

# **LABOUR LAWS**

## **INTRODUCTION**

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

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

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

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

## **EMPLOYEES PROVIDENT FUND AND MISC. PROVISIONS ACT, 1952**

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

### **Applicability**

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

### **Schemes under the Act**

Three beneficial schemes-

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

### **Membership**

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

### **Contribution to EPF**

- Employees' share : 12% of the Basic + DA
- Employer's contribution : 12% to be deposited as :
  - 8.33% to be deposited in Pension Fund A/C No 10 and
  - the balance, ie, 3.67% to be deposited in Provident Fund A/C No 01 along with Employees' share of 12%

- Administration charges -
- @ 1.1% of the total wages/salary disbursed by deposit to A/C No 02,
- Employees Deposit Linked Insurance @ 0.5% of the total wages/salary by deposit to A/C No. 21 and
- Administration of EDLI @ 0.01% of the wages/ salary by deposit to A/C. No. 22.

### **Pension Benefits**

- Pension to Member
- Pension to Family (on death of member)
- Scheme Certificate
  - This Certificate shows the service & family details of a member
  - This is issued if the member has not attained the age of 58 while leaving an establishment and he applies for this certificate
  - Member can surrender this certificate while joining another establishment and the service stated in the certificate is added with the service he is gaining from the new establishment.
  - After attaining the age of 50 or above, the member can apply for Pension by surrendering this scheme certificate (if total service is at least 10 years)
  - This is a better choice than Withdrawal Benefit, that if a member dies holding a valid scheme certificate, his family will get pension (Death when NOT in service) ○

#### Withdrawal Benefit

- if not eligible for pension, member may withdraw the amount accumulated in his pension account
- the calculation of this amount is based only on (i) Last average salary and (ii) Service (Not based on actual amount available in Pension Fund Account)

- No amount is taken from Member to give Pension to the Member. Employer and Govt. contribute to Pension fund @8.33% and @1.16% respectively
- EPFO guarantees pension to members, even if the Employer has not contributed to Pension Fund.
- Pension calculation is similar to that of Govt. Employee

### **Death Benefits**

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

### **LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS & MAINTAINING REGISTERS BY CERTAIN ESTABLISHMENTS) ACT, 1988**

#### **Objective**

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

#### **Applicability**

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

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

**Exemption from returns and registers under certain labour laws:**

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

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

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

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

### **THE PAYMENT OF BONUS ACT, 1965:**

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

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

#### **Eligibility for Bonus**

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

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

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

#### **Calculation for Working Days in An Accounting Year**

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

- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
- (b) he has been on leave with salary or wage;
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

- (d) the employee has been on maternity leave with salary or wage, during the accounting year.

## **Payment of Gratuity Act, 1972**

### **Applicability of the Act**

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

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

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

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

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

The payment of gratuity shall be forfeited:

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

According to Sec.2(e) "**employee**" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied,[and whether or not such person is employed in a

managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity].

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

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

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

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

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

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

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

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



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

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

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

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

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

#### **Rate of gratuity**

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

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

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

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

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

## **MATERNITY BENEFIT ACT, 1961**

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

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

### **Applicability of the Act**

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

### **Important definitions under the Act**

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

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

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

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

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

"**Establishment**" means—

(i) a factory;

(ii) a mine;

(iii) a plantation;

(iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;

(iva) a shop or establishment; or]

(v) an establishment to which the provisions of this Act have been declared under subsection (1) of section 2 to be applicable. (Sec.3(e))

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

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

#### **Persons entitled to maternity benefit**

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

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

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

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

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

the child dies during this period, the liability will be only up to and including the day of the death of the child.

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

In the event of a miscarriage, the woman must produce relevant proof that she has suffered a miscarriage. This will entitle her to receive leave with wages at the rate of the maternity benefit, for a period of six weeks immediately following the date of the miscarriage.

Women who are ill on account of pregnancy, delivery, premature birth of a child or a miscarriage are also entitled to a period of absence or to leave with wages at the rate of maternity benefit for a maximum period of one month. However, they must submit proof of their illness.

### **Notice of claim for maternity benefit**

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

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

### **Dismissal during absence on account of pregnancy**

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

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

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

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

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

### **Punishment under the Act**

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