compulsory in majority of disputes.

Investigation

Section 6 of the Act empowers the government to constitute a court of inquiry, for inquiring into any matter pertaining to an Industrial Dispute. The procedure of the court of inquiry has also been

prescribed by Section 11. While the report of the court is not binding on the parties, many time it paves the way for an agreement.

Arbitration

Voluntary arbitration is a part of the infrastructure of resolving the Industrial Dispute in the Industrial adjudication. Section 10 of the Act provides for the provision for resolving the Industrial Dispute by way of arbitration, which leads to a final and binding award. However, in India arbitration is not a preferred way of resolving Industrial Disputes.

Adjudication

Adjudication means a mandatory settlement of Industrial Disputes by labour courts, Industrial Tribunals or National Tribunals under the Act or by any other corresponding authorities under the analogous state statutes. By and large, the ultimate remedy of unsettled dispute is by way of reference by the appropriate government to the adjudicatory machinery for adjudication. The adjudicatory authority resolves the Industrial Dispute referred to it by passing an award, which is binding on the parties to such reference. There is no provision for appeal against such awards and the same can only be challenged by way of writ under Articles 226 and 227 of the Constitution of India before the concerned High Court or before the Supreme Court by way of appeal under special leave under Article 136 of the Constitution of India.

Employment Injury, Health, and Maternity Benefit

The Workmen's Compensation Act 1923 is one of the earliest pieces of labour legislation. It covers all cases of 'accident arising out of and in the course of employment' and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. The younger the worker and the higher the wage, the greater is the compensation subject to a limit. The injured person, or in case of death the dependent, can claim the compensation. This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Scheme, which is conceptually considered to be superior to the Workmen's Compensation Act.

The Employees' State Insurance Act, 1948 provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. It facilitates both outpatient and in-patient care and freely dispenses medicines and covers hospitalization needs and costs. Leave certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining.

The Maternity Benefit Act is applicable to notified establishments. Its coverage can therefore extend to the unorganised sector also, though in practice it is rare. A woman employee is entitled to 90 days of paid leave on delivery or on miscarriage. Similar benefits, including hospitalisation facilities are available under the law described in the paragraph above.

Retirement Benefit

There are two types of retirement benefits generally available to workers. One is under the Payment of Gratuity Act, 1972 and the other is under the Employees Provident Fund Act. In the first case a worker who has put in not less than five years of work is entitled to a lump sum payment equal to 15 days' wages for every completed year of service. Every month the employer is expected to contribute the required money into a separate fund to enable this payment on retirement or termination of employment. In the latter scheme both the employee and the employer make an

equal contribution into a national fund. The current rate of contribution is 12 percent of the wage including a small percentage towards family pension. This contribution also attracts an interest, currently 9.5 percent per annum, and the accumulated amount is paid on retirement to the employee along with the interest that has accrued. The employee is allowed to draw many types of loan from the fund such as for house construction, marriage of children, and education etc. This is also a benefit, which is steadily being extended to sections of the unorganized sector, especially where the employer is clearly identifiable.

Statutory Regulation of Condition of Service in Certain Establishments

There is statutory provision for regulating and codifying conditions of service for an industrial establishment employing more than 100 workmen under the provisions of Industrial Employment (Standing Orders) Act, 1946 (this Act). Under the provisions of this Act every employer of an Industrial Establishment employing 100 or more workmen is required to define with sufficient precision the condition of employment and required to get it certified by the certifying authorities provided under Section 3 of this Act. Such certified conditions of service will prevail over the terms of contract of employment. In a significant judgment recently the Delhi High Court has held that a hospital even though employing more than 100 workmen is not covered under the provisions of this Act, as a hospital is not an Industrial Establishment as defined under this Act.

Distinctive Feature of Indian Labor and Employment Laws

A distinguishing feature of Indian Labor and Employment Laws are that in India there are three main categories of employees: government employees, employees in government controlled corporate bodies known as Public Sector Undertakings (PSUs) and private sector employees.

The rules and regulations governing the employment of government employees stem from the Constitution of India. Accordingly, government employees enjoy protection of tenure, statutory service contentions and automatic annually salary increases.

Public sector employees are governed by their own service regulations, which either have statutory force, in the case of statutory corporations, or are based on statutory orders.

In the private sector, employees can be classified into two broad categories namely management staff and workman. Managerial, administrative or supervisory employees drawing a salary of Rs.1600/- or more per month are considered management staff and there is no statutory provisions relating to their employment and accordingly in case of managerial and supervisory staff/employee the conditions of employment are governed by respective contracts of employment and their services can be discharged in terms of their contract of employment. Workmen category are covered under the provisions of the Industrial Disputes Act as already detailed above.

Voluntary Retirement Scheme and Golden Handshake

In the competitive time of globalization and liberalization the system of Voluntary retirement with golden handshake is widely prevalent both in public and private sectors in order to reduce the surplus manpower which for most of public sector undertakings is a major cause of losses.

Classification and overview of LABOUR LAWS in India

Labour Laws may be classified under the following heads:

I. Laws related to Industrial Relations such as:

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

II. Laws related to Wages such as:

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

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

8. Factories Act, 1948.
9. Plantation Labour Act, 1951.
10. Mines Act, 1952.
11. Working Journalists and other Newspaper Employees' (Conditions of Service and Misc. Provisions) Act, 1955.
12. Merchant Shipping Act, 1958.
13. Motor Transport Workers Act, 1961.
14. Beedi & Cigar Workers (Conditions of Employment) Act, 1966.
15. Contract Labour (Regulation & Abolition) Act, 1970.
16. Sales Promotion Employees Act, 1976.
17. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
18. Dock Workers (Safety, Health & Welfare) Act, 1986.
19. Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996.
20. Building and Other Construction Workers Welfare Cess Act, 1996
21. Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
22. Dangerous Machines (Regulation) Act, 1983
23. Dock Workers (Regulation of Employment) Act, 1948
24. Dock Workers (Regulation of Employment) (Inapplicability to Major Ports) Act, 1997
25. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
26. Industrial Employment (Standing Orders) Act, 1946
27. Mines and Mineral (Development and Regulation) Act, 1957
28. Plantation Labour Act, 1951
29. Private Security Agencies (Regulation) Act, 2005

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

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

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

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

VI. Laws related to Social Security such as:

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

- 47. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972**
- 48. Mica Mines Labour Welfare Fund Act, 1946**
- 49. Personal Injuries (Compensation Insurance) Act, 1963**
- 50. Personal Injuries (Emergency Provisions) Act, 1962**

LABOUR LAWS FOR HR PROFESSIONALS

Acts covered:

1. The Contract Labour (Regulation and Abolition) Act 1970
2. The Employees Provident Funds and Miscellaneous Provisions Act 1952
3. The Employees State Insurance Act 1948
4. The Factories Act 1948
5. The Industrial Disputes Act 1947
6. The Industrial Employment (Standing Orders) Act, 1946
7. The Maternity Benefit Act 1961
8. The Minimum Wages Act 1948
9. The Payment of Wages Act 1936
10. The Payment of Gratuity Act 1972
11. The Trade Unions Act 1926
12. The Employee's Compensation Act 1923

The Factories Act, 1948

Working conditions in factories are regulated by this Act, which provides for health, safety and welfare and precautions to be taken in case of hazardous processes. Minimum standards of lighting, ventilation, health, safety and welfare service, which the employer should provide in their factories, have also been laid down. The Act prescribes 48 hours week for adult workers, prohibits the employment of children under 14 in any factory, and makes some special provisions for children and women. It also makes provision for annual leave with wages.

The Act is enforced by the State Governments through their Factory Inspectorates.

Definition:

“Factory” means any premises including the precincts thereof -

- i. whereon 10 or more workers are working on any day of the preceding twelve months, and in any part of which a manufacturing process is carried on with the aid of power, or is ordinarily so carried on, or
- ii. Whereon 20 or more workers are working on any day of the preceding twelve months, and in any part of which manufacturing process is carried on without the aid of power, or is ordinarily carried on, -

But does not include a mine subject to the operation of the Mines Act 1952 or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.

Explanation I : For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account.

Explanation II : For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;

"Manufacturing process"

Means any process for - (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

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

(iii) Generating, transforming or transmitting power; or

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

(v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; (Inserted by the Factories (Amendment) Act, 1976, w.e.f. 26-10-1976.)

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

Worker"

a person employed directly or by or through any agency (including a Contractor) with or without the knowledge of the principal employer whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for manufacturing process, or any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

MAIN PROVISIONS

Registration and Renewal of factories:

To be granted by Chief Inspector of Factories on submission of prescribed form, fee and plan

Health

- **Disposal of wastes and effluents**

Effective arrangements should be made for the treatment and disposal of wastes and effluents

- **Ventilation and temperature**

Adequate ventilation by circulation of fresh air and suitable temperature for maintaining comfort and preventing injury to the workmen should be ensured.

- **Dust and fumes**

Effective measures should be taken to prevent inhalation and accumulation of dust and fumes in work room.

- **Artificial Humidification**

Artificial humidification shall be maintained as per the standards prescribed by the State Government

- **Over crowding**

Each employee should be given a space of at least 14.2 cub.m

- **Lighting**

Sufficient and suitable lighting natural or artificial or both should be maintained

- **Drinking Water**

Wholesome drinking water should be supplied to the workers

- **Latrines and Urinals**

Sufficient Latrine and Urinal accommodation conveniently situated and accessible to all workers at all times should be provided

- **Spittoons**

Sufficient number of spittoons in convenient places shall be maintained in clean and hygienic conditions.

Safety Measures:

- **Fencing of Machinery**

Every moving part of the prime mover and all moving parts should be properly fenced.

- **Work on near machinery in motion**

Trained adult male worker wearing tight fitting clothing should only be allowed to work near machinery in motion

- **Employment young persons on dangerous machines**

No young person should be allowed to work on dangerous machines without proper training

- **Striking gear and devices for cutting off power**

Suitable devices for cutting of power shall be provided for cutting off power

- **Self acting machines**

No traversing part of the self-acting of machine shall run over a space which any person is liable to pass

- **Casing of new machinery**

All screws and bolts should be encased to prevent any danger

- **Prohibition of employment of women and children near cotton openers**

No women and children should be employed near cotton openers

- **Hoists, lifts, lifting machines, chains, ropes and tackles**

Hoists, lifts, lifting machines, chains, ropes and tackles should be of good mechanical construction and tested periodically

- **Revolving Machinery**

Effort should be taken to ensure that safe working speed of the revolving machinery should not be exceeded

- **Pressure Plants**

Effective measures should be taken to ensure that safe working pressure of Pressure Plant is not exceeded

- *Floors, stairs and means of access*

Floors, stairs and means of access should be of sound construction and properly maintained

- **Protection of eyes**

Eye should be protected from any injury or exposure to excessive light

- **Precaution against dangerous fumes and gases etc.,**

All practical measures should be taken to remove any dangerous fumes, gases, vapours before allowing any person to enter into confined space

- **Explosive or inflammable dust, gas etc.,**

Effective enclosure of machinery and removal of inflammable dust gas etc., should be done to prevent any explosion

- **Precaution in case of fire**

Safe means of escape in the event of a fire and necessary equipments or extinguishing fire should be provided

- **Safety Officer**

Wherein more than or equal to 1000 employees are working, a Safety Officer should be appointed

Welfare Measures:

- **Washing facilities**

Adequate and suitable facility for washing shall be provided and maintained for the use of workers

- **Facilities for storing and drying clothes**

Suitable places for keeping clothing not worn during working hours and for the drying of wet clothing should be provided

- **Facilities for sitting**

Suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

- **First Aid appliances:**

Provision of first-aid boxes or cupboards equipped with the prescribed contents and the number of such boxes and cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed.

- **Canteens**
In every factory wherein more than 250 workers are ordinarily employed a canteen should be provided and maintained.
- **Shelters, Rest rooms and Lunch rooms:**
Every factory wherein more than 150 workers are ordinarily employed adequate and suitable shelters or rest rooms and a suitable lunchroom, with provision for drinking water shall be provided and maintained for the use of the workers.
- **Crèches**
When there are 30 or more women workers are employed, there shall be provided and maintained suitable rooms for the use of children under 6 years of age of such women
- **Welfare Officer**
When there are 500 or more workers, occupier shall employ such number of welfare officers as prescribed

Working Hours of Adults:

Normal working hours:

- Weekly Hours – 48 hrs
- Daily Hours - 9 hrs (subject to 48 hrs. / week)
- The above restrictions shall not apply to employees who hold position of supervisory, Management or employees in confidential positions. (Stenographer, Telephone Operator, PAs or Secretaries.)

Urgent Repairs:

- Weekly hours - 56 hrs
- Daily hours - 10 hrs
- Total Hours of OT / Qtr.- 50 (Qtr means three consecutive months beginning with 1 January, 1 April, 1 July or 1 October)
- Shift workmen are allowed to work the whole or part of the subsequent shift due to absence of a reliever subject to following conditions:
 - The next shift for the shift workmen shall not commence before a period of eight hours elapsed.
 - notice to Inspector of factories within 24 hrs of the commencement of the shift explaining the reasons under which the worker is required to work
 - Exemption to male adult worker only.

Urgent Repairs which involve danger to human life or safety:

- Exemptions are allowed for Urgent repairs:
- Daily hours – 15 hours (Cumulative 3 days – 39 hours)
- Weekly hours – 66 hours

Chief Inspector of Factories exempts the factory to deal with an exceptional pressure of work:

- Daily hours - 12 hrs
- Total Hours including OT / week.- 60 hrs

- OT Hours per qtr - 75 hrs.
- No worker shall be allowed to work more than 7 days at a stretch

Employment of young persons

- Prohibition of employment of young children who have not completed 14 years

Annual leave with wages:

- A worker having worked for 240 days is granted leave with wages @ one day leave for every 20 days of work.

Workers' Participation in Safety Management

(1) The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a Safety Committee consisting of equal number of representatives of workers and management to promote cooperation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf : Provided that the State Government may, by order in writing and for reasons to be recorded, exempt the occupier of any factory or class of factories from setting up such committee.

(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.

Obligations of workers

(1) No worker in a factory - (a) shall willfully interfere with or misuse any appliance, convenience or other thing provided in a factory for the purposes of securing the health, safety or welfare of the workers therein;

(b) Shall willfully and without reasonable cause do anything likely to endanger himself or others; and

(c) Shall willfully neglect to make use of any appliance or other thing provided in the factory for the purposes of securing the health or safety of the workers therein.

(2) If any worker employed in a factory contravenes any of the provisions of this section or of any rule or order made thereunder, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Right of workers, etc

Every worker shall have the right to - (i) obtain from the occupier, information relating to workers' health and safety at work;

(ii) Get trained within the factory wherever possible, or, to get himself sponsored by the occupier for getting trained at a training centre or institute, duly approved by the Chief Inspector, where training is imparted for workers' health and safety at work;

(iii) Represent to the Inspector directly or through his representative in the matter of inadequate provision for protection of his health or safety in the factory

Penalties:

Offence	Penalties
For contravention for the provisions of the Act or Rules	Imprisonment upto 2 years or fine upto Rs.1 Lakh or both
On continuation of contravention	Rs.1000 per day
On contravention of Chapter IV pertaining to safety or dangerous operations	<ul style="list-style-type: none"> Not less than Rs.25000 in case death Not less than Rs.5000 in case serious injuries
Subsequent contravention of some provisions	Imprisonment upto 3 years or fine not less than Rs.10,000 which may extend to Rs.2 Lakhs
Obstructing Inspectors	Imprisonment upto 6 months or fine upto Rs.10,000 or both
Wrongful disclosing result pertaining to results of analysis	Imprisonment of six months or fine upto Rs.10,000 or both
For contravention of the provisions of Sections 41 B, 41 C and 41 H pertaining to compulsory disclosure of information by occupier specific responsibility of occupier or right of workers to work imminent danger	Imprisonment upto 7 years with fine upto Rs.2 Lakhs and on continuation @ Rs 5000 per day. Imprisonment of 10 years contravention continuous for 1 year

The Employee's Compensation Act 1923

The passing of Workmen's Compensation Act in 1923 was the first step towards social security of workmen. The theory of this act is that "the cost of product should bear the blood of the workman". This Act provides compensation to certain classes of workmen by their employers for injury, which may be suffered, by the workmen as result of an accident during the course of employment.

Object

To provide Compensation to Workmen for accidental injury and occupational diseases arising during and in the course of employment.

Applicability of Act

This Act is applicable to all employments in which the ESI Act is not applicable.

Definitions

"Dependent"

means any of the following relatives of a deceased workman, namely :- (i) a widow, a minor legitimate or adopted son, and unmarried legitimate or adopted daughter, or a widowed mother; and

- (ii) 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;
- (iii) If wholly or in part dependent on the earnings of the workman at the time of his death, (a) a widower,
 - (b) A parent other than a widowed mother,
 - (c) 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 a minor,
 - (d) A minor brother or an unmarried sister or a widowed sister if a minor,
 - (e) A widowed daughter-in-law,
 - (f) A minor child of a pre-deceased son,
 - (g) A minor child of a pre-deceased daughter where no parent of the child is alive, or
 - (h) A paternal grandparent if no parent of the workman is alive.

Explanation : For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively;

"Employer"

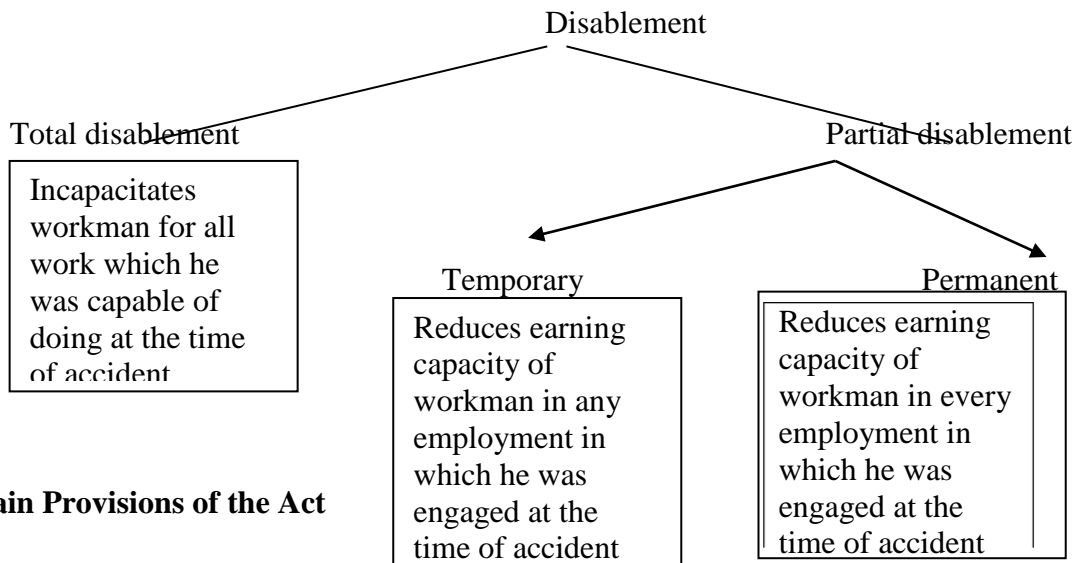
includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;

"Wages"

includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

"Workman"

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



Main Provisions of the Act

Injury / Diseases arising out of and in course of employment are payable –

The term ‘arising out of and in the course of employment’ means that Compensation is payable only in those injury/diseases where the employment is the immediate and proximate cause of the said injury/disease. In other words, the injury/disease would not have occurred had the workman not been employed in the particular employment

Compensation payable – The Workmen’s Compensation payable as per the act is as under :

S.N	Description	Compensation
1	Death due to injury	50% of wages * Relevant factor OR Rs 80,000/- , whichever is more
2	Permanent total disablingment due to injury	60% of wages * Relevant factor OR Rs 90,000/- , whichever is more
3	Permanent Partial disablingment due to injury	% of compensation as is payable in (ii) or % of compensation proportionate to loss of earning capacity
4	Temporary Disablingment	25% of wages paid half monthly
5	Occupational disease	Occupational disease to be treated as injury by accident and compensation as applicable in the cases of injury are payable

Following points are to be noted in calculation of compensation

- Wages to be actual or Max Rs 4000/- per month.
- Relevant factor are given in Schedule III of the Act
- Employee not eligible for compensation when he/she has filed a Civil Suit against the employer.

Compensation not payable : Compensation under this Act is not payable when

- The disablement due to injury is less than 4 days
- The employee was under the influence of drugs/alcohol at the time of accident
- Workman willfully disobeys any safety rule
- Workman willfully removes/disregards any safety guard/ equipments
- Workman has filed a Civil suit against the employer for claim of compensation.
- Workman has refused to get himself medically examined cost of which is borne by the employer.

Payment of Compensation – The Compensation payable under the Act is to be made by deposit to the Commissioner of Workmen's Compensation who will distribute the same to workmen or his dependents.

However, amount equal to 3 months wages can be paid directly to the dependents in cases of death of workman, provided the said amount is less than the total compensation payable to workman.

Report of death and serious bodily injury – should be given within 7 days of the death/ serious bodily injury to the Commissioner of Workmen's Compensation

Medical Examination –The employer should get the medical examination of the workman who has made a claim for compensation, within 3 days of receipt of claim.

Penalties

<i>Offence</i>	<i>Punishment</i>
Whoever fails to maintain notice book or send information /report to Commissioner	Fine which may extend upto Rs 5000/-

The Contract Labour (Regulation and Abolition) Act, 1970

The employment of contract labour cannot be completely ruled out under the circumstances, the government, committed as it is to ideal of social justice could adopt only the middle course i.e., regulating the employment of contract labour in certain establishments and abolishing it in other establishment. In view of the above, this Act was formulated.

Applicability

1. To every Establishment where 20 or more contract workmen are employed/ were employed in previous 12 months, **and**
2. To every Contractor who employs 20 or more workmen /employed in previous 12 months

DEFINITIONS.**"Appropriate Government"**

Means,

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government; (ii) in relation to any other establishment, the Government of the State in which that other establishment is situated;

(b) a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer;

"Contractor",

means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;

"Controlled industry"

means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;

"Establishment"

Means

(i) Any office or department of the Government or a local authority, or

(ii) Any place where any industry, trade, business, manufacture or occupation is carried on;

(f) "Prescribed" means prescribed by rules made under this Act;

"Principal employer"

Means

(i) In relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,

(ii) In a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named,

(iii) In a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,

(iv) In any other establishment, any person responsible for the supervision and control of the establishment.

Explanation : For the purpose of sub-clause (iii) of this clause, the expressions "mine", "owner" and "agent" shall have the meanings respectively assigned to them in clause (j), clause (l) and clause (c) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

"Wages"

shall have the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936);

"Workman"

Means, any person employed, in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied but does not include any such person –

(A) Who is employed mainly in a managerial or administrative capacity; or

(B) Who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or

(C) Who is an out-worker, that is to say, a person to whom any articles and materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

(2) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

Main Provisions of the Act

- **Registration of Establishment** - Principal Employer (PE) should apply for Registration of the establishment.
 - At any given time, there should be only that number of contract labour (or less) as specified in the Registration Certificate.
 - An establishment which is not registered under this Act cannot employ Contract Labour
- **License for Contractors**- All the contractors covered under this Act have to obtain a License for employing contract labour in a particular establishment.
 - License is valid for specified period and can be renewed on payment of fees
 - License contains conditions like payment of wages to contract labour, number of contract labour, hours of work, etc

- **Prohibition of Contract Labour** – The Appropriate government may prohibit Contract Labour in a particular employment in consultation with the Contract Labour Advisory Board. The following aspects should be considered by appropriate government before prohibiting employment of contract labour
 - Whether work is incidental or necessary to industry, trade, business
 - Whether work is of perennial nature
 - Whether the work is ordinarily done through regular employees
 - Whether the work is sufficient to employ a considerable no. of whole time employees

- **Amenities for Contract Labour -**

The following amenities are to be provided by the Contractor to the Contract Labour:

- Canteens – when 100 or more contract labours are employed
- Rest Rooms – when contract labour is required to halt at night
- Wholesome drinking water
- Latrines and urinals
- Washing facilities
- First Aid facilities – First Aid box with prescribed contents

The Principal Employer should provide the above facilities if the contractor fails to provide the same. However, the principal Employer can deduct the expense incurred in providing the above facilities to the contract labour from the bill of contractor.

- **Payment of Wages to Contract Labour** – The payment of wages to the contract labour has to be witnessed and duly certified by an authorized representative of the principal employer.
- **Important Points**
 - Registration certificate should be amended whenever the number of Contract Labour engaged changes.
 - Before making the payment to the contractor following should be taken from the Contractor:
 - ◆ Copy of PF/ESI Challan
 - ◆ Declaration from the Contractor specifying the names of the employees for whom contributions have been made.
 - Wages should be paid to Contract Labour in the presence of Authorized representative.
 - **Direct supervision** of Contract Labour should not be done.
 - **Leave Permission/ID Card/Entry pass** of contract employees should not be signed by the Company employees.
 - Contract should not specify the number of persons but the quantity of work.

MODULE 2

The Payment of Wages Act, 1936

The Payment of Wages Act 1936 is meant for the benefit of industrial employees not getting very high wages and to safeguard their interest it provides against irregularities in payment of wages, withholding wages, delay in paying wages and making unreasonable deductions out of the wages. This

Act ensures payment of wages in a particular form and at regular intervals.

Definitions

"Factory"

means a factory as defined the Factories Act 1948 and includes any place to which the provisions of that Act have been applied

"Wages"

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

- (a) any remuneration payable under any award or settlement between the parties or order of a court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include -
 - (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
 - (2) the value of any house-accommodation or of the supply of light water medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
 - (3) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

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

(6) any gratuity payable on the termination of employment

Applicability:

To all factories and establishments.

Main Provisions

Wage Period: Maximum Wage Period should be one month.

Time of Payment of Wages:

Wages should be paid before the end of

7th day when employees less than 1000

10th day when employees more than 1000

Deductions from Wages:

With Authorisation	Without Authorisation
LIC Premium	Fines
Postal PLI Premium	Period of absence from duty
Trade Union Subscription	Damage or loss of goods
Contributions to Prime Minister Fund	Recovery advances / Loans
	Income Tax
	Provident Fund
	Order of Court
	Deduction for House Accommodation
	Deduction for amenities and services
	Payment to Cooperative Societies

Maximum deductions should not exceed:

- When whole or part of the deductions are meant to Cooperative Society - 75 % of wage
- In other cases - 50% of wages.

Penalties

Sl.No	Offence	Penalty
1	Contravention of any provision of the Act regarding Time of payment of wages and Deductions for fines, absence from duty and damage or loss, for services rendered and payment to cooperative societies	Fine of Rs 200/- which may extend upto 1000/-
2	Contravention of any provision of the Act regarding wage period and wages in current coins/notes and display of abstract of the Act	Fine which may extend upto 500/-
3	Fails to maintain registers and records, neglects furnishing of information, furnishes wrong information.	For each offence fine of Rs 200/- which may extend upto 1000/-

The Minimum Wages Act, 1948

The Minimum Wages act aims at making provision for statutory fixation of Minimum rates of wages in a number of industries. This act aims to prevent exploitation of labour by payment of wages which are necessary for normal and reasonable need of a workmen and his family.

Applicability of Act

This Act is applicable to all employments described in the Act i.e. minimum Wages have to be paid to all the employees of the employments described in the Act

Definition

"Employer"

means any person who employs whether directly or through another person or whether on behalf of himself or any other person one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act.

"Wages"

means all remuneration capable of being expressed in terms of money which would if the terms of the contract of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include -

(i) the value of -

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

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

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

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

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

(v) any gratuity payable on discharge;

"Employee"

means any person who is employed for hire or reward to do any work skilled or unskilled manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up cleaned washed altered ornamented finished repaired adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate government; but does not include any member of the Armed Forces of the Union.

Main Provisions of the Act**Fixing Minimum Rates of Wages –**

- Appropriate Government shall fix minimum rates of wages for all employments specified in the Schedule of the Act
- Review of Minimum wages – The appropriate Government shall review the minimum wages at such intervals as it may deem fit. However, such a review shall be done before **Five years** from date of fixing minimum wages.

Wage period

The Minimum wages may be fixed for different wage periods like

- By the Hour,
- By the Day,
- By the month, or
- By other larger wage period

Different Minimum Wages may be fixed by the Government for :

- Different employments (specified in the schedule)
- Different classes (e.g. skilled, unskilled, semis skilled, etc.) of work in the same employment
- Adults, adolescents, children and apprentices

- Different localities.

Minimum rates of Wages fixed by the Government may consist of

- Basic + Special Allowance (which varies with the cost of living index)
- Basic + Cash value of concessional supply of materials like food, clothes, etc
- An All inclusive rate which includes Basic + Cost of Living Allowance + Cash value of concessional supply of materials

Fixing minimum Rates of Wages

For fixing Minimum rates of wages, the Government may :

1. Publish its proposals in the official gazette asking from comments from the affected parties, Or.
2. Constitute committees/sub-committees for the purpose

The committees/sub-committees and advisory boards constituted by the Government consist of equal number of members of:

- Employers,
- Employees and
- Independent persons

Wages in Cash

The wages have to be paid in Cash Only. However, permission can be taken from the government where payment of wages in kind when the same is as per custom or concessional supply of materials is made to the employees

Deductions from Minimum Wages

Deductions from Minimum Wages like PF, ESI, Advances, etc (as mentioned in Payment of Wages Act 1936) are permitted.

Wages to workman who works less than normal working day

in such cases Full Wages for normal day's work have to be paid to workman. However, a workman is not entitled to wages for a full normal working day when he is unwilling to work even though work is made available by the employer.

Penalty

<i>Offence</i>	<i>Punishment</i>
Contravention of Minimum Wages Act by employer	Fine which may extend upto Rs 500/-
Payment of less than Minimum wages to employee	Imprisonment which may extend upto 6 Months or fine which may extend upto Rs 500/- or Both

The Payment of Gratuity Act, 1972

Gratuity is a retirement benefit like Provident Fund or Pension. It is the payment which is intended to help an employee after his retirement. The general principle underlying gratuity schemes is that by faithful service over along period the employees is entitled to a certain amount as retirement benefit. Thus, it is earned by an employee as a reward and meritorious service.

Applicability:

Every factory, Mine, Oil field, Plantation, Port, Railways, Company, shop establishment or educational institutions employing ten or more persons

Definitions

"Employee"

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

"Employer"

means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop - (i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive office of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

"Wages"

means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance

Main Provisions

Gratuity Eligibility Criteria:

Gratuity shall be payable to an employee on termination of his employment after he has rendered continuous service for not less than 5 years. Thus for an employee to become entitled for the payment of gratuity, he must have rendered continuous service of at least 5 years. The completion of continuous service of 5 years is not necessary where the termination of the employment of an employee is due to his death or disablement.

Wages for calculation:

Gratuity is calculated at the rate of 15 days' wages for every completed year as if the month comprises of 26 days at the last drawn wages.

Calculation for piece rated employee:

At the rate of 15 days' wages for every completed year on an average of 3 months wages

Calculation for seasonal employee:

At the rate of 7 days' wages for every completed year of service.

Employee: All employees irrespective of status or salary.

Qualifying period: On rendering of 5 years of service either on termination or on resignation or retirement.

Entitlement: On completion of 5 years service except in case of death or disablement.

Maximum ceiling: Rs.3,50,000/-

Forfeiture of gratuity:

Gratuity can be forfeited

- On termination of an employee for moral turpitude and riotous or disorderly behaviour
- Wholly or partly for willfully causing loss destruction of property, etc.,

Protection of Gratuity:

Gratuity cannot be attached in execution of any decree.

Penalties:

- Imprisonment for six months or fine upto Rs.10,000 for avoiding to make payment by making false statement or representation.
- Imprisonment not less than 3 months and upto one year with fine on default in complying with the provisions of Act or rules.

The Employees Provident Fund Act, 1952

The schemes of Provident Funds are meant to induce employees to save a portion from their present earnings for a rainy day. The object of the Act is to provide for institution of Provident Fund, Pension Fund and Deposit Linked Insurance Fund for employees in Factories and other establishments.

Definitions

"Basic wages"

means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him but does not include:

- (i) The cash value of any food concession;

(ii) Any dearness allowance (that is to say all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) house-rent allowance overtime allowance bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) Any presents made by the employer;

"Employer"

Means.

:

(i) In relation to an establishment which is a factory the owner or occupier of the factory including the agent of such owner or occupier the legal representative of a deceased owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act 1948 the person so named; and

(ii) In relation to any other establishment the person who or the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager managing director or managing agent such manager managing director or managing agent;

"Employee"

Means any person who is employed for wages in any kind of work manual or otherwise in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer and includes any person

(i) Employed by or through a contractor in or in connection with the work of the establishment;

(ii) Engaged as an apprentice not being an apprentice engaged under the Apprentices Act 1961 or under the standing orders of the establishment;

Exempted Establishment

An establishment which has been granted exemption from the operation of all or any of the provisions of any scheme or insurance scheme prescribed under the Act. Such exemption may be granted to the establishment or to any person or to any class of persons of the establishment.

Applicability

This Act is applicable to all factories and establishments where 20 or more employees are/were employed.

The Act continues to be applicable even if the number of employees falls below 20.

Main Provisions of the Act

- The EPF and MP Act make provisions for 3 types of schemes. These schemes have been summarized as under



EPF and MP Act

Provident fund

Pension Scheme

Deposit Linked Insurance

SN	Particulars	Provident fund (EPF)	Pension Scheme (EPS)	Deposit Linked Insurance (EDLI)
1	Objective	To provide for lump sum payment at the time of retirement/death	To provide for monthly pension to member and his family	To provide for insurance of employee
2	Salary ceiling	The contribution to these schemes /fund are made on salary (Basic + DA) of Rs 6500/- Per month.		
3	Contribution of – Employee	12 % of Basic + DA	Nil	Nil
4	Contribution – Employer	3.67% of Basic + DA + Any difference between actual 8.33% of Basic +DA and Rs 541/-	8.33% of Basic + DA (subject to max of Rs 541/- (8.33% of basic + DA of Rs 6500)	0.5% of Basic + DA
5	Contribution -Central Govt.	Nil	1.16% of Basic + DA	Nil
6	Voluntary contribution of employees	Allowed. However employer is not bound to contribute over and above the statutory Requirements	Not Allowed	Not Allowed
7	Returns	@ 9.5% per year	No Fixed returns	NIL
8	Advances	Allowed after membership of prescribed period	Not Allowed	Not Allowed
9	Benefits when received by employee	At the time of retirement or death	At the time of retirement or death	For death while in service

Establishment to include all branches/departments

All the branches and departments of establishment are included in the establishment for the purpose of this Act.

Administration of Schemes

The above schemes and funds are administered by the Employees Provident Fund Organization (EPFO). The EPFO has appointed officers at various levels to further apply the provisions of the Act e.g

Central Provident Fund Commissioners

Additional Central Provident Fund Commissioners

Deputy Provident Fund Commissioners

Regional Provident Fund Commissioners, etc

This officers are also authorized to listen to any complaints regarding contribution, benefits , etc and may pass orders suitably.

Protection against Attachment

the amount standing to the credit of account of an member cannot be attached, assigned or charged by any order of any court.

Employer not to reduce wages

Employer cannot reduce wages of an employee by reason of his liability of contributing to the schemes under this Act.

Penalties

Sl No	Offence	Penalty
1	Avoiding payment under this Act or knowingly making false statement	Imprisonment which may extend upto 1 year or Fine which may extend upto Rs 5000/- or both
2	Employer who contravenes in provisions regarding payment of administrative charges and contribution	Imprisonment which may extend upto 3 year or Imprisonment I year +Fine Rs 10000/-
3	Contravention regarding payment of inspection charges	Imprisonment which may extend upto 1 year or Fine which may extend upto Rs 5000/- or both
4	Same offence is committed again	Imprisonment which may extend upto 5 year and Fine of Rs 25000/-

The Employees' State Insurance Act 1972

The Employees State Insurance Act is a piece of social security legislation conceived as a means of extinction of the evils of society, namely disease, dirt, ignorance and indigence. The object of this Act is to secure sickness, maternity, disablement, and medical benefit to employees and dependants' benefits to the dependants. These benefits are secured by financial contributions to the Scheme by employers and employees.

Application

In the first instance, it shall apply to all factories (including factories belonging to Government) other than seasonal factories.

Definition

“Factory”

Where on ten or more employed and being carried out the Manufacturing activity with the aid of power or where on 20 or more persons employed and being carried out the Manufacturing activity without aid of power.

“Employee”

means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies

“Family”

A Spouse

A minor Legitimate or adopted child

A child who is wholly dependent till he or she attains age of 21 yrs

An Unmarried daughter

A child who is in firm by reason of any physical or mental abnormality

Dependent parents

“Wages”

All remuneration paid or payable but does not include PF & Gratuity payable of the discharge

“Employment Injury”

A personal injury to an employee caused by accident or an occupational disease arising out of and in the course of employment

"Dependant"

Means any of the following relatives of a deceased insured person, namely :- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter;

(ia) A widowed mother;

(ii) If wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;

(iii) If wholly or in part dependent on the earnings of the insured person at the time of his death, -
(a) a parent other than a widowed mother,

(b) A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,

(c) A minor brother or an unmarried sister or a widowed sister if a minor,

(d) A widowed daughter-in-law,

(e) A minor child of a pre-deceased son,

(f) A minor child of a pre-deceased daughter where no parent of the child is alive, or

(g) A paternal grand-parent if no parent of the insured person is alive;

"Permanent partial disablement"

Means such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement

"Permanent total disablement"

Means such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.

"Sickness"

A condition, which required medical treatment, attendance and necessitates abstention from work on medical grounds

Main Provisions

Contribution:

The sum payable to the contribution by the principal employer in respect of an employee and employer

Employee Contribution is 1.75%

Employer's Contribution is 4.75%

Contribution Period	Benefit Period
1 st April to 30 th Sept	1 st Jan to 30 th June of the year following
1 st October to 31 st March	1 st July to 31 st Dec

Standard Benefit:

- Means 50 % of contributed daily wages (Average of six months contributions)

BENEFITS

Sickness Benefit:

91 days in any two consecutive benefit periods (50% of Standard Benefit)

Extended Sickness Benefit

124 days which may be extended to 309 days in case of TB, leprosy etc during a period of 3 yrs. (25% above the STD Benefit)

Enhanced Sickness Benefit

7 days for vasectomy and 14 days for tubectomy (Twice Standard Benefit)

No benefit for the first two days. (Waiting days)

Maternity Benefit (Twice Std Benefit rate)

12 weeks (84 Days) 6 weeks in case of miscarriage (42 Days). Additional one month if necessary.

Disablement Benefit (Employment Injury)

In case of temporary disablement as long as incapacity lasts and incase of permanent disablement for life time. Dependent's Benefit (70% of wage)

Dependence benefits:

The dependents, of insured person who died as a result of an employment injury, will be allowed dependents benefits by the ESI in the form of pension as follows :

To the widow	During life until remarriage, 3/5 th of the full standard benefit rate
To the children	Till they attain the age of 18, 2/5 th of the standard benefit rate.
Minimum benefit	Rs. 14 per day.

Medical Benefit

An insured person and his dependents can receive medical benefit in the form of free full medical treatment at an ESI hospital, dispensary or clinic.

Funeral Benefit

Rs. 2500/- is paid to meet the funeral expenses of Insured person

NOTICE OF INJURY:

The insured employee who sustains a employment injury should give a notice of the same to the employer or manager or supervisor etc., by means of an entry in the accident book or otherwise in writing or even orally. This is very important for claiming the disablement benefit.

OCCUPATIONAL DISEASES:

If a person contracts any disease specified as an occupational disease in respect the industry, under the act, then such disease would be treated as an employment injury.

ACCIDENT REPORT BY THE EMPLOYER:

- (a) In case of an accident in the establishment, the employer should prepare an “Accident report” in form No. 16 (in triplicate) and submit to the local office and the insurance medical officer. The third copy is the office copy. The report should be submitted within 48 hours in ordinary cases and immediately in death cases.
- (b) The particulars of the accident should be entered in the accident book in form no. 15.
- (c) In case of death of an insured person due to an accident, the body of the insured person shall not be disposed until the body has been examined by the insurance medical officer or if he is not able to arrive within 12 hours, by any other medical practitioner, who will arrange a post-mortem to be conducted before the body is disposed off.

FORMS AND RETURNS:

Certain forms including returns are required to be filled and submitted by the employers to the ESI authorities. Forms generally required to be filled in by the employers are as under.

Form	Title	purpose
01	Employer's registration form (Registration of factories or establishments as required by regulation – 10B)	To be completed by employer to furnish to the appropriate regional office within 15 days after the act becomes applicable.
1	Declaration by persons in employment engaged after appointed day (Regulations 11 & 12)	The particulars of the employees are to be obtained and the forms have to be completed and submitted to the appropriate local office / regional office doing registration work within 10 days.
3	Return of declaration forms (Regulation – 14)	This is a covering letter for the declaration forms to be submitted in duplicate to the appropriate office.
1B	Change in the family particulars (Regulation-15B)	This form is required whenever there is a change in the particulars of the family or when the insured person acquire family.
6	Return of contributions (Regulation-	This form has to be submitted in

	26)	quadruplicate to the regional office along with the six challans of deposit of contributions within 42 days of the end of every contribution period (before May 12 th & Nov 12 th) A Nil return is to be submitted if there are no employees in any contribution period.
16	Accident report (Regulation – 68)	This form is to be filled triplicate (one copy to local office, another to IMO/IMP and third office copy to be retained). The reports are to be submitted within 48 hours in ordinary cases and immediately in case of death.
37	Certificate of re-employment/continuing employment.	The form is to be given by the employer to an insured person on re-entry into insurable employment provided he has earlier been debarred from medical benefit or where he has been disentitled for medical benefit due to non-submission or delay in submission of contribution returns. This card will help the insured person in getting the medical benefit.
53	Application for change.	This is required for effecting changes in dispensary.
71	Wage / contributory record	Initiated by the local office to the employer to ascertain the contributory particulars in the absence of return of contributions.
72	Application for duplicate identity card	To be filled in by insured person and countersigned by the employer and submitted to the local office.
86	Certificate of employment issued to insured person by employer	To authorize medical benefit to newly appointed employees before their identity cards / temporary identification certificates are received.
105	Certificate of entitlement for medical treatment.	To be given to insured person going to outstation on temporary duty or on leave to enable him and his family to obtain medical benefit at outstation.
S-III S-IV	(Cash) Challans. (Cheques) Challans	To be filled in quadruplicate and payment deposited in the state bank of India or any other authorised bank within 21 days following the end of the calendar month in which contributions fall due (within 21 st of every month)

REGISTERS TO BE MAINTAINED:

The following registers are to be maintained:

- register of employees form 7
- accident book form 15
- inspection book

OFFENCES AND PENALTIES:

Sl.no.	Offences	Penalties
1	Whoever knowingly makes any false statement or representation for the purpose of (a) claim or increasing any benefit or payment allowable to him or (b) avoiding any payment payable to him.	Imprisonment up to 6 months or fine up to Rs.2000/- or both
2	a) Failure to pay employee's contributions deducted from the salary.	Imprisonment upto 3 years (minimum 1 year) and fine of Rs. 1000/-
	b) Failure to pay contributions	Imprisonment upto 3 years (minimum 1 year) and fine of Rs. 5000/-
	c) Deduction of any sum from or reduce wages of an employee on account of employer's contribution.	Imprisonment upto 1 year or fine upto Rs. 4000/- or both
	d) Failure to submit any return or submission of false return	Imprisonment upto 1 year or fine upto Rs. 4000 or both
	e) Obstruction of any inspector in allowing him to discharge his duties.	Imprisonment upto 1 year or fine upto Rs. 4000/- or both.
	f) Contravention of any other provision of the act or rules.	Imprisonment upto 1 year or fine upto Rs. 4000/- or both
3	On every subsequent offence committed after conviction for the same offence being mentioned at 2 (a) or (b) above	Imprisonment upto 5 years (minimum 2 years) and fine of Rs. 25000/-
4	On every subsequent offence committed after conviction for the same offence being any other offence.	Imprisonment upto 2 years and fine of Rs. 5000/-

LEVY OF INTEREST:

Interest shall be payable @ 12% p.a. in respect of each day of default or delay in payment of contributions.

DAMAGES FOR DELAY IN PAYMENT OF CONTRIBUTIONS AND OTHER AMOUNTS

Sl.No.	Period of delay	Rate of damages in % per annum
1	upto 2 months	5
2	2 months and above but less than 4 months	10
3	4 months and above but less than 6 months	15
4	6 months and above	25

DISPUTE :

A dispute arising under the act shall be decided by the ESI court (not by a civil Court), provided the employer deposits 50% of the dues claimed by the ESIC.

APPEAL :

An appeal shall be lie to the High court against order of ESI Court. The appeal should be filed within 60 days.

Accidents happening while traveling in employer's transport

(1) An accident happening while an insured person is, with the express or implied permission of his employer, traveling as a passenger by any vehicle to or from his place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if

(a) The accident would have been deemed so to have arisen had he been under such obligation; and

(b) At the time of the accident, the vehicle

(i) Is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and

(ii) Is not being operated in the ordinary course of public transport service.

(2) In this section "vehicle" includes a vessel and an aircraft

The Maternity Benefit Act, 1961

Women at the reproductive stage are exposed to special risks during pregnancy and child bearing, and mortality and maternal morbidity are factors which require special consideration. The Maternity benefit Act was passed to regulate the employment of women for certain period before and after the child birth and to provide certain maternity and other benefits .

Definitions**"Wages"**

means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes -

(1) such cash allowances (including dearness allowance and house rent allowance) as a woman is for the time being entitled to;

(2) incentive bonus; and

(3) the money value of the confessional supply of food grains and other articles, but does not include -

(I) any bonus other than incentive bonus;

(ii) over -time earnings an any deduction or payment made on account of fines;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

(iv) any gratuity payable on the termination of service;

"Woman" means a woman employed, whether directly or through any agency, for wages in any establishment.

Applicability of Act

This Act is applicable to all establishments and factories in which 10 or more persons are/were employed in the preceding 12 months.

This Act is applicable to every establishment involved in equestrian, aerobatics and other performances, irrespective of the number of employees

This Act is not applicable to those establishments /factories where Employees State Insurance Act, 1948 is applicable.

Main Provisions of the Act

Prohibition of employment of Women during certain periods

No employer shall:

- Knowingly employ women during six weeks immediately following the date of pregnancy/ miscarriage/ medical termination of pregnancy.
- Employ a woman in a work of arduous nature and which may interfere with the pregnancy or normal development of foetus for a period of One month before pregnancy.

Maternity Benefits

The maternity benefits under this act are as follows :

- **Eligibility**
A woman is eligible for maternity benefits when she has worked for atleast 80 days in the preceding 12 months from her date of expected delivery.
- **Pay**
Employer shall pay Maternity benefit equal to Basic +DA+ Cash Allowances + Incentive Bonus for the period of absence to the women employee.
- **Leave**
The woman employee is eligible to get maternity benefit for **180 days** (i.e 26 weeks).
- **Medical Bonus**
Employer should pay Rs 250/- to the woman employee as Medical Bonus if no prenatal and post natal care is provided to the concerned woman employee free of charge
- **Other Leaves** (with wages as in maternity benefit) arising out of pregnancy
 - a) Miscarriage, Medical termination - 6 weeks from day after pregnancy
Miscarriage, Medical termination of pregnancy
 - b) Tubectomy - 2 weeks from the day after tubectomy
 - c) Illness due to Pregnancy, Delivery - One month

Nursing breaks.- Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

Claim for Maternity benefit and Payment

1. A woman who is pregnant shall give a notice to the employer mentioning the following :
 - Date from which she will be absent (not being earlier than 42 days from expected date of delivery)
 - Maternity benefit to be paid to her or to her nominee
 - However, if a woman employee was unable to give a Notice to the employer when she was pregnant, she may do so as soon as possible after the delivery.
2. On receiving the notice, the employer shall make the payment to the female employee/ nominee within **48 hrs.**

Prohibition for dismissal during absence due to Pregnancy

3. An employer cannot dismiss a female employee for absence who is availing maternity benefit.
4. Such a dismissal by the employer should not deprive a female employee from claiming maternity benefits
5. However, an employer can deprive a female employee of the maternity benefit if the discharge is due to **Gross misconduct.**

Leave for miscarriage.- In case of miscarriage, a woman shall, on production of such proof as may be prescribed, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage.

Forfeiture of Maternity Benefits

The female employee who is availing Maternity benefit from her employer but works in some other establishment/factory, shall forfeit her claim to Maternity benefit.

Penalties

<i>Offence</i>	<i>Punishment</i>
Dismissal of female employee for absence due to maternity	Imprisonment for 3 Months which may extend up to 1 year and fine of Rs 2000/- which may extend up to Rs 5000/-
Other provisions of the Act	Imprisonment which may extend up to 1 year or fine which may extend up to Rs 5000/-

Payment of Bonus Act, 1965

1. Applicability of the Act

The Act is applicable to:

- (a) Every factory
- (b) Every other establishment employing 20 or more persons.

The Government can, however, apply the Act to any establishment employing less than 20 but not less than 10 persons. An establishment to which the Act applies shall continue to be governed by the Act irrespective of any fall in the number of person employed therein. (Section 1)

Objectives of the Act

The object of the Act is to maintain peace and harmony between labour and capital by allowing the employees to share the prosperity of the establishment reflected by the profits earned by the contributions made by capital, management and labour.

Following employees are not covered with the provision of this Act

- a) Apprentices
- b) Employees of Central Government or Local Authority
- c) Employees of Public Sector which sells goods manufactured by it.
- d) Employees of other Public Sector
- e) Seaman etc., registered under Dock Workmen (Regulation of Employment) Act, 1948
- f) Employees of LIC, GIC, Red Cross, Inland Water Transport, Universities and other Educational Institutions.
- g) New establishment for 5 years following accounting year in which employers sell goods produced or in which he derives profit from the establishment whichever is earlier.

Eligibility of Bonus

Every employee who has worked for 30 days or more in a year and drawing salary of Rs. 10,000/- or less in an establishment to which this act applied is entitled for bonus. Maximum bonus will be paid to Rs. 3,500/- and accordingly the calculation will be made on the basis of drawing salary of Rs. 3,500/- per month.

4. Rate of Bonus.

Minimum bonus to the employee's payable in an accounting year to the limit of 8.33% of the salary subject to maximum limit of Rs. 3,500/- p.a.

5. Deduction of Bonus

In any Accounting year, if the employee is found guilty of misconduct causing financial loss to the employer, the employer will be entitled to recover the loss from the amount of bonus payable to him

6. Timely payment

Bonus payable under the Act is to be paid within 8 months from the close of the accounting year or within one month from the date of which award becomes enforceable.

7. "Payment of Bonus Register" to be maintained

- 1. Is a seasonal worker entitled to get bonus?

A. Section 8 relates to the eligibility for bonus. The only requirement of that section is that the employee should have worked in an establishment for not less than thirty working days in an accounting year. Therefore, if a seasonal worker has worked in an establishment for more than thirty working days, he shall be entitled to get bonus.

2. What is to be included in and excluded from a salary or wage for the purpose of calculating bonus?

A. For the purpose of calculation of bonus a salary or wage includes a basic salary or wage and dearness allowance but does not include other allowances, overtime salary or wage, house rent allowance, traveling concessions, bonus, employer's contribution to provident fund, retrenchment compensation, gratuity or commission. {Section 2(21)}

3. What is the amount of minimum bonus payable by the employer to his employees every year?

A. The employer is bound to pay to his employees every year a minimum bonus of 8.33% of the Salary or wage or Rs. 100.00, whichever is higher, whether he has any allocable surplus or not. {Section 10}

4. What is the amount of maximum bonus payable by the employer to his employees in any year?

A. The maximum bonus payable by the employer to his employees in that year is 20% of the salary or wage. {Section 11}

5. What is the time limit for making payment of bonus to the employees?

A. If there is no dispute about payment of bonus; bonus must be paid within a period of 8 month from the close of the accounting year. If there is a dispute about the payment of bonus pending before any authority, bonus must be paid within one month from the date on which the award in respect of such dispute becomes enforceable or the settlement in respect of such dispute comes into operation. In all cases bonus must be paid in cash. {Section 19}

6. What are the offences under the Act and what is the punishment for them?

A. If any person contravenes any provision of the Act or any rule made thereunder; or fails to comply with any direction given to him; he would be punished with imprisonment up to 6 months, or with fine up to Rs. 1000.00 or with both. {Section 28}

7. Are the newly set up establishments exempted from paying bonus to their employees?

A. The newly set up establishment is exempted from paying bonus to its employees in the first five years following the year in which the employer sells the goods produced or manufactured by him. If, however, the employer derives profit in any of the first five year, he has to pay bonus for that year. The provisions of set on and set off are not applicable in such cases. {Section 16}

8. Is an employee entitled to be paid bonus for the period during which he is laid off and is paid lay off compensation?

A. According to section 14 of the Act an employee shall be deemed to have worked on the days on which he has been laid off. During the period of lay-off he is paid lay-off compensation which is

not excluded from the purview of the definition of wages under the Act. He is therefore entitled to be paid bonus for the period.

9. Is the employer required to maintain any registers under the Act?

A. Every employer is required to maintain, in the prescribed form, the following three registers:

- a. A register showing the computation of the allocable surplus;
- b. A register showing the set-on and set-off of the allocable surplus;
- c. A register showing the details of the amount of bonus payable to each of employees, the amount of deductions if any, and the amount actually paid.

The employer is also required to send, in the prescribed form, an annual return to the Inspector appointed under the Act. The time limit for sending the annual return is thirty days from the expiry of the time limit specified in section 19 for payment of bonus. {Section 26 & Rule 4 and 5}

MODULE 3

The Industrial Employment (Standing Orders) Act, 1946

The object of the Act is to “require employers in industrial establishments to define the conditions of employment under them and make the said conditions known to workmen employed by them. The conditions of employment includes the conditions of recruitment, discharge, disciplinary action, holidays of the workmen employed in the establishments etc.,

Definition

"Industrial establishment"

Means

- (i) an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936 (4 of 1936), or
- (ii) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948), or
- (iii) a railway as defined in clause (4) of section 2 of the Indian Railways Act, 1890 (9 of 1890), or
- (iv) the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;

Main Provisions of the Act

Submission of Draft Standing Orders

(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

Conditions for Certification of Standing Orders

Standing orders shall be certifiable under this Act if

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act; and it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.

Certification of Standing Orders

(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft Standing Orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen.

Appeals:

(1) Any employer, workman, trade union or other prescribed representatives of the workmen aggrieved by the order of the Certifying Officer appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.

Date of operation of Standing Orders

Standing orders shall, unless an appeal is preferred under section 6, come into operation on the expiry of thirty days from the date on which authenticated copies thereof are sent under sub-section (3) of section 5, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority, are sent under sub-section (2) of section 6.

Duration and modification of Standing Orders

(1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen, or a trade union or other representative body of the workmen, be liable to modification until the expiry of six months from the date on which the standing orders or the last modifications thereof came into operation.

(2) An employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workman or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application.

Payment of Subsistence Allowance

(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance –

(a) At the rate of fifty per cent. of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) At the rate of seventy-five per cent. of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

Interpretation, etc., of Standing Orders

If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman or a trade union or other representative body of the workmen may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947 (14 of 1947), and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

Penalties

Sl No	Offence	Penalty
1	Employer who fails to submit draft standing orders	fine five thousand rupees
2	contravention of the standing orders	fine one hundred rupees

The Industrial Disputes Act, 1947

The Industrial Disputes Act , 1947 is a principle central legislation which provides for settlement of industrial Disputes. The main objective of the Act is to secure industrial peace by preventing and settling industrial disputes through internal works committees or external machinery of conciliation (consisting of Conciliation Officers, Boards of Conciliation and Courts of inquiry) or compulsory adjudication (consisting of Labour Courts, Industrial Tribunals and National Tribunals) and through Voluntary arbitration. This Act also protects the service conditions of employees during pendency of Industrial disputes proceedings. It also prohibits employers and workmen from indulging in any unfair trade practices.

Applicability of Act

This Act is applicable to all Industries in the country.

Definitions**“Industry”**

means any business, trade, undertaking, manufacture or calling of the employees and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

“Industrial Disputes”

Means any dispute or difference between :

- Employers and Employers or between
- Employers and Workmen or between
- Workmen and Workmen,

Which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person?

“Wages”

Means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, includes

- i. such allowances including Dearness Allowance,
- ii. value of any house accommodation,
- iii. Traveling concession, commission but does not include;
 - a) Bonus
 - b) Employer’s contribution to EPF/ESI
 - c) Gratuity on termination of service

Main Provisions of the Act

Industrial Disputes

Any dispute concerned to an individual workman is not to be considered as an Industrial dispute. However, disputes connected to discharge, dismissal, retrenchment of an individual workman are treated as Industrial dispute.

Works Committee

In case of any industrial establishment in which one hundred or more workmen are employed or have been employed, the appropriate Government by general or specific order require the employer to constitute a Works Committee. It is a Joint Committee with equal number of employers and employees representatives for discussion of certain common problems.

Authorities under ID Act

The authorities for settlement and investigation of Industrial Disputes as per the ID Act are as under:

Sl.No	<i>Dispute settlement machineries</i>	<i>Authority</i>
1	Conciliation Officers – generally the Regional Labour Commissioner of the respective region are appointed as conciliation officers. The conciliation arrived at is known as ‘settlement’	Non – judicial.
2	Conciliation Board – consists of a Chairman(Independent) and 2/4 members representing all the parties equally	-----do-----
3	Courts of Inquiry – consists of one independent person or if No. is more than 2 then one of them is appointed as Chairman. Their decision is known as ‘Award’	Quasi Judicial.
4	Labour Courts – consist of 1 person who has <ol style="list-style-type: none"> a) been judge of High court ,or b) been District Judge for atleast 3 years, or c) been a judge in other office for atleast 7 years, or d) Presided a Labour court under any State Act for 5 years 	-----do-----
5	Industrial Tribunals – consists of one person who has <ol style="list-style-type: none"> a) been judge of High court ,or b) been District Judge for atleast 3 years 	-----do-----
6	National Tribunals – consists of 1 person who has been a judge of High Court	-----do-----

Following points are to be noted in cases of Industrial Disputes.

- (i) **Matters which are to be dealt with by the Labour Courts and Industrial tribunal are specified in Schedule 2 and Schedule 3 of the ID Act**

Strikes and Lockouts

1. No person employed in a public utility service shall go on strike, in breach of contract-
 - b) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
 - c) within fourteen days giving such notice or
 - d) before the expiry of the date of strike specified in any such notice as aforesaid or
 - e) during pendency of any conciliation proceedings before a conciliation officer and 7 days after conclusion of such proceedings.
2. No employer carrying on any public utility service shall lock-out any of his workmen-
 - a) without giving them notice of lockout as hereinafter provided, within six weeks before locking out or
 - b) within fourteen days giving such notice or
 - c) before the expiry of the date of lock-out specified in any such notice as aforesaid or
 - d) during pendency of any conciliation proceedings before a conciliation officer and 7 days after conclusion of such proceedings.

General prohibition of strikes and lock-outs

No workman who is employed in any establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out

- a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion such proceedings
- b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion such proceedings
- c) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion such proceedings
- d) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award

Layoff, Retrenchment and closure

These are the actions taken by an employer. The general conditions governing these are as under:

SN	Description	Layoff	Retrenchment	Closure
1	Meaning	Failure, refusal or inability of an employer on account of shortage of coal, power, raw materials , or natural calamity to give employment to a workman whose name	Termination of employment of workman otherwise than a) Disciplinary action, b) Voluntary retirement, c)Superannuation d) Non renewal of	Permanent closing down of a place of employment or part thereof

		is borne on muster roll	contract and e) continued ill health of workman	
2	Prior Permission from government	Not necessary when no. of workmen less than 50. In other cases prior permission of Govt. necessary	Not necessary when no. of workmen is less than 50. In other cases prior permission of Govt. necessary	Necessary in all cases
3	Notice to workmen	Copy of permission letter to govt. should be given to workmen	30 days when workmen is less than 50. In other cases 3 month	60 days when workmen is less than 50. In other cases 90 days
4	Compensation	50% of Basic + DA to workman who is on rolls for atleast a year	15 days wages for each completed year	15 days wages for each completed year
5	Other points	1. Workman will get compensation if he presents himself at the establishment at the appointed day. 2. Workman not entitled to compensation if he refuses employment within radius of 5 miles from establishment	1. Last in first out should be followed for retrenchment 2. Retrenched workman should be given preference for reemployment	1. In case of financial difficulties total compensation should not exceed 3 months wages. 2. Closed establishment may be restarted in exceptional circumstances

Penalties

<i>Offence</i>	<i>Punishment</i>
Penalty for layoff and retrenchment without permission	Imprisonment which may extend upto 1 month or Fine which may extend upto Rs 1000/- or both
Penalty for closure without proper notice, compensation and permission	Imprisonment which may extend upto 1 month or Fine which may extend upto Rs 1000/- or both
Penalty or unfair labour practices	Imprisonment which may extend upto 1 month or Fine which may extend upto Rs 1000/- or both
Penalty for illegal strike / lock-out	Imprisonment which may extend upto 1 month or Fine which may extend upto Rs 50/- or both
Penalty for breach of settlement/award	Imprisonment which may extend upto 6 month or with Fine or both

The Trade Unions Act, 1926

The law relating to the registration of trade unions and certain other matters is contained in the Trade Unions Act 1926. This Act was passed to regulate:

- a) Conditions governing the registration of Trade Unions
- b) Obligations imposed upon a registered Trade Unions
- c) Rights and Liabilities of registered Trade Unions

Definition

"Trade Union" means combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation of two or more Trade Unions;

Provided that this Act shall not affect -

- (c) Any agreement between partner to their own business;
- (i) Any agreement between an employer and those employed by him as to such employment; or
- (ii) Any agreement in consideration of the sales of the goodwill of a business or of instruction in any profession, trade or handicraft.

Main Provisions of the Act

Registration of trade union – Any 7 or more members of a trade union may apply subscribing to the rules of the Trade Union for Registration of the said Union.

- a) **Minimum Number of members** - For registration, the minimum members should be 100 or 10% of workmen of establishment, whichever is less
- b) **Applicants ceasing to be member** – The application for registration will not be invalid if less than 50% of members applying for its registration have ceased to be the member of the concerned trade union.
- c) **Statement to Registrar** - following information should be given to the Registrar of Trade Unions alongwith the application:
 - Name, occupation and address of mebers making applliocation
 - Title, name, age, occupation and addresses of office bearers of trade union
 - Place of work of the Workmen (in case of trade union of workmen)
 - Name of Trade Union and address of its head office.

Registration

The registrar on being satisfied that all requirements of the Trade Unions Act in respect of registration have been fulfilled, register a particular trade union and issue a 'Certificate of Registration' to the concerned trade union.

Certificate of Registration

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

Cancellation of Registration

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar

- (a) On the application of the Trade Union to be verified in such manner as may be prescribed, or
- (b) If the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter, provision for which is required by Section 6:

Provided that not less than two months previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

Criminal conspiracy in trade disputes

No officers or member of a registered Trade union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code, in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in Section 15 unless the agreement is an agreement to commit an offence.

Immunity from civil suit to certain cases

(1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any [Note: Inserted by Act No.51 of 1970] or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by and agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to, express instructions given by the executive of the Trade Union.

Legal status of a Trade Union

A registered Trade Union shall be a

- Body corporate having perpetual succession and a common seal
- It can acquire, hold and sell properties
- It can file a suit and be sued in its name

Membership of Trade Union

Minors who have attained 15 years of age can become members of a trade union subject to the rules of the concerned Trade Union.

Disqualification for becoming Office bearers of Trade Union

No member of a Trade Union can become Office bearer if he/she:

- Has not attained 18 years of age,

- Convicted by a court for offence involving moral turpitude and sent for imprisonment and 5 years have elapsed since his/her release.
- **Registered office**
- All correspondence to a Trade union may be addressed to its registered office. Any change in the above has to be informed to the Registrar within 14 days of such change.

- **Change of Name**

Any change in name of a registered trade union has to be informed in writing to Registrar by the secretary and 7 members of the Trade Union.

- **Amalgamation of Trade Union**

Any two or more registered Trade Unions may become amalgamated together as one Trade Union with or without dissolution or division of the funds of such Trade Unions or either or any of them, provided that the votes of at least one-half of the members of each or every such Trade Union entitled to vote are recorded, and that at least sixty percent of the votes recorded are in favour of the proposal.

Dissolution

(1) When a registered Trade Union is dissolved, notice for 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 and shall be registered by him if he is satisfied the dissolution has been effected in accordance with the rules of the Trade Union, and the dissolution shall have effect from the date of such regulation.

(2) Where the dissolution of a registered Trade Union has been registered and the rules of the Trade Union do not provide for the distribution and funds of the Trade Union on dissolution, the Registrar shall divide the funds amongst the member in such manner as may be prescribed.

General Fund

The Registered Trade Union may use the general fund for the following purposes:

- Salaries/allowances to office bearers
- Expenses for administration of trade union
- Conduct of Trade disputes on behalf of Trade Union
- Provision for education, social or religious beliefs of members or to the dependents of deceased members, etc.

Political Fund

a separate political fund may be constituted by a trade Union for the following purposes:

- Payment of expenses for a candidate for election to a legislative body
- Holding of any meeting or distribution of any literature in support of such candidate
- Maintenance of any person elected to legislative body

The membership to such a political fund should be

- a) Voluntary for the Members
- b) Should not be disentiing a non-member of such fund to any benefits of the trade union.

Returns

A general statement, audited in the prescribed manner, may be sent to the Registrar. The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

Penalties

<i>Offence</i>	<i>Punishment</i>
Failure of office bearers to give notice or statement as required under Act	Fine of Rs 5/-
Any person making willful False entry or statement, alteration of rules	Fine which may extend upto Rs 5/-