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Factory Act--1948

Introduction

A piece

- Social Legislation, protecting workers—(Leela Vs. State of Kerla 2004.---Kerla High Court)
- Humanization of Work Places
- Quality of work life
- Removing Exploitation
- Providing better Working Conditions
Chapter 1

Definitions

1. Adult- Above 18 years, Adolescent below 18 years, child-below 15 years, young person-15 to 18 years

2. Worker- A person directly or through any Agency (including a contract worker), with or without knowledge of Principal employer, with or without remuneration in a factory
3. Factory means any premises and prescient thereof
- 10 workers with power, 20 without power
- Manufacturing process is carried on
- Prescient means- within the enclosed walls or fences
- Definition does not include hotel, restaurant, EDP centers, railway workshop etc.
4. Occupier- A person who has the ultimate control over the affairs of the factory—one of the partners or directors.

- Private Sector

- Government/Public Sector) (IOC CASE)

A person appointed by govt. to manage the affairs of the factories (of Govt. companies)
2(cb) **Hazardous Process** - Any Process or activity in relation to Industry as specified in First Schedule.
Main responsibility for administrating the Act

Is of the State Government

Section 3 empowers State Government to make rules for references to time of day where IST being 5 ½ hours ahead of GMT, is not observed

Section 4 empowers State Government to declare different departments to be separate factories or two or more factories to be single factory. The power is used at its own or on application

Section 5 in the case of public emergencies, empowers State Government to exempt any factory or class of factories from all or any of the provisions of this Act except from section 67
Sec-6

i) Compulsory Approval, Licensing and Registration of Factories—Section 6
- General duties of occupier-Section 7(A)-Provision of F.A.
- General Duties of the Manufacturers etc. as regards articles and substances for use in factories (Section 7 B)
Importers of articles have to ensure the standard set out in the country or standard adopted outside the country.
Chapter-II

INSPECTING STAFF

- **Powers of inspectors**
  - Qualification
  - Power
    Enter, examine, enquire, seize, direct occupier, dismantler stop etc.

- **Certifying surgeon**
  - Qualification
  - Power
    Examine & certification of young Person.

- Every District Magistrate is the chief inspector of factory for his own area.
Chapter-III

HEALTH

Cleanliness, Disposal of Waste and affluent, ventilation and temperature, Dust and Fumes, Artificial humidification, over crowding, Listing, Drinking Water, 250 workers---cooler, Latrine and Urinals, (commonly situated separate for Men & women sanitation-sweepers) Spittoons(Rs 5 as fine)
Chapter IV

SAFETY

Sec-21-40
Fencing of machinery, work on or near machinery in motion, employment of young children on dangerous machinery, casing of new machines, Prohibition of children and women near cotton firms, Resolving machines, Pressure Plant, Floors, stairs and areas of access, dangerous fumes, gases, explosive or inflammable gases, fire-precautions etc.
40-B
- Manager Safety- Appointments, functions etc.
- 1000 workers or more
- Certifying Surgeon- Functions etc.
Section 41
After Bhopal Gas Tragedy---Amendment/Addition-1987

section 41-A
Constitution of Site /Appraisal Committee to consider application involving hazardous process or for expansion etc.
- water pollution
- Air pollution
Section 41-B
Compulsory disclosure of information by the occupier to inspector & general public–manufacturing, transportation, storage etc. Involving damages/ Health hazards.
- Draw-up disaster Plan/Central
- Make known to the workers/ public
Section 41-C

Specific responsibility— The occupier in relation to hazardous processes—Schedule--First
- Up-to-date health records/ Medical records
- Medical Examination of worker who are exposed to chemicals, Toxic & harmful substances.
Section 41-D
Central Government can appoint Enquiry Committee to enquire into the standards of health/safety of workers & public.

Section 41-E
Central government can lay down suitable Emergency Standards.

Section 41-F
Certain chemicals can be exposed for limited period permissible limits of exposure of chemicals/toxic substances—(second schedule) cultural/state Govt. can change/add.
**Section 41-G**
Workers’ participation in Safety Management

**Section 41-H**
Right of workers to warn about imminent dangers

- In case of reasonable apprehension, they can bring that to the notice of the occupier, Agent
- If not satisfied, refer to Inspector of Factories
Chapter V

WELFARE

- Intra-Moral
- Extra-Mural
- Washing/ drying facilities, silting, First Aid(100) canteen(250), Rest-rooms, Creches(30)
- Welfare officers (250)
- Functions
- Protection
Chapter VI

WORKING HOURS FOR ADULTS

- 48 hours a week, not exceeding 9 hours a day- spread over up to 10-1/2 hours, maximum 12 hours with permission
- Rest intervals- 5 hours, ½ hour
- Weekly holiday in a week, or immediately after or before. Not more than 7 days in a week
- Overtime-75 hours in three months
- Overlapping shifts and double
- Notice period of work for adult workers
- Register of adult workers.

For Woman worker

- Hours of work must not exceed 12 hours a day and 60 hours a week including Overtime
- Spread over including rest intervals is not to exceed 13 hours in any one day
- Total Overtime amount not exceed 75 hours in a quarter of three months and no one to be allowed to work more than seven days at a stretch
- No woman is allowed to work more than nine hours and between hours of 7 p.m. to 6 a.m. or between 10 p.m. and 6 a.m., if this change is permitted by Government
- There will be no change in shift without a weekly or any other holiday
### On employment of children

<table>
<thead>
<tr>
<th>Hours</th>
<th>7 p.m. to 6 a.m.</th>
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<tbody>
<tr>
<td>No child below 14 years</td>
<td></td>
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<tr>
<td>Duration</td>
<td>Certifying system</td>
</tr>
<tr>
<td>Age</td>
<td>4-1/2 hours, 10 p.m. to 6 a.m.</td>
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<tr>
<td></td>
<td>A register to be maintained</td>
</tr>
</tbody>
</table>
- **Child**: Not completed 15th years of age
- **Young**: Young man is neither a child nor an adolescent
Chapter VII

- Certificate of fitness
- Duration of work
- Shift working
- Register of child worker
- Medical examination
Chapter VIII

ANNUAL LEAVE WITH WAGES

- 240 days working
- One day for 20 days working for adult
- One day for 15 days working for a child
- For computation of 240 days, earned leave, maternity leave and lay-off period is counted. But for computing 20 days, they are not counted
- Fraction of leave of half day or more is computed as full day leave
A worker has to work for 2/3rd of an year to become eligible for earned leave
ANNUAL LEAVE AWITH WAGES (CONT'D.)

- Earned leave can be carried forward upto 30 days in case of adult worker and 40 days in case of a child
- Refused leave can be carried forward without limit
- In case of dismissal, quitting of service, superannuation and death, wages in lieu of leave is to be paid. Before expiry of 2nd day in case of dismissal/discharge and before expiry of two months in case of superannuation and death.
- Section 79 (6 & 7) deals with methods of applying and granting of leave
- A leave not availed cannot be used for giving notice for discharge and dismissals.
- Wages payable for leave can be recovered under payment of wages Act./ID Act.
ANNUAL LEAVE WITH WAGES (CONTD.)

If a factory provides better leave amenities to its employees, the State Government may in the interest of employees exempt the factory from the operation of Chapter VIII of the Act. In Fact, some State Govt. Have provided for National Holidays, Sick and Casuals Leave in their shops and Commercial Establishments Acts, or in separate legislation on the subject. (Shops & Establishment Act.)
<table>
<thead>
<tr>
<th>OFFICE</th>
<th>PENALTY</th>
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<tbody>
<tr>
<td>1. Contravention of Act/ Rule</td>
<td>Two years, upto one lakh or both</td>
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<tr>
<td>2. Continuous contravention</td>
<td>Fine of Rs. 1000/- per day</td>
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<td>3. Repetition</td>
<td>Three years, Fine of Rs. 10,000/- which may be extended to rupees 2 lakhs or both</td>
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<tr>
<td>4. Obstructing Inspection</td>
<td>Imprisonment upto six months and fine upto Rs. 2 lakhs</td>
</tr>
<tr>
<td>5. Disclosing results of analysis under section 96</td>
<td>Imprisonment upto six months and fine upto Rs. 2 lakhs</td>
</tr>
<tr>
<td>6. Contravention of Section 41-B, 41-C and 41-H u/s 96A</td>
<td>Seven years, fine upto Rs. 2 lakhs</td>
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<tr>
<td>7. Continuance of these offences after fine/conviction</td>
<td>Rs. 5000/- per day for each day of continuance</td>
</tr>
<tr>
<td>8. If offences confirmed after one year</td>
<td>10 years</td>
</tr>
<tr>
<td>9. Offences by workers</td>
<td>Fine upto Rs. 500/-</td>
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<tr>
<td>10. Penalty for using false certificate of fitness of child to work (98)</td>
<td>Two months/Rs.1000/both</td>
</tr>
<tr>
<td>11. Double Employment of child (99)</td>
<td>Fine upto Rs. 1000</td>
</tr>
</tbody>
</table>
Special Provisions

Sec 87 - Dangerous operation
- State Govts. Can make rules/ occupier to follow

87.A. - Power to prohibit employment on account of serious hazard

89 - If any worker contacts any diseases specified in the third schedule
- Medical Practicum to attend him
- Full Information to Inspector of Factory

91. Full Power to direct enquiry in cases of Accidents/Diseases
Objective: To avoid friction and tension between employer and workmen employed in and industry establishment Covered (Sec 1 (3))

- A factory as defined in Clause (m) of section 2 of the Factories Act, 1948 or;
- A railway as defined in Clause (4) of Section 2 of the Indian Railways Act 1890; or
- The establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen.
Contents of the Schedule

The matter referred to in the Schedule are:

- Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, of badlis.
- Manner of intimating to workmen periods and hours of work, holidays, paydays and wage rates.
- Shift working.
- Attendance and late coming.
- Conditions of, procedure in applying for, and the authority which may grant, leave and holidays.
- Requirement to enter premises by certain gates, and liability to search.
- Closing and reopening of sections of the industrial establishment, and temporary stoppages of work and the right and liabilities of the employer and workmen arising there from.
- Termination of employment, and the notice thereof to be given by employer and workmen.
- Suspension or dismissal for misconduct, and act or omissions which constitute misconduct.
- Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servant.
Additional matters to be provided in Standing Orders in coalmines.

1. Medical aid in case of accident.
2. Railway travel facilities.
3. Method of filling vacancies
4. Transfers
5. Liability of manager of the establishment or mine
6. Service certificate
7. Exhibition and supply of Standing orders
Additional matters to be provided in Standing Order relating to all industrial establishments.

1. Service record—matters relating to service car, token tickets, certification of services, change of residential address of workers and record of age,

2. Confirmation

3. Age of retirement

4. Transfer

5. Medical aid in case of accidents.
6. Medical examination
7. Secrecy
8. Exclusive services

Any other matter which may be prescribed.
Certification Process– its Operation and Binding Effect

Conformity with the Model Standing Orders

Fairness and Reasonableness of Standing Order

Certifying Officers: Their Appointments, Powers and Duties

Appeals Against Certification

Posting of Standing Orders

Interpretation of Standing Orders
LAWS RELATED TO INDUSTRIAL DISCIPLINE IN STANDING ORDER

The legal Dimension

Amongst others the following acts on the part of an employee have been held to be misconducts:

- any act or conduct which is prejudicial or is likely to be prejudicial to the interests of the employer or to the reputation of the employer;
- any act or conduct inconsistent or incompatible with the due or peaceful discharge of the workman's duty to his employer;
any act or conduct of an employee which is such as to open before his temptations for not discharging his duties properly;

any act or conduct of an employee which disturbs the peaceful functioning at the place of work;

use of filthy or abusive language against co-employees, officers or employer;

insulting behaviour and in-subordination as to make it impossible to retain the relation of master and servant;
☐ habitual neglect of duties for which a worker is paid;
☐ neglect of the employee, though isolated which causes or tends to cause serious and harmful consequences;
☐ theft, fraud or dishonesty in connection with the employer's business;
☐ illegal strike;
breach of duty, absence without leave, non-performance of job-duties, disobedience of orders;

Breach of discipline, disrespect to or assaulting superiors or subversion organization discipline, disrupting relations with co-workers;

Delinquencies like telling lies, committing theft, fraud, dishonesty, disloyalty and corruption, damage to property or goodwill;

Disabling or disrespectful conduct, disreputable outside conduct.

**Principles of Natural Justice**

**Domestic enquiry**
Decision

The following punishments are generally imposed on the employees depending upon the gravity of the misconduct committed by them:

(i) Warning;
(ii) Fine;
(iii) Withholding or stoppage of increments;
(iv) Demotion or reduction in rank;
(v) Suspension;
(vi) Discharge;
(vii) Dismissal.

Provision for Appeal