

## **SEMINAR**

**on**

# **LABOUR LAWS: SELF REGULATION REGIME**

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**Saturday, June 17, 2017 - Hotel Le-Meridien, Gurugram**

## **BACKGROUNDER**



**THE INSTITUTE OF  
Company Secretaries of India**  
IN PURSUIT OF PROFESSIONAL EXCELLENCE  
Statutory body under an Act of Parliament

**NORTHERN  
INDIA  
REGIONAL  
COUNCIL**

**(Host: Gurgaon Chapter of NIRC)**

4, Prasad Nagar Institutional Area, New Delhi-110005

Tel.: 011-49343000 Telefax :011-25722662;

Email : [niro@icsi.edu](mailto:niro@icsi.edu)

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**PROGRAM SHEET**

<b>Time</b>	<b>Session/Speakers</b>
10.00 AM to 11.00 AM	<b>INAUGURAL SESSION</b> <i>Chief Guest:</i> <b>Shri Nayab Singh Saini</b> Hon'ble Minister of Labour & Employment Department, Govt. of Haryana
11.00 AM to 11.30 AM	TEA
11.30 AM to 1.30 PM	<b>FIRST TECHNICAL SESSION</b> <i>Guest Speakers:</i> <b>Shri Anupam Malik</b> Additional Labour Commissioner-Haryana <i>Topic: Compliance of Labour Laws – New Perspective &amp; facilities</i> <b>by Labour Department in Haryana</b>  <b>Shri M M Kaushal</b> <i>Advocate</i> <b>Topic: Wage Components : Important Judicial Pronouncements</b>  <b>Question-Answer Session</b>
1.30 PM to 2.30 PM	<b>LUNCH</b>
2.30 PM to 5.00 PM	<b>SECOND TECHNICAL SESSION</b> <i>Guest Speakers:</i>  <b>Shri Anil Bhat</b> Managing Partner, Lex & Craft <i>Topic: Law of “Outsourcing” in India</i>  <b>CS Ravi Chhabra</b> Managing Counsel, Ask Us Legal <b>Topic: Labour Laws Compliance Management</b>  <b>Ms. Aditi Kaushal</b> Advocate <b>Topic: Prevention of Sexual Harassment at Workplace</b>  <b>Question-Answer Session</b>
5.00 PM	<b>TEA &amp; Program Concludes</b>

# **GERMANE OF INDUSTRIAL RELATIONS**

**By M M Kaushal**

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## **INDIA'S NEED**

In any country which is passing through a growing economy has to consider certain relevant factors to become as a developed economy. We are supposed to check with the Industrial Relations laws in the said country to have the path of growth. Every developed nation is looking towards us for business and intentional requirement of investment. In the recent past we have faced debacles because of many factors including red tapism in working, complications in taxation laws and the industrial relations issues in operational sectors.

We have an advantage that the nature of human beings in India in general is based upon ethical behavior, obedience, soberness and observance of norms. We are peace lover human being and have no touch or eagerness for revolt. There was an in-flow of business but industrial unrest coupled with violence in the past has hampered our growth rate.

## **PRESENT GOVERNMENTS NEEDS :**

Our Prime Minister is making all efforts to attract foreign investors to our country to make the economy viable. He has an aptitude to have technology and manufacturing sector in the country. He wants to generate employment. His vision was reflected from his address from LAL KILLA on 15th August, 2014 when he make a distinction between the word "SERVICE" & "JOB". Subsequent attempts were made by him during his visits to world leaders while he visited their nations. He has the intention to modify or repeal all laws which are dead wood for our society. He has expressed his vision that he will simplify the laws and does not believe in framing new laws.

Unfortunately, it appears that the British Raj which was got over sixty years ago but their influence on our labour laws are still continued one. Most of the Acts are too complex, rigid, redundant and slow in results. There are around 250 labour laws (both centre and state) with significant involvement of the government in our

country, which is not the case in developed countries. It is for the said reason that the investors had opted to stay away from carrying out manufacturing operations. Even the Indian investors had opted to invest in foreign countries. Number of industrial houses had opted to invest in other countries. They had opted to buy components from other countries or are still doing stamping business.

Rigid laws are in existence as the "LABOUR LAWS" are falling in the concurrent list of our constitution. Labour Laws can be framed by the central government and the state government. Both central and state governments have enacted laws on labour relations and employment issues. The major problem with the current labour laws is that they are constructed without realizing what would be their impact on the investment and market. Investors are not confident to invest in near future and it impacts the growth although we have potentiality and we can become the world leader.

### **WHAT WE SHOULD DO :**

If something was felt wrong, the primary conjecture was that you simply pass a law to ban it than to make an attempt to correct it logically. We have to modify such practices immediately.

We are living in the era of industrial up-gradation. Ours industrial relation Labour Laws were framed from time to time during the era of British Rule or at the fag end of their rule. After the partition we opted for framing laws to provide social security which was the need of the said hour. In exchange for payment and protection that the law provides, it was expected that the employees were required to guide them about their responsibility. We were involved in manufacturing of limited products based upon the available techniques only. In nineties when the laws were incorporated the working techniques were not specialized. We were working with orthodox systems. Limited qualified persons were hired to carry out the production norms. We used to engage the general workers and trained them after working at the site of the entrepreneurs. He had to work as a bonded labourer being indebted to the entrepreneur. The master was dominating his working class and was in a position to drag him as per his whims.

After independence we expended our activities. Global needs of the country during sixties & seventies were different. We were running our industries based upon orthodox techniques and entrepreneurs were intending to adopt copying [JOGRU] system. We had no

intention to spend for the concept of research and development systems. There was no social security available to the labourers. Various labour laws were framed to meet out the needs of the labour class at that time. The regards for the working class was limited or missing. Nobody ever thought to highlight the balance vision for their responsibilities.

Today the position has changed. Workers participation in management was never appreciated by the management nor the elite managerial class opted to educate the working class. With modernization in technique the working class was required with qualified knowhow. Work-force became an important component in the industrial set up like other factors such as finance or material. The working class was provided with benefits and they are getting handsome packages and facilities too. We are pulling on with the old guarded systems of laws incorporated long back ago in early twenties to fifties or sixties. The value of law is to be assessed on the basis of the need of the society and the working environments.

In exchange for payment and protection that the law provides, employees are expected to act responsibly and ethically. Laws are required to be amended and modified with the existing infrastructure and trends in India. We are calling these laws as "labour laws". Today the work force is neither a "helpless or bonded labour" nor they can be called as "labourers".

They are engaged in employment and part of the management. They are skilled force and employer cannot carry out its activities after dispensing with their requirements. The notion has been changed and the word "labourer" has been substituted to the new word "Employee" or "working Class".

We have to learn from the industrial growth and industrial relation up-gradations in the growing countries during the last eighties to nineties till date. Key areas here include punctuality, confidentiality, objectivity, integrity and safety. China is a communist country. However the labour laws and the standard thereof were changed in the said country and the system of fixed term engagements and allied norms of indirect hire and fire was approved based upon the principle of contractual employment. Singapore model has its own features.

We are lacking in our objectives to adopt new notions to create investor's friendly environments. Whether democracy is the root

cause for such hindrances? Whether we can muster a will power to amend the laws? How best we can make the laws flexible to the needs of the investor to generate employment?

## **BETTER LABOUR LAWS**

NEED OF THE HOUR is based upon the principle of Good ethical behaviour and includes:

- Conducting proper dealings with customers/clients and suppliers (ie no conflict of interest or fraud)
- Responding to competitors' behaviour without transgressing the law
- Complying with governmental regulations
- Providing good products or services
- Observing good environmental practices
- Providing support to work colleagues
- Ensuring fair staff selection and recruitment practices
- Providing good quality of work

## **Obedience**

Employees are expected to be obedient to all lawful orders from their employer, or employer's agent (e.g. manager). Employees are expected to carry out work assigned to them (the job description) in the manner requested by the employer provided it isn't against the law.

Confidentiality and Privacy

Employees must not misuse and information about clients or company personnel. Under the Privacy Act, information can only be used for the purpose for which it was collected.

## **Employee Rights**

Employees have rights in a number of areas. These include:

- Freedom from harassment and sexual harassment
- Right to join a union
- Right to work in a safe workplace
- Right to fair remuneration

## **Punctuality**

Lateness and unpredictable attendance cause difficulties for employers. People who exhibit poor punctuality are a burden to the rest of a work group.

## **Safety and care**

Employees are responsible for acting with all due regard to safety, at all times. They have a responsibility to observe the legal safety regulations. They can be held responsible if safety equipment such as clothing provided by the employer is not worn in the workplace. Employees must give consideration to the health and welfare of co-workers.

The Constitution of our country has provided the rights to every citizen of the country whether to perform his assignment in one way or the other. Employer has his own rights to run the business but there are obstacles for closure or retrenchment or even for lay off in the absence of the work or the orders.

As on today there are different classes of industry based upon different techniques of operations and different pay package. Statutory benefits or working environments cannot be equated with mind set of employer providing contractual pay package and working environment which are based upon new technique and hi-tech working conditions. Old labour laws are meant for those who have mind set for providing mere statutory benefits.

New and modified labour laws are required to be drafted for those who have mind set for providing hi-tech contractual benefits which can be termed as fair wages for each category of employees and such employment should be kept away from the peripheral view of Industrial Dispute Act, 1947.

Redundancy pay must be given under the statutory law, set at 15 day's average pay for each complete year of continuous service. An employee, who has worked for four year in addition to various notices and due processes, must be paid a minimum of the employee's wage equivalent to 60 days before retrenchment, if the government grants the employer permission to layoff. a permanent worker can be terminated only for proven misconduct or habitual absence. The Industrial Disputes Act (1947) requires companies employing more than 100 workers to seek government approval



before they can fire employees or close down. In practice, permissions for firing employees are seldom granted.

Handsome pay can be given as per the principle of contractual obligation for the employer for separation in the case of employees kept beyond the purview of Industrial Disputes Act (1947). VRS is the notion adopted in practical aspect of the matter and the employers are suffering on account of low production or collective issues created by the work force or for coercive action to extra amount. The concept of permission where separation is the only compulsion is required to be identified through contractual pre-determined notions for such class of industry. The period of pay package can be made out for such adoption of contractual obligations. An employee opting for contractual obligation for specified period then his employment right will flow from such contract only.

Co-existence of parallel laws and systems for such type of business houses will smoothen the separation process and the issue of existing laws will not be a dispute for regulating industrial relations. There shall not be any requirement for repealing any law or to face any labour unrest for the trade unions in the industrial houses. Even otherwise the minimum safety protection will continue to remain in operation against those employers who are having their mindset for a limited payments or who could not afford to give the handsome packages to its employees.

Such acts can be framed under the provisions of the Shop or Commercial establishment enactments where institutions are doing service assignments. Since the laws were framed from time to time to cover different fields therefore the laws have different definition for same or similar words. Symmetry is required to be had for defining the words used under various labour laws. Scope of the enactments and the purpose thereof is known to us therefore we can draw comprehensive meaning to cover the definitions.

Volumous litigations under industrial laws for industrial dispute or relations are pending in the courts. Under the Labour regulations there are provisions for appeal to the higher adjudicating authorities. Conciliation is the spirit of law. To avoid complex procedures the settlement can be achieved if some specified targets for payment are made out for compensation. The relief can be made out in terms of compensation rather than imposing anyone on the employer.

A provision in the amended laws can be made out for excluded industries whereby any employee has to face enquiry if he is found committing misconduct. He shall have to face the charges or the procedure of enquiry if no package is opted by the employer in such case and the package can be forfeited if someone is held guilty of the charges.

The concepts of contractual employment or severance of relationship can be assured in cases of excluded industries. No employer can run an organization without any trained labour force. A person who is willing to work cannot be termed as headache for the employer. The employer who can dispense with the services of contractual employee will be having a free hand to devote more and more time for development, research, technology and for having standardized productions for achieving better results thereto. In our country the labour force may not accept the amended Indian laws at the first instance but with benefits for the working class willing to work the new modified laws will be accepted by them. The old shall face its own fate thereafter and shall die its own death gradually. Things have changed a lot since 1940-60 to the present era of 2010 and above.

I am having a belief that we have to understand the different ways and means to accommodate various classes of employees working differently. Various form of labour laws can be framed to create two different service conditions and Industrial laws covering statutory laws and contractual laws.

The Cabinet has given its nod for labour reforms to encourage investment, ease of doing business and entrepreneurship. We need labour laws that will boost the demand for labour in the private sector, which is in turn, will lead to employment, good wages and working conditions and also the social safety of employees.

# **AN OVERVIEW UNDER LABOUR LAWS: DIGITALIZATION OF THE RECORDS**

**By Aditi Kaushal**

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Labour laws constitute an essential component of Labour Policy in India aimed at imparting certain basic rights to workers and fixing obligations on the principle employer and giving the authorities to the Government officials to ensure compliances are been made, as per the powers enshrined in our Constitution. Labour law reforms are a never ending and unceasing process and the Government has been introducing new laws and modifying the existing ones in response to the emerging needs of the growth and development of industries and workers in a constantly energetic economic environment.

The existing labour laws had the need to be reviewed considering the growth, development and modernisation of industries. In order to protect the interest of workers more effectively while at the same time promoting growth of industry, employment and productivity of workers in a healthy and harmonious work environment the Government had taken initiatives for bringing amendments in wage bills promoting startups, small entrepreneurs and organised and unorganised industries, MEMES etc.

The Indian labour laws derive their origin, inspiration and strength from the very existence of the fact of development khadi gram udyog, sugarcane industries, cottage industries etc to the latest concepts of intuitive products, software industries and MNCs. India has focussed on the expressions by great nationalist leaders during the days of national freedom struggle, partly from the debates of the Constituent Assembly and partly from the provisions of the Constitution and the International Conventions and Recommendations.

## **Digitization of Labour Laws:-**

Digitalization is the conversion of traditional, analog materials such as books, maps, and other paper items into an electronic, digital copy. Under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result, a large number of labour laws have been enacted catering to different aspects of labour

namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc. In a dynamic context laws need to be reviewed from time to time. Hence, review / updation of labour laws is a continuous process in order to bring them in tune with the emerging needs of the economy.

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment Bill, 2011 was introduced in the Rajya Sabha on 23.03.2011. The main proposals of the new Bill, 2011 are to:

- Change the definition of small establishments to cover 10-40 workers as against 10-19 workers in the Principal Act;
- Increase the number of Acts to be covered under the Principal Act from 9 to 16;
- Simplification and consolidation of returns to one form for very small and small establishments and maintenance of 1 register for very small establishments and 2 registers for small establishments.
- Maintenance of registers and returns in computer, floppy, diskette or
- other electronic media and return submitted through e-mail;

### **Dynamic Variations in law:-=**

The development of law in this field is well-known. At one point of time, the companies, societies etc. registered under the Indian Companies Act and Societies Registration Act were treated as separate corporate entities being governed by its own rules and regulations and, thus, held not to be 'States' although they were virtually run as department of the Government, but the situation has completely changed. Statutory authorities and local bodies were held to be States in Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal & Ors. - (1967) 3 SCR377.

This court, however, did not stop there and newer and newer principles were evolved as a result whereof different categories of bodies came to be held as State. The thrust now is not upon the composition of the body but the duties and functions performed by it which could be accordingly made flexible considering the on floor or procedural requirement.

Madon, J. in *Central Inland Water Transport Corporation Limited and Another Vs. BrojoNathGanguly and Another* [(1986) 3 SCC 156] questioned : -

"Should then our courts not advance with the times ? Should they still continue to cling to outmoded concepts and outworn ideologies ? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories ? Should the strong be permitted to push the weak to the wall ? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak ?

It was opined :

"26. The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable. The early nineteenth century essayist and wit, Sydney Smith, said : 'When I hear any man talk of an unaltelrable law, I am convinced that he is an unalterable fool.'" The law must, therefore, in a changing society march in tune with the changed ideas and ideologies"

Constitutions have to evolve the mode for welfare of their citizens. Flexibility is the hallmark of our Constitution. The growth of the Constitution shall be organic, the rate of change glacial. (See R. Stevens, *the English Judges: Their Role in the Changing Constitution* (Oxford 2002), p.

### **Relevancy of Electronic Evidence:**

Modernization and digitalization has been the latest trend considering which the crimes that take place in India whether civil or criminal

wrong, the Apex court has considered the preview of consideration of electronic evidences and records. An electronic record is information recorded by a computer that is produced or received in the initiation, conduct or completion of an agency or individual activity. Examples of electronic records include: e-mail messages, word- processed documents, electronic spreadsheets, digital images and databases.

The evidence consisted of three parts – (i) electronic records, (ii) documentary evidence other than electronic records, and (iii) oral evidence. As the major thrust in the arguments was on electronic records, we shall first deal with the same.

Electronic record produced for the inspection of the court is documentary evidence under Section 3 of The Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act'). The Evidence Act underwent a major amendment by Act 21 of 2000 [The Information Technology Act, 2000 (hereinafter referred to as 'IT Act')]. Corresponding amendments were also introduced in The Indian Penal Code (45 of 1860), The Bankers Books Evidence Act, 1891, etc. Section 22A of the Evidence Act reads as follows:

"22A. When oral admission as to contents of electronic records are relevant.- Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question." Section 45A of the Evidence Act reads as follows:

"45A. Opinion of Examiner of Electronic Evidence.-When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000(21 of 2000)., is a relevant fact.

Explanation.--For the purposes of this section, an Examiner of Electronic Evidence shall be an expert." Section 59 under Part II of the Evidence Act dealing with proof, reads as follows:

"59. Proof of facts by oral evidence.—All facts, except the contents of documents or electronic records, may be proved by oral evidence." Section 65A reads as follows:

“65A. Special provisions as to evidence relating to electronic record: The contents of electronic records may be proved in accordance with the provisions of section 65B.” Section 65B reads as follows:

“65B. Admissibility of electronic records:

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: -

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on

over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether –

(a) by a combination of computers operating over that period; or  
(b) by different computers operating in succession over that period;  
or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, –

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, –

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;



(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation: For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process." Wheres in the Statement of Objects and Reasons to the IT Act, it is stated thus:

"New communication systems and digital technology have made drastic changes in the way we live. A revolution is occurring in the way people transact business." In fact, there is a revolution in the way the evidence is produced before the court. Properly guided, it makes the systems function faster and more effective. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause.

It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice. Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A – opinion of examiner of

electronic evidence. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The evidence relating to electronic record, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. *Generaliaspecialibus non derogant*, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in *State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru*, (2005) 11 SCC 600, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible. (*Anvar P.V vs P.K.Basheer&Ors* on 18 September, 2014)

On the questions of importance of electronic evidence in investigation and increasing impact of technology in everyday life, in *Tomaso Bruno versus State of U.P.*, (2015) 7 SCC 178, it has been observed:

"25. With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the accused or the liability of the defendant. Electronic documents *strictusensu* are admitted as material evidence. With the amendment to the Indian Evidence Act in 2000, Sections 65A and 65B were introduced into Chapter V relating to documentary evidence. Section 65A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65B is complied with. The computer generated electronic records in

evidence are admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act. Sub-section (1) of Section 65B makes admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section (2) of Section 65B. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act. PW-13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.

Production of scientific and electronic evidence in court as contemplated under Section 65B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of Mohd. Ajmal Mohammad Amir Kasab vs. State of Maharashtra, (2012) 9 SCC 1, wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the accused. Similarly, in the case of State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600, the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers."(Kundan Singh vs The State on 24 November, 2015)

In *Servo Electronics vs Collector Of Central Excise 1996 (82) ELT 267 Tri Del* "Having regard to the modern conditions when Government is entering into business like private sector and also undertaking public utility services, many of its actions may be a State action even if some of them may be non- governmental in the strict sense of the general rule. Although rule is that a writ cannot be issued against a private body but thereto the following exceptions have been introduced by judicial gloss:

(a) Where the institution is governed by a statute which imposes legal duties upon it;

(b) Where the institution is 'State' within the meaning of Article 12.

(c) Where even though the institution is not 'State' within the purview of Article 12, it performs some public function, whether statutory or otherwise. Some of the questions involved in this matter have recently been considered in an instructive judgment by High Court Delhi in *Rahul Mehra and Another Vs. Union of India and Ors.*

(Civil Writ Petition No. 1680 of 2000) disposed of on 4th October, 2004.

The power of the High Court to issue a writ begins with a non-obstante clause. It has jurisdiction to issue such writs to any person or authority including in appropriate cases any Government within its territorial jurisdiction, directions, orders or writs specified therein for the enforcement of any of the rights conferred by Part III and for any other purpose. Article 226 confers an extensive jurisdiction to the High Court vis-à-vis this Court under Article 32 in the sense that writs issued by it may run to any person and for purposes other than enforcement of any rights conferred by Part III but having regard to the term 'authority' which is used both under Article 226 and Article 12, we have our own doubts as to whether any distinction in relation thereto can be made. (Rohtas Industries Ltd. and another Vs. Rohtas Industries Staff Union and others, AIR 1976 SC 425) This aspect of the matter has been considered in *Andi MuktaSadguru*(supra). It has clearly been stated that a writ petition would be maintainable against other persons or bodies who perform public duty. The nature of duty imposed on the body would be highly relevant for the said purpose. Such type of duty must be judged in the light of the positive obligation owed by a person or authority to be the affected party.

### **Conclusion:-**

Considering the latest verdicts and trends of the Apex Court and Government focusing on development and growth and creating law abiding flexible approach, certain state Government such as Haryana, Gujarat, Madhya Pradesh, Delhi etc have given relaxations and have accepted the approach of modernization and digitalization of record under the pretext when the records are adduced before the authorities the same satisfy the requirements as per the enactment and has been certified by the authorised person. The Government authorities as such are being directed while considering the business requirements to give relaxation to the factories or establishment in respect of maintaining records in form of electronic means. Lately to encourage business/units to verify their LIN ( Labour Identification number) on priority and avail the single online returns filing facility available on ShramSuvudha Portal launched by Honorable Prime Minister of India, on 16<sup>th</sup> October 2014. The portal has been created with the mission to become one-stop-shop for Labour law compliance and is a platform that can be shared by all the Labour enforcement agencies under control of Central and State Governments.

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# **Sexual Harassment at Workplace: A journey from Vishaka Judgment to final enactment of the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

**By Aditi Kaushal**

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Gender based discriminations are undeniably prevalent in the current society, across the world. Despite having equal education, work experience and other qualifications women are neither considered equal to men, nor given equal opportunities. This is followed by the persistent preferences for men in job interviews, payments, trainings and promotions. People have a common idea that women usually quit their careers once they get married and have children; while men carry on their job regardless of their age or any kind of personal troubles. In that case the company will not have to bear the loss of recruiting a new staff if the previously appointed staff is a male.

Men and women are like two wheels of the Chariot of Life. The term 'sexual harassment' means "a type of employment discrimination consisting in verbal or physical abuse of a sexual nature." In *Vishaka v. State of Rajasthan*, sexual harassment was defined as any unwelcome sexually determined behavior (whether directly or by implication) as physical contact and advances, a demand or request for sexual favors, sexually-colored remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The statute has been enacted almost 16 years after the Supreme Court of India, in its landmark judgment in *Vishaka and others v. State of Rajasthan* ("Vishaka Judgement"), laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women ("Guidelines"). Codification of the requirements is a much-awaited development and is a significant step towards creating awareness on the issue of workplace sexual harassment and ensuring women a safe and healthy work environment.

The Vishaka guidelines apply to all women whether students, working part time or full time, on contract or in voluntary/honorary capacity. Expressly prohibiting sexual harassment at work place these legally binding guidelines put a lot of emphasis on appropriate preventive and curative measures. (The guidelines include the following as acts

of sexual harassment: Physical contact and advances, Showing pornography, a demand or request for sexual favours, Any other unwelcome physical, verbal/non-verbal – such as whistling, obscene jokes, comments about physical appearances, threats, innuendos, gender based derogatory remarks, etc.)

Some of the important guidelines are:

- The onus to provide a harassment free work environment has been laid down on the employers who are required to take the following steps:
- Employers must form a Complaints Committee.
- Express prohibition of sexual harassment in any form and make the employees aware of the implications through in house communication system / posters / meetings.
- Must include prohibition of sexual harassment with appropriate penalties against the offender in Conduct rules.
- Prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 to be included by private employers.
- Provision of appropriate work conditions in respect of- work, leisure, health, hygiene to further ensure that there is no hostile environment towards women.
- No woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- Victims of sexual harassment to be given an option to seek transfer of the perpetrator or their own transfer.

Thus the Vishaka guidelines stipulated that all organisations would form a complaints committee to look into any such allegation. It would be headed by a woman employee and not less than half of its members would be women. All complaints of sexual harassment by any woman employee would be directed to this committee. The committee would advise the victim on further course of action and recommend to the management the course of action against the person accused of harassment.

However in *MedhaKotwalLele v Union of India* coordinator of Aalochana, a centre for documentation and research on women and other women's rights groups, together with others, petitioned the Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. In particular, the petitioners argued that, despite the

guidelines, women continued to be harassed in the workplace because the Vishaka Guidelines were being breached in both substance and spirit by state functionaries who harass women workers via legal and extra legal means, making them suffer and by insulting their dignity.

The Supreme Court of India, in 1997, in the Vishaka Judgment, for the first time, acknowledged sexual harassment at the workplace as a human rights violation. The Supreme Court relied on the Convention on the Elimination of All Forms Discrimination Against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. In its judgment, the Supreme Court outlined the Guidelines making it mandatory for employers to provide for sympathetic and non-retributive mechanisms to enforce the right to gender equality of working women. As per the Vishaka Judgment, the Guidelines, until such time a legislative frame work on the subject is drawn-up and enacted, have the effect of law and the Guidelines are to be mandatorily followed by organizations, both in the private and government sector. While there were several attempts made to enact a law on this subject previously, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was eventually passed by the Lower House of the Parliament (Lok Sabha) on September 3, 2012, then passed by the Upper House of the Parliament (Rajya Sabha) on February 26, 2013 and received the President's assent on April 22, 2013.

The Constitution of India ensures and guarantees every individual the right "to practice any profession, or to carry on any occupation, trade or business" as enshrined under Article 19(1) (g). Every woman has a constitutional right to participate in public employment and this right is denied in the process of sexual harassment, which compels her to keep away from such employment. Though this right is only available against the state, it is a recognized right in all the major international conventions. If any action, deed or remark abridges the enjoyment of this right, that act is not justified in any manner, unless it satisfies certain restrictions as imposed under article 19 (6). Sexual harassment of woman at the place of work exposes her to a big risk and hazard which places her at an inequitable position vis-à-vis other employees and this adversely affects her ability to realize her constitutionally guaranteed right under Article 19(1) (g).

Sexual harassment of women at workplace is also a violation of the right to life and personal liberty as mentioned in Article 21 that no

person shall be deprived of his life or personal liberty. Right to livelihood is an integral facet of the right to life. Sexual harassment is the violation of the right to livelihood. For the meaningful enjoyment of life under Article 21 of the Constitution of India, 1950, every woman is entitled to the elimination of obstacles and of discrimination based on gender. Since the 'Right to Work' depends on the availability of a safe working environment and the right to life with dignity, the hazards posed by sexual harassment need to be removed for these rights to have a meaning. The preamble of the Constitution of India contemplates that it will secure to all its citizens – "Equality of status and opportunity." Sexual harassment vitiates this basic motive of the framers of the constitution.

The concept of gender equality embodied in our Constitution would be an exercise in ineffectiveness if a woman's right to privacy is not regarded as her right to protection of life and liberty guaranteed by Article 21 of the Constitution of India. In view of the fact that sexual harassment of women at the workplace violates their sense of dignity and the right to earn a living with dignity, it is absolutely against their fundamental rights and their basic human rights.

Safe working environment is very much essential for the exercise of the fundamental right to practice any profession. The Supreme Court commented: 'Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right.' The common minimum requirement of this right has received global acceptance. The court had to rely on international statutes and conventions due to the lack of development of the Indian legislations. In the absence of proper legislations pertaining to this field, the court took upon itself, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces the contents of international conventions and norms are significant for the purpose of interpretation of Articles 14, 15, 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment and for the formulation of guidelines to achieve this purpose.

As a result of the growing importance of the issues relating to sexual harassment and protection of female employees in India, a new section 3 was added to the Indian Penal Code, 1860 through the Criminal Law (Amendment) Act, 2013<sup>4</sup>, which enlists the acts which constitute the offence of sexual harassment and further envisages penalty / punishment for such acts. A man committing an offence under this section is punishable with imprisonment, the term of



which may range between 1 - 3 years or with fine or both. Since the amendment criminalizes all acts of sexual harassment, employers shall be required to report any offences of sexual harassment to the appropriate authorities.

It has been more than seven months since the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 received its assent from the President of India. But unfortunately there has been a failure on the part of the WCD ministry to notify the legislation. Moreover the rules specified under the legislation have not come into effect. As a result there is a lot of confusion especially among state governments, on whether the law can be implemented without the central government notifying the rules. However, looking at the rising number of reported complaints of sexual harassment it is evident that the new law has at least served to improve awareness about the obligations of employers and rights of employees in case of workplace sexual harassment. The resentment towards incidents of sexual harassment is also increasing. Perhaps this legislation will help the silenced voice of women audible by taking off the feet that coerce women's necks.

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# **MANAGEMENT OF A FAMILY BUSINESS**

**By Anupam Malik**

Even in the most advanced economies, families' account for a very significant portion of business ownership, control and management. The family business has both strengths and weaknesses. The important thing is to recognize and understand them. Among the weaknesses of the family management, the conflict between the interests of the family and the enterprise as a whole is quite common. The strength of the family can be realized only when the family understands that its personal objectives can be realized only by the long-term success of the enterprise. While allowing some family privileges, the need to accept some limitation on family rights and prerogatives has to be recognized in order to obtain a strong management organization.

The job of operating a family-owned company is often grievously complicated by friction arising from rivalries which may involve cousins, brothers and even a father and his only son or other members of the extended family, who though not shareholders, hold positions in the business. In the atmosphere of unresolved rivalries and conflicts, everyone feels uncomfortable. The conflicting emotions make the family members behave in a manner, which not only cannot be explained or accounted for, but is also contradictory in nature. The feelings of rivalry of one member of the family are the reflection of the feelings of the other. These conflicts terribly tear the family members, resulting in fierce competition and a hostile rejection of dependence of each other. Sometimes the competition can even lead to a manipulative alignment with the employees, business associates or those relatives not connected with the business. The ladies (mothers and wives) have a stake in their own men and may become a foil and reflection of their ambitions and fantasies.

Due to friction within the family, the business becomes a battleground that produces casualties but no peace. To overcome such a situation, a few suggestions need to be thoughtfully considered, namely:-

(a) Family members should try to discuss freely the fears, worries, anger and disappointments caused by each other. They should also be able too talk about the affection of each other. Since there is a love and hate in all relationships, these can not, by definition, be

pure. They should neither feel guilty nor have feelings of self-pity about their anger with each other, but they need to talk it out.

(b) Having done that, they can divide, recognize and reallocate tasks in the organization so that each will have a chance to acquire and demonstrate competency and work in a complementary relationship with each other. Structural changes can go a long way to smoothen the ruffled and disturbed feelings.

(c) No one should behave like a big brother. Even when he does not do so, care should be taken that the others do not perceive so. We all know that perceptions are not always based on truth.

**(d)** It must be made clear in the common interactions repeatedly that the interest of the organization is supreme and that professional competence must be given precedence over individual choice or discretion. It is also necessary to clarify in the same context that if for emotive reasons or other compulsions, if an incompetent or unproductive person from the family has to be 'accommodated somehow' or paid as a part of the organization, it is better to pay the dead wood outside the organization than to pay him on a job inside the set up. The existence of an incompetent and unproductive person breeds more of the type.

(e) As the different units flourish individually, all should co-ordinate, with each other and function with understanding and harmony in the best interest of the family - namely the group establishments. These are called sister (and not brother) concerns as women contribute more than men to the unity and peace of the house. Women are associated with love, affection and emotion of stability. That is why we always say 'mother-land', 'mother-tongue' and even 'mother-board' used in the computers.

(f) Units situated at different stations and even at different places in the same station can be treated as independent establishments without deserting the corporate umbrella of culture. Details in this respect can be worked by mutual discussions.

(g) To ensure smooth functioning of the business organisation, all the important parameters like extent of functional integrity and Independence, source of finances, purchases, market strategy, advertisements, transfer of employees etc. should be discussed threadbare and defined with full clarity. The idea is that all the units should progress on the basis of co-operation, group dynamics and

synergism. Objectives should be to develop a culture that abolishes. "WE" and "THEY" syndrome and behaviour.

(h) For taking decisions, which is the main function of the management, these can be classified as (i) 'GREEN', that any Director can take; (ii) "YELLOW", that any group can take (iii) "RED" that have to be taken collectively by both the groups and (iv) 'OUT-OF-BOUND' that have to be referred to the Board of Directors. The essence of this system is that the entire team meets at least once in a month and each member reviews with his colleagues his performance during the month and discusses his plans for the following month.

(i) The Board of Directors of a limited company can authorize any person to make appointments of the employees by passing a resolution to that effect. It is not necessary that the Managing Director should be the appointing authority. Any Director or even a non-shareholding manager can be given this power.

(j) The penalty of removal or dismissal from service can be inflicted only by the appointing authority or a superior authority but not by the authority sub-ordinate to that authority. If on account of amendments in the company resolutions, the lower authority becomes competent to make appointments, the old employees cannot be removed or dismissed from services by the new authority, which is junior in rank to the previous appointing authority.

(k) Under the Labour Laws, the concept is of a single person to be the 'appointing authority', 'employer' or 'occupier' in respect of an establishment. For example, section 2 (d) of the Industrial Employment (standing orders) Act, 1946 which requires an employer to define with sufficient precision, the conditions of employment under him and to make the said conditions known to the workmen employed by him, defines the term 'employer' by reference to 'any person; and 'head of department'. In section 2 (g) of the Industrial Disputes Act, 1947 which defines the term 'employer' the expressions used are 'head of the department' and 'chief executive officer'. Similar is the position in the definition of the term 'employer' as contained in section 2(17) of the employee's State Insurance Act, 1948. In fact, the working journalists and other newspaper employees (conditions of service) and Miscellaneous Provisions Act, 1955 does not define the term employer but says in section 2(g) that all words and expressions used but not defined in the Act and defined in the Industrial Disputes Act, 1947 shall have the same meaning

respectively assigned to them in that Act. Obviously, there can be only one 'head' or 'chief executive' of an establishment. Under the factories Act, 1948 there is no definition of the term 'employer' but instead, vide section 2(n), the term 'occupier' is defined to state that in case of a Company 'any one' of the directors will be deemed to be an occupier.

Thus dualism and diarchy in such vital personnel matters will not only be in discordance with law but would also create administrative and industrial relations problems. Besides, this arrangement would be pregnant with very damaging mischief. Needless to mention that an approach can be effective only when a macro perspective taking into account long-term effect is kept in focus.

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**BRIEF NOTES AND**  
**COMPLIANCE**  
**CHECKLIST**  
**UNDER LABOUR**  
**LAWS**

Compiled By:

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CS Peer Mehboob

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## **EMPLOYEES PROVIDENT FUNDS & MISC. PROVISIONS ACT, 1952 AND SCHEMES**

### **Object of the Act**

To provide wider benefits to the Workers on completion of their employment.

### **Applicability**

Every specified factory or establishment in which 20 or more persons are employed. Any factory or Establishment can also voluntarily cover under the Act, even if the number of employees are less than 20.

### **Eligibility**

- Any person who is employed for work of an establishment or employed through contractor in or in connection with the work of an establishment and drawing salary upto Rs.15,000/- p.m. (Basic + DA).

### **Rates of Contribution**

- Employer - 12%
- Employee - 12%
- Govt. - 1.16%

<b>SCHEME</b>	<b>EMPLOYEE'S</b>	<b>EMPLOYER'S</b>	<b>CENTRAL GOVT.</b>
Provident Fund Scheme	12%	Amount > 8.33% (i.e. 3.67%)	Nil
Insurance Scheme	Nil	0.5%	Nil
Pension Fund	Nil	8.33% (diverted out of provident fund's 12%)	1.16%

**Insurance Scheme:** All members contributing to Provident Fund are automatically insured for their life during the Service. Employer's Contribution to the Insurance Scheme is 0.5%. The max. amount payable to the nominee in case of death of employee is Rs.100000/-.

**Pension Fund:** All employees covered under Provident Fund become members of Pension Scheme. 8.33% of Basic Salary upto



Rs.15,000/- is contributed to Pension Scheme from employers share of contribution. A minimum period of ten years of contributory service is required to be eligible to receive monthly Pension. Full pension is payable on completion of 20 years of contributory service.

**Compliance Checklist under EPF Act:**

<b>S.No.</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
<b>1.</b>	Employer and Employee's PF dues	15 <sup>th</sup> of the following month	<b>Challan No. A/c No.1</b>
<b>2.</b>	Pension Fund	15 <sup>th</sup> of the following month	<b>Challan No. A/c No.10</b>
<b>3.</b>	Insurance Fund	15 <sup>th</sup> of the following month	<b>Challan No.21</b>
<b>4.</b>	Detail of employees	Detail of employees enrolled as members PF fund, within 1 month of coverage	<b>Form 9</b>
<b>5.</b>	Nomination Form	Immediately on Joining the fund	<b>Form 2</b>
<b>6.</b>	Addition of members	Detail of newly enrolled members within 15 days of following month	<b>Form 5</b>
<b>7.</b>	Deletion of member	Detail of members left service during the month-before 21 <sup>st</sup> of following month	<b>Form 10</b>
<b>8.</b>	Details of contribution	Detail of employees and employer's contribution-by 25 <sup>th</sup> of following month	<b>Form 12A</b>
<b>9.</b>	Detail of wages and contribution	For each member- By 30 <sup>th</sup> April every year	<b>Form 3A</b>
<b>10.</b>	Yearly Consolidated statement of contribution	To be forwarded yearly alongwith Form 3A	<b>Form 6A</b>
<b>11.</b>	Return of ownership of establishment	Within 15 days on coverage and whenever there is a change in ownership	<b>Form 5A</b>
<b>12.</b>	Transfer of PF	-	<b>Form 13</b>

## **EMPLOYEES STATE INSURANCE ACT,1948**

### **Object of the Act**

To provide social insurance for the employees.

### **Applicability of the Act & Scheme**

Is extended in area-wise to establishments employing 20 or more persons.

### **Coverage of employees**

Employees drawing gross wages upto Rs.21000/- per month, engaged either directly or through contractor. [ESI (Central) Amendment Rules, 2016 amended ceiling of wages from Rs.15000/- to Rs. 21000/- w.e.f 01/01/2017].

### **Rate of Contribution of the wages**

Employers' 4.75%  
Employees' 1.75%

### **Manner and Time Limit for making Payment of contribution**

The total amount of contribution (employee's share and employer's share) is to be deposited with the authorised bank through a challan in the prescribed form in quadruplicate on or before 21st of month following the calendar month in which the wages fall due.

### **Benefits to the employees under the Act**

Medical, sickness, extended sickness for certain diseases, enhanced sickness, dependents maternity, besides funeral expenses, rehabilitation allowance, medical benefit to insured person and his or her spouse.

### **Penal Provision**

- For contraventions of Provisions of the Act, imprisonment upto 2 years and fine upto Rs.5,000/-
- For repeated contraventions of the Act, imprisonment upto 5 years and fine upto Rs.25,000/-.

### **Compliance Checklist under the ESI Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	-	Registration of factory	Particulars of factory and changes in particulars, if any be shall be furnished	Form 1
2.	Rule 11	Declaration from all employees	Regarding particulars to be furnished in Form 1	Form 3
3.	Rule14	Declaration Forms to be sent to appropriate office	Within 10 days of furnishing of declaration forms	Form 3
4.	Rule 15	Allotment of Insurance Number	On receipt of declaration forms, appropriate office shall allot insurance number and temporary identification certificate for each employee, which employer shall deliver to each employee	-
5.	Rule 15	Register of Employees	-	Form 6
6.	Rule 15A	Registration of families	Particulars of family of insured shall be furnished by each insured employee which shall be sent to appropriate office within 10 days of furnishing	Form 1A
7.	Rule 17	Identity Card	Appropriate office shall issue for each employee	Form 4
8.	Rule 26	Return of Contributions	Within 42 days of termination of contribution period in quadruplicate	Form 5
9.	Rule 31	Time for payment of contribution	Within 21 days of last day of calendar month	-
10.	-	Half Yearly Return	-	Form 6A

## **FACTORIES ACT, 1948 READ WITH RULES**

### **Applicability of the Act:**

To any premises where manufacturing activities are carried out with the aid of power and where 10 or more workers are/were working OR where manufacturing activities are carried out without the aid of power and where 20 or more workers are/were working.

### **Employer to ensure health of workers pertaining to**

- Cleanliness Disposal of wastes and effluents
- Ventilation and temperature dust and fume
- Overcrowding Artificial humidification Lighting
- Drinking water.

### **Safety Measures**

- Fencing of machinery
- Work on near machinery in motion.
- Employment prohibition of young persons on dangerous machines.
- Striking gear and devices for cutting off power.
- Self-acting machines.
- Hoists and lifts.

### **Working Hours, Spread Over & Overtime of Adults**

- Weekly hours not more than 48 hours.
- Daily hours, not more than 9 hours.
- Intervals for rest at least ½ hour on working for 5 hours.
- Spread over not more than 10½ hours.
- Overlapping shifts prohibited.
- Extra wages for overtime double than normal rate of wages.

- Restrictions on employment of women before 6AM and beyond 7 PM.

### **Welfare Measures**

- Washing facilities
- Facilities for sitting
- First-aid appliances – one first aid box not less than one for every 150 workers.
- Canteens when there are 250 or more workers.
- Shelters, rest rooms and lunch rooms when there are 150 or more workers.
- Creches when there are 30 or more women workers.
- Welfare officer when there are 500 or more workers.

### **Employment of Young Persons**

- Prohibition of employment of young children i.e. below 14 years.
- Adolescent workers (15 to 18 years of age) are permitted with less working hours and special conditions.

### **Annual Leave with Wages**

A worker having worked for 240 days @ one day for every 20 days of working.

### **Penal Provision**

- For contraventions of Provisions of the Act, imprisonment upto 7 years or fine upto Rs.2,00,000/-
- For continuous contraventions of the Act, imprisonment upto 10 year and/or fine upto Rs.5,000/- per day.

**Compliance Checklist under Factories Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Rule 3A	Approval of Plans	1. Plan of Factory building must be approved by Chief Inspector 2. No addition / alteration in building can be made unless approved by Chief Inspector	1. Form 1A- Application for approval of plan
2.	Rule 4	Certificate of stability	Neither any manufacturing process shall be carried by any building nor any machinery shall be added unless a certificate of stability is signed and accepted by the Chief Inspector	Form 1F-certificate of Stability
3.	Rule 6	Work rooms of Factory	1. Height of work room shall be atleast 3.75 meter and approved by Chief Inspector 2. Particular of every work room shall be entered in Form 1D and shown to inspector if required	Form 1D- Particulars of each workroom of factory
4.	Rule 7	Application for Registration of Factory	Application for registration and licence of factory shall be made Chief Inspector in triplicate. (Licence granted under this rule shall be valid for 1 yr. or 5 yrs.)	Form No.2- Application for licence and registration of factory

5.	Rule 18	Record of white washing etc.	Record of whitewashing, color washing, varnishing etc. shall be entered in a Register (Whitewashing of every latrine and urinal shall be repeated once in every 4 months.)	Form No.7- Register under Rule 18
6.	Rule 58	Register of workers attending machinery	-	Form-7A
7.	Rule 60	Examination of hoists and lifts	A register shall be maintained to record particulars of examination	Form 23
8.	Rule 71	Canteen	Canteen shall be provided if there are more than 250 workers Accounts of canteen shall be maintained and audited	-
9.	Rule 79	Crèches	Factory employing more than 30 women workers	-
10.	Rule 110	Muster Roll	Muster Roll specifying the detail of workers	Form 25
11.	Rule 94A	Leave with wages Register	-	Form 15
12.	Rule 95	Leave Book	-	Form 15
13.	Schedule IX	Cautionary Notices	Cautioner notices as to anthrax shall be affixed on prominent position of factory	-
14.	Schedule IX	Protective clothing	Protective clothing like waterproof gloves, footwear, aprons etc. be provided to workers engaged in processes	-

15.	Schedule IX	Medical facilities and record of examinations and tests	Occupier of the factory shall appoint qualified medical practitioner. Every worker within 15 days of appointment shall be examined by the practitioner and after that atleast once in every year.	Form 17-Register of every examination shall be maintained
16	Rule107	Annual Return	Before 31 <sup>st</sup> of January each year	Form 21
	Rule 107	Half Yearly Return	Before 15 <sup>th</sup> July/15 January	Form 22
18	Rule110	Attendance Card		
19	Rule 106	Display of notices	Abstract of Rules and Act required to be displayed in every factory	Form 20
20		Welfare Officer	For factories employing 500 to 1000 workers	
21	Rule 112	Inspection Book	-	Form 35
22	Sec.7	Notice by Occupier	15 days before joining notice be sent to chief inspector	-
23	Sec.7A(3)	General Duties of Occupier	Written Statement of general policy w.r.t the health and safety of the worker.	-
24	Sec.11	Cleanliness	Whitewash, paint etc. shall be carried out every year and the date on which it was carried shall be entered in a register	-
25	Sec.40B	Safety Officer	If there are more than 1000 workers.	-
26	Sec.108	Display of notices	Abstract of Rules and Act required to be displayed in every factory	Form 20



## **INDUSTRIAL DISPUTES ACT, 1947 AND RULES**

### **Object of the Act**

Provisions for investigation and settlement of industrial disputes and for certain other purposes.

### **Authorities to deal with Disputes**

**Works Committee**—Joint Committee with equal number of employers and employees' representatives for discussion of certain common problems.

**Conciliation**—is an attempt by Govt. Official in helping to settle the disputes.

**Adjudication** – Labour Court, Industrial Tribunal or National Tribunal to hear and decide the dispute.

### **Conditions for Laying off**

Failure, refusal or inability of an employer to provide work due to

- Shortage of coal, power or raw material.
- Accumulation of stocks.
- Breakdown of machinery.
- Natural calamity.

### **Lay off Compensation**

Payment of wages except for intervening weekly holiday compensation 50% of total or basic wages and DA for a period of lay off upto maximum 45 days in a year.

### **Notice of Change**

21 days notice to be given by an employer to workmen about changing the conditions of service.

### **Prohibition of strikes & lock out**

- Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking.
- Within fourteen days of giving such notice.

- Before the expiry of the date of strike specified in any such notice as aforesaid.
- During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings.
- During the pendency of proceedings before a Labour Court, Tribunal or National
- Tribunal and two months, after the conclusion of such proceedings.
- During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under Sub-Section(3A) of section 10A
- 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.

### **Prior Permission from the Govt.**

When there are more than 100 workmen during preceding 12 months, prior permission to be obtained by the Employer for Lay Off, Retrenchment or Closure.

### **Retrenchment of Workmen Compensation & Conditions**

No employees who has worked for 240 days in a year shall be retrenched unless paid/given:

- Retrenchment compensation @ 15 days' wages for every completed year of service.
- Given One month's notice or wages in lieu thereof.
- Reasons for retrenchment
- Complying with principle of 'last come first go'.

### **Notice for Closure of an Undertaking**

- 60 days' notice to the authorities for intended closure in prescribed form,
- To apply for Prior permission from Govt. atleast 90 days before the intended closure, when there are 100 or more workmen during preceding 12 months

## **Penal Provision**

- For breach of provisions of the Act, the employer shall be punishable with imprisonment upto 6 months and/or fine not exceeding Rs.5,000/-.
- On continuity of offence fine upto Rs.200/- per day.

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
<b>1.</b>	Sec.3	Work Committee	Where 100 or more workers are employed, a work committee representing employers and workmen shall be constituted to secure and preserve amity and good relations. <ul style="list-style-type: none"><li>• The representatives of work committee shall be appointed by following the complete procedure of election as laid down under Rules.</li></ul>	-
<b>2.</b>	Sec.9A	Notice of change	To effect any change in the conditions of Service	<b>Form E</b>

<b>3.</b>	Rule 56A	Half Yearly returns	Not later than 20 <sup>th</sup> Day of month following the half year	<b>Form-G.I</b>
<b>4.</b>	Rule 74A	Notice of lay off	Notice of lay off shall be given to the workmen on commencement and termination of lay off	<b>Form O-1 and Form O-2</b>
<b>5.</b>	Rule 75A	Notice of and application for permission of retrenchment	-	<b>Form PA and Form PB</b>
<b>6.</b>	Sec.9C	Grievance Settlement Authorities	Where 50 or more workmen are employed, Grievance Settlement Authority for settlement of Industrial Dispute shall be constituted.	-
<b>7.</b>	Sec.250	Closure of undertaking	60 days notice to labour authorities and prior permission from govt. if workers are more than 100	<b>Form QA</b>

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

### **Object of the Act**

To provide certain statutory right to the employees to share the profit of the employer.

### **Applicability of Act**

Every establishment where in 20 or more persons are employed on any day during an accounting year.

### **Exemption for newly set up Establishments**

Newly set up establishment is exempted from paying bonus for the initial 5 years, provided no profit is made during these years. If the employer derives profit in any of the first five years, he has to pay bonus for that year.

### **Eligibility for Bonus**

- Employees (other than Apprentice) drawing salary (basic + DA) upto Rs.10,000/- p.m.
- An employee will be entitled only when he has worked for 30 working days in that financial year.

### **Benefits**

- Minimum Bonus is 8.33% of total salary earnings (basic + DA) for the financial year.
- Maximum bonus is 20% if allocable surplus exceeds amount of minimum bonus.

### **Disqualification & Deduction of Bonus**

On dismissal of an employee for

- Fraud; or
- riotous or violent behaviour while on the premises of the establishment; or

- theft, misappropriation or sabotage of any property of the establishment or
- Misconduct of causing financial loss to the Employer to the extent that bonus can be deducted for that year.

### **Time Limit for Payment of Bonus**

Within 8 months from the close of accounting year.

### **Penal Provision**

For breach of provisions of the Act, the employer shall be punishable with imprisonment upto 6 months and/or fine not exceeding Rs.1,000.

### **Compliance Checklist under Bonus Act.:**

<b>S.No.</b>	<b>Provision</b>	<b>Form</b>
1.	Register showing computation of allocable surplus u/s 2(4)	Form A
2.	Register showing set off and set on of allocable Surplus u/s 15	Form B
3.	Register showing complete details of bonus, due and paid to each employee	Form C
4.	<b>Annual Return</b> within 30 days from the expiry of time limit for payment of bonus.	Form D

## **PAYMENT OF GRATUITY ACT,1972**

### **Object of the Act**

To provide certain reward to the employees for a long meritorious service, at the end of their services.

### **Applicability**

Every factory, mine, oil field, plantation, port, railways, shop or establishment employing 10 or more employees Once Act applies, it continues to apply even if employment strength falls below 10.

### **Eligibility**

- Any person employed on wages/salary (irrespective of designation) and completed 5 years of continuous service (except in case of death), shall be eligible for gratuity at the end of their services.

### **Benefits**

- 15 days wages (basic + DA) for every completed year of service.
- Maximum gratuity payable is Rs.10,00,000/-

### **Calculation Method**

Gratuity =  $\frac{\text{Monthly salary} \times 15 \text{ days} \times \text{No. of year of service}}{26}$

26

### **Forfeiture of Gratuity**

Gratuity can be forfeited on termination of an employee

- for moral turpitude or riotous or disorderly behaviour.
- Wholly or partially for wilfully causing loss, destruction of property etc.

### **Display of Notice**

Certain notices & abstract of Act are to be displayed at conspicuous place at the main entrance in English language or the language understood by majority of employees of the factory/establishment. 12 Nomination To be obtained by employer after expiry of one year's service, in Form 'F'.

### **Penal Provision**

- Imprisonment upto 2 years or fine upto Rs.20,000 for avoiding to make payment by making false statement or representation.
- For other contraventions of the Act, imprisonment upto one year and/or fine upto Rs.10,000/-

### **Compliance checklist under the GratuityAct:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Sec4A	Compulsory License	Compulsory insurance towards payment of gratuity from LIC shall be obtained or established approved gratuity fund	-
2.	Sec.4A(3)	Registration of establishment	-	Form A
3.	Sec.6	Nomination	Each employee who has completed his one year of service shall make nomination	Form F
4.	Sec.7	Determination of amount of gratuity	As soon as gratuity become payable, employer shall determine gratuity and shall pay within 30 days of it becomes payable	-
5.	Rule 3(1)	Notice of opening of establishment	Within 30 days of opening of establishment, notice be submitted to the controlling authority of area	Form-A
6.	Rule 3(2)	Change of address	Within 30 days of change of name,	Form B



			address or nature of business notice shall be sent	
7.	Rule 4	Display of notice	At the main entrance of factory, a notice in conspicuous manner in English and vernacular language, the name of authorized person who will receive notices under this Act	
8.	Rule 7	Application of gratuity	Employee shall within 30 days of gratuity becoming payable and application to the employer	Form I, J or K as may be applicable
9.	Rule 8	Notice of payment of gratuity	Within 15 days of receipt of application, issue notice either in Form L to fix the date of payment or in Form M in case of payment not admissible. Copy of notice shall be endorsed to controlling authority	Form L or Form M
10.	Rule 20	Display of abstract of Act and Rules	At conspicuous manner or near to main entrance in English and in vernacular language	Form U

## **PAYMENT OF WAGES ACT, 1936**

### **Object of the Act**

The main object of the Act is to regulate the payment of wages of certain classes of employed persons, avoid unnecessary delay in the payment of wages and to prevent unauthorised deductions from the wages.

### **Applicability of Act**

- Factories, industrial Establishments, Tramway service or motor transport service, Air transport service, Dock, Wharf or Jetty, Inland vessel, Mine, quarry or oil-field Plantation, Workshop, construction activities or other establishment etc.

### **Coverage of Employees**

The employees drawing average wage upto Rs.10,000/- p.m.

### **Time of payment of wages**

The wages of every person employed be paid:

- When less than 1000 persons are employed shall be paid before the expiry of the 7th day of the following month.
- When more than 1000 workers, before the expiry of the 10th day of the following month.

### **Mode of Payment of Wages**

- As per the recent Payment of Wages (Amendment) Act, 2017, employers shall pay wages to workers through cheque or transferring into their bank account without their authorisation.

### **Deduction from wages**

Deductions such as, fine, deduction for amenities and services supplied by the employer, advances paid, over payment of wages, loan, granted for house building or other purposes, income tax payable, in pursuance of the order of the Court, PF contributions, cooperative societies, premium for Life Insurance, contribution to any fund constituted by employer or a trade union, recovery of losses,

ESI contributions etc. can be made from the wages, in accordance with Section 7.

### **Maximum Deductions**

- The maximum permissible deductions is 50% of the wages
- In the event of deduction include payment to co-operative societies, the maximum permissible deduction is 75% of the wages.

### **Penal Provision**

- Penalties for breach of provisions are from Rs.200/- to Rs.1000/-.
- Repeat offences attract 1 month to 6 months imprisonment and fine from Rs.500/- to Rs.3000/-
- Delayed wage payments attract penalty of Rs.100/- per day

### **Compliance Checklist under Payment of Wages Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Sec.4	Wage Period	Employer shall fix a wage period not exceeding 1 month for payment of wages	-
2.	Sec.5	Time for payment of wages	Within 10 days after the last day of wage period	-
3.	Sec.13A	Registers and records	Register and records giving particulars of all employees, attendance and wages paid to them. Every register shall be preserved for three years	-
4.	Sec.45	Display of notices	Notice of abstract of Act shall be displayed in English and vernacular language	-
5	-	Annual Return	By 15 <sup>th</sup> February of next year	Form IV

## **EMPLOYEES COMPENSATION ACT, 1923**

### **Object of the Act**

This Act earlier known as "Workmen's Compensation Act" was introduced as a kind of Social Security Scheme for the workmen who suffer employment injury, occupational disease etc.

### **Coverage of Workmen**

All workers irrespective of their status or salaries either directly or through contractor or a person recruited to work abroad.

### **Eligibility**

- Any workman who is injured by accident arising out of and in the course of his employment OR contracts occupational disease peculiar to his occupation.

### **Benefits**

- In case of death results from injury, 50% of monthly wages x relevant factor OR Rs.1,20,000/- whichever is more.
- In case of Permanent total disablement resulted from the injury, 60% of monthly wages X relevant factor OR Rs.1,40,000/- whichever is more
- Where permanent, partial disablement or temporary disablement results from injury, as per prescribed schedule.
- In case of death, funeral expenses of Rs.5,000/-
- Relevant factor is based on the age of workman
- For the purpose of calculation of compensation, the monthly salary ceiling is Rs.8000/-, as per Central Govt. Notification dated 31.05.2010.
- In the event of death or in the event of any dispute, the compensation to be deposited with the Commissioner within one month.

### **When an employee is not liable for compensation**

- In respect of any injury which does result in the total or partial disablement of the workman for a period not exceeding three days.
- In respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to-

- The workman having been at the time thereof under the influence of drink or drugs, or
- Willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
- Willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

**Bar of benefit under other enactments :-**

When a person is entitled to any of the benefits provided by this Act, he shall not be entitled to receive any similar benefit admissible under the provisions of any other enactment.

**Penal Provision**

In case of default by employer - 50% of the compensation amount +interest to be paid to the workman or his dependents as the case may be. Other offences attract fine upto Rs.5000/-.

**Compliance Checklist under Employees Compensation Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Sec. 10B	Report of fatal accident	-	Form E-E
2.	Sec.8(1)	-	Furnish statement in case of death and on depositing compensation	Form A
		-	In other cases, statement be furnished to Commissioner	Form AA
		-	While depositing compensation information be sent to commissioner, in case of non-fatal accidents	Form D
3.	Rule 48	Memorandum of Agreement	On settlement of compensation, memorandum of agreement with workmen shall be executed	Form- K, L, and M
4.	-	Annual Return of compensation	-	-

## **CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970**

### **Object of the Act**

To regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

### **Applicability**

- Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour.
- Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

### **Registration of Establishment**

Every Principal employer employing 20 or more workers through the contractor has to register with the Authority by paying prescribed fees.

### **Licensing of Contractor**

- Every Contractor engaging 20 or more workers should obtain License from the Authority by required fees and keeping specified Security Deposit.
- The License is issued for specified period.

### **Welfare measures to be taken by the Contractor**

- Canteen facility (if workers are 100 or more)
- First Aid facilities.
- Rest Rooms
- Drinking water, latrines and washing facilities.
- Creches

### **Liability of Principal Employer**

- To ensure provision for canteen, restrooms, sufficient supply of drinking water, latrines and urinals, washing facilities.
- Principal employer entitled to recover from the contractor for providing such amenities or to make deductions from amount payable.

### **Employer's obligation:**

- To issue wage slips to the workmen at least a day prior to the disbursement of wages.
  - Obtain the signature or thumb impression of the worker concerned against the entries relating to him on the Register of wages or Muster Roll-Cum-Wages Register.
  - When covered by Payment of Wages Act, register and records to be maintained under the rules.
  - To display an abstract of the act and Rules in English and Hindi and in the language spoken by the Majority of workers in such forms as may be approved by appropriate authority.
  - To display notices showing rates of wages, hours of work, wage period, dates of payment, names and addresses of the inspector and to send copy to the inspector and any change forthwith
- 
- To issue an employment card to each worker in prescribed form.
  - To issue service certificate to every workman on his termination in prescribed form.

### **Penal Provision**

- For contraventions of Provisions of the Act, imprisonment upto 3 months or fine upto Rs.1,000/-.
- For continuous contraventions of the Act, fine of Rs.100/- per day.

**Compliance Checklist under Indian Contract Labour Laws:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Rule 17 and Sec.7	Registration of Establishment	-	Form I in triplicate
2.	Sec.8	Licensing of contractors	No work can be undertaken by contract labour unless license is taken. License shall be valid upto 31 <sup>st</sup> December Renewal OF License	Form IV- for application for license Form VII - Renewal of license
3.	Sec.29	Registers and records to be maintained	1. Register of Contractors 2. Register of Employment Card 3. Muster Roll 4. Register of wages 5. Register of Deductions for damage or loss. 6. Register of Fines 7. Register of Overtime 8. Register of Advances	Form XII- Register of Contractors Form XIII- Register of persons employed Form XVI- Muster Roll Form XVII- Register of wages Form XX- Register for deduction for damages Form XXI- Register of fines Form XXII- Register of advances Form XXIII- Register of Overtime
4.	-	Half yearly Returns	Within 30 days	Form XXIV



## **INDUSTRIAL EMPLOYMENT (STANDING ORDERS)ACT, 1923**

### **Object of the Act**

To standardize the service conditions of the workmen employed in any industrial establishment. The Act lay down uniformity in the service conditions of the employees in Industrial Establishments, so that the employer and the employees know in clear manner their rights and obligations.

### **Applicability of the Act**

- Every industrial establishment wherein 100 or more employees are employed.

### **Matters to be provided in Standing orders**

- Classification of workmen, e.g., whether permanent, temporary, apprentices, probationers, or badlis. Manner of intimating to workmen periods and hours of work, holidays, pay-days 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 re-opening of sections of the industrial establishments, and temporary stoppages of work and the right and liabilities of the employer and workmen arising therefrom.
- Termination of employment, and the notice thereof to be given by employer and workmen.
- Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.

### **Additional Matters**

- Service Record
- Token tickets,
- Record of age,
- Fixing Age of retirement
- Medical Examination
- Secrecy
- Exclusive Service

### **Submissions of Draft Standing Orders**

The employer has to submit draft Standing orders for certification within six months from the date when the Act becomes applicable to an industrial establishment.

### **Temporary Application of Model Standing Orders**

Till the certification is done by the Certifying Officer, the Model Standing orders provided by the Rules shall be applicable to the Establishment.

### **Procedure for Certification of Standing Orders**

- The Draft Standing Order to be submitted to the Certifying Officer.
- The Certifying Officer has to forward a copy of draft standing orders to the trade union or in the absence of union, to the workmen of the industry.
- The trade union or the other representatives, as the case may be, are to be heard. (Sec.5)
- After hearing both the parties and after making necessary changes and amendment, the Certifying Officer shall certify the Standing order.

### **Date of commencement of Operation of Standing Orders**

On the date of expiry of 30 days from certification or on the expiry of 7 days from the Appellate order if any passed.

### **Display of Standing Orders**

The certified Standing Orders should be displayed in English language or in the language understood by majority of workmen on a notice board at or near the entrance of the Establishment.

### **Penal Provisions**

- For contraventions of provisions of the Act, a fine upto Rs. 5000/- can be imposed.
- For repeated or continuous contravention of the Act, further fine of Rs. 200/- per day can be imposed

### **Compliance Checklist under Industrial Employment Standing Orders Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Sec.3	Submission of Draft Standing Orders	Employer shall submit 5 copies of draft standing orders to the Certifying Officer(i.e.labour commissioner)	Form I
2.	Sec.9	Posting of standing orders	The certified Standing Orders should be displayed in English language or in the language understood by majority of workmen on a notice board at or near the entrance of the Establishment.	-

## **MATERNITY BENEFIT ACT, 1961 AND RULES**

### **Object:**

To regulate the employment of women in establishment before and after child-birth and to provide for maternity benefit and certain other benefits.

### **Applicability:**

To every establishment where women are employed, whether directly or through any agency, for wages in establishment.

### **Eligibility:**

Woman must have worked for atleast 180 days preceding the date of her expected delivery.

### **Prohibition of employment by workmen during certain period**

**Sec.4:** No woman shall work in any establishment during 6 weeks from immediately last day of her delivery or miscarriage.

### **Maximum period of maternity benefit:**

Total 26 weeks (of which not more than 8 weeks shall precede the date of expected delivery.)

Medical Bonus shall be paid along with the second installment of maternity benefit.

### **Payment of Maternity Benefit:**

1. Payment of maternity benefit at the rate of the average daily wages for the period of actual absence.
2. Average daily wages: wages paid during the period of 3 calendar months immediately preceding the date of her expected delivery.

### **Nursing Breaks:**

Every women delivered of a child who returns to duty after such delivery shall be allowed in the course of her daily work two breaks for nursing her child until the child attains the age of 15 months.

## **Maternity Benefits (Amendment) Act, 2016:**

The Maternity Benefit (Amendment) Act, 2016 comes into force from April 1, 2017. However, the provisions relating to permission required to 'work from home' (Section 3(5) of the Act), will come into effect from July 1, 2017. Highlights of the amendments are as follows:

- Increase Maternity Benefit from 12 weeks to 26 weeks for two surviving children and 12 weeks for more than two children.
- 12 weeks Maternity Benefit to a 'Commissioning mother' and 'Adopting mother'.
- Facilitate 'Work from home'. An employer may permit a woman to work from home, if the nature of work assigned permits her to do so.
- Mandatory provision of Creche in respect of establishment having 50 or more employees. The woman will be allowed four visits to the crèche in a day.
- Inform every woman at the time of appointment regarding every benefit available under this Act.

## **Compliance Checklist under Maternity Benefit Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Sec.5	Maternity Benefit	At the rate of average daily wages for the period of her actual absence and including the day of delivery and 6 weeks immediately following that day.	-
2.	Rule 3	Muster Roll	The employer of every establishment in which women are employed shall prepare and maintain a muster roll in form 'A'	Form A
3.	Rule 4 read with Sec. 6	Notice of maternity benefit by the women employee	-	Form B

4.	Rule 5	Proof	Proof of pregnancy, delivery of child or miscarriage	Form C
5.	Sec.11	Nursing break	Nursing break shall be provided to the women returns on work after delivery till the child attain the age of 15 months	-
6.	Sec.19	Display of notice	An abstract of Act and rules shall be displayed in vernacular language at all places where women are employed.	Form K
7.	Rule 13	Supply of Forms	Employer shall supply to every women employed by him at her request free of cost Form B, C, D, E, F, G, H and Form I.	
8.	Rule 16 read with Sec. 28(2)	Annual Return	On or before 21 <sup>st</sup> day of January	Form L, M, N and O

1. Form A- Muster Roll
2. Form B- Notice under Sec.6 by women employee
3. Form C- Certificate by medical practitioner
4. Form D- Certificate by Registered by Mid-wife
5. Form E- Certificate by Medical Practitioner in case of death of employee
6. Form F- Reciept of Meternity Benefit.
7. Form G & H- Letter to Competent Authority by the employee on being deprived of maternity benefit by employer
8. Form I- Letter to competent authority by the nominee on being deprived of maternity benefit.
9. Form J- A letter to the authority by the employer stating non entitlement of material benefit of employee.
10. Form K- Abstract of Material Benefit Act.
11. Form L, M, N and O- Annual Return

## **TRADE UNION ACT, 1926 AND RULES**

### **Objects:**

To provide for the registration of Trade Unions and in certain respects to define the law relating to registered Trade Unions

### **Formation:**

1. Trade Union may be formed by any 7 or more members by subscribing their names to Rules of Trade Union and apply for registration under this Act.
- 2.
3. Atleast half of Office Bearers shall be person engaged or employed in the industry with which trade union is connected.

### **Compliance Checklist under Trade Union Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Sec.5	Application for registration	Application shall be made with Registrar of Trade Union accompanied with rules of Trade Union and a Statement giving complete details of Trade Union	Form A
2.	Sec.12	Registered Office	Trade Union shall have a registered office and may change address of Registered office with the intimation to Registrar	-
3.	Sec.28	Annual Return	Return of all receipts and expenditures and assets and liabilities for the year ended 31 <sup>st</sup> December shall be sent to Registrar.	Form D

## **EQUAL REMUNERATION ACT, 1976 READ WITH RULES**

### **Object:**

To provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of gender, against women in the matter of employment and for matters connected therewith or incidental thereto.

### **Applicability**

Every establishment wherein men and women workers are employed.

### **Main Provisions:**

1. No employer shall pay to any worker at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex for performing the same work or work of similar nature.
2. No employer for complying above provision reduce the rate of remuneration.
3. No discrimination while recruitment against women except where the employment of women is prohibited or restricted under any law.

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
<b>1.</b>	Sec.4	Duty of employer	Employer shall pay equal remuneration to men and women for same work or work of a similar nature.	-
<b>2.</b>	Sec.5	No discrimination while recruitment	No employer shall, while making recruitment for the same work or work of a similar nature, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law.	-
<b>3.</b>	Sec.8	Duty of employers to maintain register	Every employer shall maintain registers in relation to the workers employed by him	<b>Form D</b>



**THE PUNJAB INDUSTRIAL ESTABLISHMENT (NATIONAL AND FESTIVAL HOLIDAYS AND CASUAL AND SICK LEAVE) ACT, 1965 AND RULES**

**Object:**

An Act to provide for the grant of National and Festival Holidays and Casual and Sick Leave to persons employed in Industrial Establishments in the State of Punjab.

**National and Festival Holidays, Casual and Sick Leave :**

Every worker shall be allowed:

- Three National holidays: on 26<sup>th</sup> January, 15<sup>th</sup> August and 2<sup>nd</sup> October
- Five Restricted Holidays: on any festival scheduled in the Act.
- Casual Leave: 7 days in every calendar year
- Sick Leave: 14 days in every calendar year

**Main Provisions:**

- Where a worker works on any holiday then he shall be entitled for twice of his average daily wage or his average daily wage and a substituted holiday within 90 days.
- Casual Leave may be allowed for max. 2 days for every 3 months. Unavailed casual leave shall lapse at the end of calendar year. Workman shall get leave encashment for unavailed casual leave. An application for casual leave shall be made in advance of atleast 2 days.
- For Sick leave of more than 2 days, medical certificate shall be attached with application.

**Compliance Checklist under the Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Sec.6	Account of every holiday and leave to be kept of every workers	-	Form B
2.	Rule 6 read with Sec.15	Statement of festivals	Every employer shall submit to the Inspector of the area a statement of Festival Holidays to be allowed to the workers during the calendar year before the 31st. December of the preceding year in Form 'A' and such statement shall be displayed on notice board.	Form A

## **PUNJAB LABOUR WELFARE FUND ACT,1956 & RULES**

### **Objects:**

Large sums of money realised by employers of establishments from their employees as fines, unpaid wages, bonus or gratuity which are not claimed by the latter remain accumulated with the employers and are not properly utilised by them in the best interests of labour. This bill seeks to provide for the constitution of the Labour Welfare Fund to carry on various activities conducive to the Welfare of labour through the agency of this Fund into which all such accumulations are required to be paid.

### **Compliance Checklist under the Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Sec. 3 and Rule 3	Unpaid accumulation wages and fines	Every employer shall pay unpaid accumulation held by him to the welfare commissioner	-
2.	Rule 22	Maintenance of Registers	Every employer shall maintain two registers under this Act: 1. Register of wages in Form A 2. Consolidated Register of unclaimed wages and fines in Form B	Form A and Form B

## **LABOUR LAWS (EXEMPTION FROM FURNISHING RETURNS AND MAINTAINANCE OF REGISTERS)**

### **Objects:**

To provide for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws.

### **Applicability:**

Applicable only for small and very small establishments.

### **Important Definitions:**

Small establishment means establishment not more than nineteen persons are employed.

Very small establishment means establishment in which less than 10 persons are employed.

## **SEXUAL HARRASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

### **Objects:**

To provide protection against sexual harassment of women at workplace and for prevention and redressal of complaints of sexual harassment and for matter connected therewith or incidental thereto.

### **Applicability:**

All establishments whether organized or unorganized.

### **Constitution of Internal Complaint Committee**

Every employer of workplace where not less than 10 employees are employed, shall by order in writing constitute a committee known as "Internal Complaint Committee".

### **Constitution of Local Complaints Committee**

Every District officer shall constitute in the District a committee known as "Local Complaints Committee" to receive complaints of sexual harassment from establishment where internal complaint committee has not been constituted due to having less than 10 workers or if complaint is against the employer himself.

### **Procedure for Complaint under the Act**

1. A complaint of sexual harassment shall be made in writing to the Internal Committee or local committee as the case may be, within three months of incident.
2. Before initiating the enquiry, may take steps to settle the matter between the parties through conciliation.
3. Committee shall complete enquiry within a period of 90 days.
4. On completion of enquiry, committee shall forward a report of its findings to the employer.
5. When allegations are proved, Committee shall recommend to the employer to take action such as written apology, withholding promotion, withholding of increments, termination of services etc.
6. Action may be taken against women on false or malicious complaint.

7. Employer shall within 60 days shall act upon recommendation of committee.

**Duties of Employer**

1. To provide a safe working environment at the workplace.
2. Display at any conspicuous place in the workplace, penal consequences of sexual harassment and order constituting Internal Complaint Committee.
3. Organize workshop and awareness programme under the Act.
4. Treat sexual harassment as misconduct.

**Annual Report**

Committee shall in each calendar year prepare and submit annual report to the employer and employer shall include in its Annual Report the number of cases filed and their disposal under the Act.

**Compliance Checklist under the Act:**

<b>S.No.</b>	<b>Section/Rule</b>	<b>Provision</b>	<b>Compliance</b>	<b>Form</b>
1.	Sec.4	Internal Complaint Committee	Every employer of workplace where 10 or more women employee shall constitute an Internal Complaint Committee	-
2.	Sec.13(4)	Inquiry Report	Employer shall take action upon the report of committee within 60 days	-
3.	Sec.19	Display of penal consequences	Display at any conspicuous place in the workplace, penal consequences of sexual harassment and order constituting Internal Complaint Committee.	-
4.	Sec.22	Annual Report	Committee shall in each calendar year prepare and submit annual report to the employer and employer shall include in its Annual Report the number of cases filed and their disposal under the Act.	-

**MONTHLY CHECKLIST FOR STATUTORY RETURNS UNDER VARIOUS LABOUR LAWS**

<b>Month &amp; Last Date</b>	<b>Name of the Statute</b>	<b>Name of Return</b>	<b>Form</b>
January			
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
15	Factories Act, 1948	Half Yearly Return	Form 22
20	Industrial Disputes Act, 1947	Half yearly Return	Form G-I
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
21	Maternity Benefit Act	Annual Return	Form L, M, N and O
30	The Contract Labour (Restriction & Abolition) Act, 1970	Half yearly return by Contractor	Form XXIV
31	National and Festival Holidays Act, 1963	Annual Return	Form V
31	Factories Act, 1948	Annual Return	Form 21
February			
1	Minimum Wages Act, 1948	Annual Return	Form III
15	Payment of	Annual Return	Form IV

	Wages Act, 1936		
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
March			
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
April			
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
21	Employees State	Monthly	Challans

	Insurance Act, 1948	Remittance of Contribution to SBI	
30	Employees' Provident Fund Act, 1952	Annual Individual Return & yearly consolidated statement of Contribution	Form 3A & Form 6A
May			
12	Employees State Insurance Act, 1948	Summary of contribution in quadruplicate	Form 5
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
June			
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
July			
15	Factories Act,	Half Yearly Return	Form 22



	1948		
15	The Contract Labour (Restriction & Abolition) Act, 1970	Half Yearly Return	Form XXIV
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
20	Industrial Disputes Act, 1947	Half yearly Return	Form G-I
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
August			
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
September			
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans

15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
October			
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
30	Factories Act, 1948	Application for renewal of licence	Form 3
31	Contract Labour (R&A) Act, 1970	Application for Renewal of Licence	Form VII
November			
12	Employees State Insurance Act, 1948	Summary of contribution in quadruplicate	Form 5
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly	Form 5, 10 & 12A

		remittance statement	
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
December			
15	Employees Provident Fund Act, 1952	Monthly Remittance of Contribution to SBI	Challans
15	Employees Provident Fund Act, 1952	Monthly return of employees qualifying/leaving & monthly remittance statement	Form 5, 10 & 12A
21	Employees State Insurance Act, 1948	Monthly Remittance of Contribution to SBI	Challans
30	Payment of Bonus Act	Annual Return	Form D
Event Based			
4 hrs of occurrence	Factories Act, 1948	Notice of accident/dangerous occurrence	-
12 hrs of occurrence	Factories Act, 1948	Report of accident	-
7 days of incident	Employees' compensation Act, 1923	Report of fatal accidents	Form EE

**Compiled By:**

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**CS Peer Mehboob**

# HARYANA GOVERNMENT

## LABOUR DEPARTMENT

### **Notification**

The 10<sup>th</sup> August, 2016

No.11/38/2016-4Lab. The Governor of Haryana is pleased to formulate “Third Party Certification / Audit Scheme” for the factories, shops and commercial establishments in the State to liberalize the enforcement of labour laws in pursuance of implementation of the ‘Business Reform Action Plan 2016 - Ease of Doing Business’ as formulated by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India.

The Scheme shall consist of the following provisions:-

### **PART-A**

#### **Third Party Certification/Audit Scheme**

#### **under the Factories Act, 1948 and Rules framed there-under**

Third Party Certification / Audit Scheme aims to simplify the business regulations (Ease of Doing Business), to facilitate the entrepreneurs for making the compliance of the provisions of the Factories Act, 1948 and Rules framed there-under and to curtail the unnecessary visits of inspecting officers.

1. This scheme shall be optional and applicable to the following factories-

- (i) where manufacturing processes involves use, storage, handling or processing of toxic or highly inflammable or explosive or hazardous chemicals or wherein such toxic or highly inflammable or explosive substances are likely to be generated or given off.
- (ii) Involving hazardous processes as listed in First Schedule appended to section 2(cb) of the Factories Act, 1948.
- (iii) Employing more than 250 workers.

2. In this scheme unless the context otherwise requires:-

- (i) “Third Party Certification / Audit” means a systematic, objective and document evaluation of the occupational safety, health and welfare provisions and procedures in a factory.

- (ii) "Third Party Auditor" means a person recognized by Chief Inspector of Factories, Haryana to carry out safety audit in accordance with The Factories Act, 1948 and rules framed there under and include the safety auditors mentioned in sub-para (iii) of para 4;
  - (iii) "Annexure" means the Annexure appended to this scheme;
  - (iv) "Institution" means a firm, association, body, corporate, society registered in accordance with the law for the time being in force and dealing mainly with the object of ensuring safety and health of workers engaged in factories.
  - (v) Words or expressions used, but not defined here in, shall have their respective meanings as assigned to them in the Factories Act, 1948 or rules made there-under.
3. The Safety Audit shall be carried out as per the standards laid down under the Factories Act, 1948 and rules framed there-under and as IS 14489: 1998 in the Indian Standard Code of Practice on Occupational Safety and Health Audit or any such standards prevailing at the relevant time whichever is latest by the Safety Auditor or in case of an institution, by the person or employee possessing the qualification, experience and other requirements as set out in Annexure-I.
4. (i) The Chief Inspector of Factories, Haryana may recognize any person possessing the qualifications, experience and other requirements as set out in the Annexure-I, hereto as a Safety Auditor for the purpose of carrying out Safety Audit as provided by this scheme.
- (ii) The Chief Inspector of Factories may recognize any institution, employing at least three persons possessing the qualifications, experience and other requirements as set out in the Annexure-I as a Safety Auditor for the purpose of carrying out Safety Audit as provided by this scheme.

Provided that, where the institution to which such recognition has been granted ceases to employ at least three persons possessing the qualifications, experience and other requirements, set out in the Annexure-I, the recognition granted to such institute shall stand cancelled;

Provided further that, Chief Inspector of Factories may for reasons to be recorded in writing, relax the requirements of qualification, if such institution is exceptionally specialized in the field of carrying out Safety Audit for not less than 5 years.

- (iii) Director General Factory Advise Services & Labour Institute (DGFASLI), all Regional Labour Institutes (RLI), National Safety Council (NSC) and Haryana Safety Council (HSC) shall be deemed institutions for carrying out Safety Audit.
  - (iv) The Chief Inspector of Factories may from time to time fix the total number of such Safety Auditors to be appointed, depending on the total quantum of work available in the State and also the manner in which applications are to be invited.
- 5.
- (i) An application for grant or renewal, of certificate of recognition as a Safety Auditor for carrying out safety audit shall be made to the Chief Inspector of Factories by an individual in Form-A and by an institution in Form-B.
  - (ii) (A) On receipt of an application duly made in accordance with this scheme, the Chief Inspector shall accept/reject such application, after having satisfied itself as regards the competence and facilities available at the disposal of the applicant.  
(B) For giving an approval to the applicant as a Safety Auditor, the Chief Inspector of Factories may constitute a committee, if required, consisting of such members as it may deem fit, to advise it. The application shall be scrutinized by such committee and recommend it to the Chief Inspector of Factories for its approval, after having satisfied itself as regards the competence and facilities available at the disposal of the applicant or recommend to the Chief Inspector of Factories for rejecting the application, after specifying the reasons.  
(C) On receipt of the recommendation of the committee, if constituted under paragraph (B), the Chief Inspector of Factories may grant recognition to the applicant as Safety Auditor or reject the application, after specifying the reasons therefor.  
(D) After the Chief Inspector of Factories grants approval to the applicant as the Safety Auditor, the Chief Inspector shall issue a certificate of recognition in Form-C, subject to the following conditions and any other condition as may be specified by the Chief Inspector of Factories, namely:-
    - (a) Safety Auditor shall maintain a log book of all safety audits

undertaken by him indicating the name and address of the audited factory, name of the person who has carried out safety audit, contact persons, date of the audit and date of submission of the audit report to the Occupier and Chief Inspector of Factories.

- (b) Safety Auditor shall not conduct a Safety Audit of any factory where such auditor or person is employed, or an occupier, partner, director, or manager of that factory, or of any factory owned, operated, managed, or conducted by immediate family members, relatives or extended family members or wherein that auditor has any direct or indirect interest whatsoever. An auditor shall not carry out the safety audit of those factories to which that auditor supplies any plant, machinery, raw material, safety equipment's or other materials or equipment.
- (c) Safety Auditor shall not disclose, even after he ceases to be a recognized auditor or employee of the institution, any manufacturing or commercial secrets or working processes or other confidential information which may come to his knowledge in the course of their duties as an auditor. Any failure in this regard may make such auditor liable for criminal or civil proceedings, in accordance with the law for the time being in force.
- (iii) The recognition granted under sub-para (ii) of para-5, shall be valid for two years from the date of issue of Certificate of Recognition.
- (iv) The application for renewal of recognition as a safety auditor shall be made at least three months before the expiry of the period of recognition and the procedure stated in sub-para (ii) of para-5, shall apply *mutatis mutandis* for its renewal.
- (v) The applicant shall not be eligible for renewal of recognition as a Safety Auditor if ,-
  - A. the Chief Inspector of Factories has revoked such recognition in the past on two occasions; or
  - B. he has not carried out at least five safety audits of factories in past one year;
- (vi) The Chief Inspector of Factories may, after giving an opportunity to the

Safety Auditor of being heard, revoke the certificate of recognition, if it has a reasons to believe that,-

- A. the Safety Auditor has violated any of the conditions stipulated in the certificate of recognition or renewal of recognition; or
  - B. the Safety Auditor has carried out the safety audit in violation of the provisions of the Act or the rules or has acted in a manner inconsistent with the intent or the purpose of the Act or rules made thereunder or has omitted or failed to act as required under the Act and rules made thereunder; or
  - C. for any other like reason;
6. The Occupier of the factory as well as the Safety Auditor shall inform in writing to the Chief Inspector of Factories, thirty days in advance before commencement of the safety audit in a factory.
7. The Safety Auditor shall within one week from the date of completion of safety audit forward the report to the Occupier of the factory and Chief Inspector of Factories in Proforma prescribed under Annexure II on the letter head and his recommendations regarding improvement of the occupational safety, health and welfare in the factory.
- Provided that if during safety audit, auditor finds any hazard posing imminent danger to the life of workers or threat to the safety of workers working there-in, he shall immediately communicate in writing to the occupier as well as to the Chief Inspector of Factories. In such case the occupier shall take immediate corrective action and submit the compliance report and the steps taken by him to the Chief Inspector of Factories within 72 hours.
8. The Occupier shall, within thirty days of the receipt of the Safety Audit Report in proforma prescribed under Annexure-II, shall take action on the recommendations of the auditor as pointed out in the safety audit report and also submit the action taken report / compliance report along with proofs of compliance to the Chief Inspector of Factories within sixty days in pursuant to the recommendations made in the Safety Audit Report.
9. The compliance of the observations / discrepancies pointed out in the safety audit report shall be monitored at the level of Chief Inspector of Factories. He may grant



ample opportunities of personal hearing to the occupier for apprising the Chief Inspector of Factories regarding the steps taken by occupier and the status of compliance. In case, the Chief Inspector of Factories is not satisfied with the compliance made by the occupier, he may get it verified at his level within a period of one month.

10. The factory opting for this scheme shall not be inspected by the department till it carries out safety audit every year regularly (except the case where statutory provisions prescribed otherwise). The Chief Inspector of Factories may issue directions for inspection of any such factory in case of genuine complaint against the factory.

Provided that, in case of any changes, total or partial, in the manufacturing process, the occupier shall, within one month after such change, get the safety audit carried out by the Safety Auditor.

11. No legal action shall be taken against the occupier / manager of the factory for any discrepancies / observations / violations of Acts / Rules pointed out by the auditor in his safety audit report.
12. The Chief Inspector of Factories may, by order in writing, exempt any factory or category of factories from all or any of the provisions of this scheme, subject to such conditions as it may specify in such order.

## Part-B

### **Third Party Certification / Audit Scheme under**

**The Minimum Wages Act, 1948, Payment of Wages Act, 1936, Contract Labour (R&A) Act, 1970, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972, Maternity Benefit Act, 1961, Child Labour (Prohibition & Regulation) Act, Punjab Shops & Commercial Establishments Act, 1958, Equal Remuneration Act 1976, Motor Transport Workers' Act, 1961, Punjab Industrial Establishments (National & Festival Holidays & Casual and Sick Leave) Act, 1965**

Third Party Certification / Audit Scheme aims to simplify the business regulations (Ease of Doing Business), to facilitate the entrepreneurs for making the compliance of the provisions of the various labour laws and Rules framed thereunder and to curtail the unnecessary visits of inspecting officers. The provisions of the scheme are as follows -

1. This scheme shall be optional and includes compliance of the Minimum Wages Act, 1948, Payment of Wages Act, 1936, Contract Labour (R&A) Act, 1970, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972, Maternity Benefit Act, 1961, Child Labour (Prohibition & Regulation) Act, Punjab Shops & Commercial Establishments Act, 1958, Equal Remuneration Act 1976, Motor Transport Workers' Act, 1961, Punjab Industrial Establishments (National & Festival Holidays & Casual and Sick Leave) Act, 1965.
2. In this scheme unless the context otherwise requires-
  - (i) "Third Party Certification / Audit" means a systematic, objective and documented evaluation of the compliance of the various labour laws mentioned above.
  - (ii) "Compliance Auditor" would be a qualified practicing Company Secretary who is a member of Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government; and who has not been an employee or on the regular pay role of the establishment or has not been a consultant of the company for the last three years. The units which submit third party certification regularly on annual basis shall not be inspected through the random list of

inspections. Such units may be inspected only in the event of serious complaints or unrest etc.

- (iii) “Institution” means a firm, association, body, corporate of **Company Secretaries**, society registered in accordance with the law for the time being in force or an individual Company Secretary, auditing the compliance of various laws including labour laws.

3. The Compliance Audit shall be carried out as per the standards laid down under various labour laws mentioned above.

- (i) The **Company Secretary** (hereinafter referred to as a Compliance Auditor), conducting the audit shall maintain a log book of all audits undertaken by him indicating the name and address of the audited establishment, name of the person who has carried out the audit, contact persons, date of the audit and date of submission of the audit report to the notified head of the establishment and the Labour Commissioner.
- (ii) A Compliance Auditor and the person authorized to carry out shall not conduct Compliance Audit of any establishment where such auditor or person is employed, or an occupier, partner, director, or manager of that establishment, or of any other unit owned, operated, managed, or conducted by immediate family members, relatives or extended family members or wherein that Compliance Auditor or such person has any direct or indirect interest whatsoever. A Compliance Auditor or such person shall not carry out the compliance audit of those establishments to which that auditor or such person has any participation in its business within the last three years.
- (iii) Compliance Auditor and the person authorized to carry out compliance audit shall not disclose, even after he ceases to be an auditor, any commercial secrets or working processes or other confidential information which may come to his knowledge in the course of their duties as an auditor. Any failure in this regard may make such auditor or person liable for criminal or civil proceedings, in accordance with the law for the time being in force.
- (iv) If the Compliance Auditor has carried out the audit in violation of the provisions of the Act or rules or has acted in a manner inconsistent with the intent or the purpose of the Act or rules made thereunder or has omitted or failed to act as required under the Act and rules made thereunder; or for any other similar reason

by which he has failed in duty as a Compliance Auditor, he shall liable to be debarred from conducting such Compliance Audits;

4. The Compliance Auditor shall within one week from the date of completion of audit forward the report to the Head of the establishment on the letter head and his recommendations regarding the compliance under various labour laws.
5. The Head of the establishment as well as the Compliance Auditor shall inform in writing to the Labour Commissioner, thirty days in advance before commencement of the compliance audit in an establishment.
6. The Head of the establishment shall, within thirty days of the receipt of the Compliance Audit Report in proforma prescribed, shall take action on the recommendation of the auditor as pointed out in the audit report and also submit the action taken report / compliance report along with proofs of compliance to the Labour Commissioner within sixty days in pursuant to the recommendations made in the Audit Report.
7. The compliance of the observation / discrepancies pointed out in the audit report shall be monitored at the level of Labour Commissioner, Haryana. He may grant ample opportunities for personal hearing for apprising the authorities regarding the steps taken by him and the status of compliance. In case he is not satisfied with the compliance made by the Head of the establishment, he may get it verified at his level.
8. The establishment opting for this scheme shall not be inspected by the department till it carries out an audit every year regularly. The Labour Commissioner may issue directions for inspection of any such establishment in case of genuine complaint against it.
9. No legal action shall be taken against the Head of the establishment / manager for any discrepancies / observations / violations of Acts / Rules pointed out by the auditor in his audit report.

**DR. MAHAVIR SINGH**  
**Principal Secretary to Government of Haryana,**  
**Labour Department.**

## ANNEXURE- I

**(See para 4)**

The applicant, for being recognized as Safety Auditor, shall possess the following qualifications and experience, etc.:-

**1. Academic Qualification and Experience.** - The applicant shall hold, -

- (i) Degree in Chemical or Mechanical or Electrical or Production Engineering and having five years' experience in manufacturing, maintenance, design, project or safety department in the supervisory or above capacity in factories; or  
Diploma in Chemical or Mechanical or Electrical or Production Engineering and having Eight years' experience in manufacturing, maintenance, design, project or safety department in the supervisory or above capacity in factories; or  
Master Degree in Physics or Chemistry and having ten years' experience in, manufacturing or safety Department of any factory in the supervisory or above capacity in factories,

and

One year full time Diploma in Industrial Safety recognized by the Board of Technical Education or All India Council of Technical Education or a recognized University;

**or**

- (ii) Degree or diploma in any branch of Engineering and having fifteen years' of experience in Factory Inspectorate or Directorate of Industrial Safety and Health or Director General Factory Advisory Services and Labour Institute or Regional Labour Institute or National Safety Council or hazardous factories of PSU's of Govt. of India.
2. The applicant shall not be directly or indirectly interested in the factory or in any process or business carried on therein or in any patent or machine connected therewith, in respect of which the safety audit is to be conducted.
  3. If the age of applicant is more than 65 years, he shall submit a Certificate of physical fitness for carrying out safety audit of factories issued by civil surgeon or certifying surgeon alongwith the application for recognition or renewal of recognition.

**ANNEXURE-II**

(See para 7 & 8)

**Proforma for Safety Audit Report**

1. Name and address of the factory:

Email ID

Contact Number

2. Name of the Occupier:

3. Name of Factory Manager:

4. Date of Audit:

5. List of raw material with maximum storage quantity:

6. List of finished products with maximum storage quantity:

7. Manufacturing process flow chart:

8. P I Diagram of all plants (Chemical Factories):

9. Name of the Safety Auditor and Certificate No. and name of the person who has carried out safety audit in case of institution:

10. Whether enclosed Safety Audit Report as per the Factories Act, 1948 and rules made there under and IS 14489, or any such standards prevailing at the relevant time, whichever is latest:

**Date :**

**Signature of Safety Auditor/  
Person or employee of an Institution  
authorized to carry out safety audit**

I .....(Occupier) undertake to submit the action taken report on recommendations of Safety Audit on or before .....

**Date :**

**Signature of the Occupier**

**FORM- A**  
[See para 5(i)]

**Application Form For recognition or renewal of recognition as Safety Auditor (to be filled in by individuals)**  
**(In Duplicate)**

Applicant's Latest Photograph signed across.

1. Name :

2. Father/Husband Name :

3. Date of Birth and Age :

4. Permanent Address :

5. Address for Correspondence :

Telephone No. :

Mobile No. :

Fax :

E-mail :

6. **Educational Qualification (Attach certified copies):**

Sr.No.	Degree/Diploma	College/Institution/University	Year of completion

7. **Technical Qualification in Safety (Attach certified copies)**

Sr.No.	Degree/Diploma	College/Institution/University	Year of completion

8. **Work Experience (Attach certified copies)**

Sr.No.	Employment Date	Name and address of Employer	Designation	Nature of work
	From To			

9. For renewal of recognition.- Certificate No. \_\_\_\_\_ Date :

**DECLARATION**

I hereby declare that,

- a) my recognition as a Safety Auditor was not revoked or cancelled by the Chief Inspector of Factories of any state in the past;
- b) my recognition as a Safety Auditor was revoked or cancelled in the past, and its details are as follows :-

<b>Date of revocation or cancellation and its order number, if any</b>	<b>Period</b>	
	<b>From</b>	<b>To</b>

*Note.*- If the recognition was cancelled or revoked twice in the past, then, the Safety Auditor is not eligible for recognition.

- c) I have carried out five or more than five, Safety Audits in the past one year, the list showing the name, address of the factory and date of audits are attached herewith.
- d) I, ----- hereby declare that the information furnished above are correct to the best of my knowledge. I undertake to:
  - (i) maintain the facilities in good working order, and
  - (ii) Fulfill and abide by the conditions, if any, stipulated in the certificate of recognition.

**Signature of the Applicant:**  
**Full Name :**  
**Date :**  
**Place :**



**FORM – B**  
**[See para 5(i)]**

**Form of Application for recognition or renewal of recognition to an institution as  
Safety Auditor**

1	Name and full address of the Institution:	
2	Institution status (specify whether Government, autonomous, co-operative, corporate or private) with registration number:	
3	a) Name of head of Institution b) Phone/Mobile No. c) E-Mail address d) Fax	
4	Whether the Institution has been declared as a Safety Auditor by this State or any other State? If so, give details.	
5	Attach bio-data of at least three employed persons, in the Annexure attached to this application:	
6	Any other relevant information	
7	Certificate No. (in case of renewal)	

**DECLARATION**

I hereby declare that,-

- (a) Recognition of the institution as Safety Auditor was not revoked or cancelled by the Chief Inspector of Factories in the past;
- (b) The recognition of the institution as Safety Auditor was revoked or cancelled in the past, its details are as follows :-

<b>Date of revocation or cancellation and its order number, if any</b>	<b>Period</b>	
	<b>From</b>	<b>To</b>

*Note.-* If the recognition was cancelled or revoked twice in the past, then, the institution is not eligible for recognition.

(c) The institution has carried out five or more than five Safety Audits in the past one year, the list showing the name, address of the factory and date of audits are attached herewith.

(d) I, hereby declare that the persons whose bio-data is attached to the application are employees of the institution whose copies of appointment letters are attached herewith.

(e) I, \_\_\_\_\_ hereby declare that the information furnished above for \_\_\_\_\_ (name of the institution) is correct to the best of my knowledge. I undertake to,-

(i) notify to the Chief Inspector of Factories, immediately, in case the employed person on the basis of which this recognition was procured leaves the employment,

(ii) Maintain the facilities in good working order,

(iii) Fulfill and abide by all the conditions stipulated in the certificate of recognition.

**Signature of the Head of the Institution**

**Designation:**

**Place:**

**Date:**

**Annexure to Form – B**  
**Personal Information of the persons employed**

1. Name :
2. Father/Husband Name :
3. Date of Birth and Age :
4. Permanent Address :
5. Address for Correspondence:  
 Telephone No. :  
 Mobile No. :  
 Fax :  
 E-mail :



**6. Educational Qualification (Attach Certified copies):**

Sr.	Degree/Diploma	College/Institution/Universit	Year of completion

**7. Technical Qualification in Safety (Attach certified copies)**

Sr.	Degree/Diploma	College/Institution/University	Year of completion

**8. Work Experience (Attach certified copies)**

Sr. No.	Employment Date		Name and address of Employer	Designation	Nature of work
	From	To			

**DECLARATION**

I hereby declare that all information provided in this annexure is true and correct to the best of my knowledge. If recognised, I shall abide by the terms & conditions of the recognition and uphold the high standard of professional ethics in discharge of my duties as a Safety Auditor.

**Signature of the Applicant:**  
**Full Name:**

**Date :**  
**Place :**

**FORM – C**  
**[See para 5(ii) (D)]**

**Certificate of recognition / renewal of recognition as a Safety Auditor.**

**CERTIFICATE NO.:**

**Date:**

*It is to inform that M/S / SHRI / SMT* \_\_\_\_\_  
(address) \_\_\_\_\_ has been  
Recognized under The Factories Act 1948 for the purpose of carrying out Safety Audit under  
Third Party Certification / Audit Scheme.

The Certificate is valid from \_\_\_\_\_ to \_\_\_\_\_

This certificate is issued subject to the conditions stipulated hereunder:-

1. Safety audit shall be carried out in accordance with the provisions of the Factories Act, 1948 and rules framed thereunder.
2. Every safety audit shall conform to the IS 14489:1998 or latest relevant standard.
3. He or the person authorized, in case of the institution, to carry out safety audit shall be physically present at the time of conducting the Safety Audit and shall maintain the record of the work done in the Log Book, as per para 5(ii)(D)(a).
4. Certificate No. and validity period should invariably be recorded on Safety Audit Report,
5. No safety audit shall be carried out after expiry of validity period.
6. The Chief Inspector of Factories reserves the right to revoke, annul or amend this Certificate at any time during its validity,
7. He or the person authorised, in case of the institution, to carry out safety audit shall not conduct a Safety Audit of any factory where such auditor is employed, or an occupier, partner, director or manager of that factory, or of any factory owned, operated, managed or conducted by immediate family members, relatives or extended family members or wherein that auditor or such person shall not carry out a safety audit of those factories to which that auditor supplies any plant, machinery, raw material, safety equipments or other materials, equipment.
8. He or the person authorised, in case of the institution, to carry out safety audit shall not disclose, even after ceasing to be a recognized Safety Auditor or the employee of the institution, any manufacturing or commercial secrets or working processes or other confidential information which may come to his knowledge in the course of their duties as an auditor. Any failure in this regard may make such auditor or person liable for criminal or civil proceedings, in accordance with the law for the time being in force.
9. The application for renewal of the recognition as a Safety Auditor shall be made at least three months before the expiry of the period of recognition.

**Chief Inspector of Factories,  
Haryana, Chandigarh**

**Date:**