

EXECUTIVE PROGRAMME

**UPDATE
FOR
INDUSTRIAL, LABOUR
AND
GENERAL LAWS**

(Relevant for students appearing in December, 2017 Examination)

MODULE 2 - PAPER 7

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Lesson-3 Payment of Wages Act, 1936

The Payment of Wages Act, 1936, is an Act to regulate the payment of wages of certain classes of employed persons, whereas it is expedient to regulate the payment of wages to certain classes of employed persons. It ensures timely payment of wages and no unauthorised deductions are made from the wages of the worker.

With effect from 11.09.2012, the employees drawing wages up to Rs.18, 000/- per month is covered under the Payment of Wages Act, 1936.

Lesson-5 Employees' State Insurance Act, 1948

The Central Government has since prescribed the wage limit for coverage of an employee under Section 2(9) of the Act as Rs. 21,000 per month. Further, it is provided that an employee whose wages (excluding remuneration for overtime work) exceed Rs. 21,000 a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the period.

Note:-

The statutory wage ceiling under the Employees' State Insurance Act, 1948 has been increased from Rs. 10,000/- to Rs. 21,000/- per month.

Lesson-6

Employees' Provident Funds and Miscellaneous Provisions Act, 1952

1. EMPLOYEES' PROVIDENT FUNDS (AMENDMENT) SCHEME, 2014

In exercise of the powers conferred by section 5 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government vide notification G.S.R.610 (E) dated 22nd August, 2014 amended the Employees' Provident Funds Scheme, 1952 w.e.f 01st September, 2014.

The amendments are as follows:

- The statutory wage ceiling under the Employees' Provident Funds Scheme has been increased from Rs. 6,500/- to Rs. 15,000/- per month.
- Employees drawing pay exceeding fifteen thousand rupees per month treated as excluded employees.

2. EMPLOYEES' DEPOSIT-LINKED INSURANCE (AMENDMENT) SCHEME, 2014

In exercise of the powers conferred by section 6C read with sub-section (1) of section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government vide Notification G.S.R. 610 (E) dated 22nd August, 2014 amended the Employees' Deposit- Linked Insurance Scheme, 1976 w.e.f 01st September, 2014.

The amendments are as follows:

- The wage ceiling under the Employees' Deposit-Linked Insurance Scheme has been increased from Rs. 6,500/- to Rs. 15,000/- per month.
- The insurance benefit under the Scheme increased by 20% in addition to the existing admissible benefits.

3. EMPLOYEES' PENSION (AMENDMENT) SCHEME, 2014

In exercise of powers conferred by section 6A read with sub-section (1) of section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Central Government vide Notifications G.S.R. 593(E) dated 19th August, 2014 and G.S.R 609(E), dated 19th August, 2014 amended the Employees' Pension Scheme, 1995 w.e.f 1st September, 2014.

The amendments are as follows:

- The wage ceiling under the Employees' Pension Scheme, 1995 has been increased from Rs. 6,500/- to Rs. 15,000/- per month.
- The minimum pension is fixed at Rs. 1,000/- per month for the members of the Employees' Pension Scheme or their nominee/ widow, etc. for the financial year 2014-15.
- The pensionable salary shall be the average monthly pay drawn in any manner including piece rate basis during contributory period of service in the span of sixty months preceding the date of exit from the membership of the Pension Fund and the pensionable salary shall be determined on pro-rata basis for the pensionable service up to the 1st day of September, 2014, subject to a maximum of six thousand and five hundred rupees per month and for the period thereafter at the maximum of fifteen thousand rupees per month.
- If a member was not in receipt of full pay during the period of sixty months preceding the day he ceased to be the member of the Pension Fund, the average of previous sixty months full pay drawn by him during the period for which contribution to the pension fund was recovered, shall be taken into account as pensionable salary, for calculating pension.
- If during the said span of sixty months there are non contributory periods of service including cases where the member has drawn salary for a part of the month, the total wages during the sixty months span shall be divided by the actual number of days for which salary has been drawn and the amount so derived shall be multiplied by 30 to work out the average monthly pay.
- The maximum pensionable salary shall be limited to fifteen thousand rupees per month.
- The existing members as on the 1st day of September, 2014, who at the option of the employer and employee, had been contributing on salary exceeding six thousand and five hundred rupees per month, may on a fresh option to be exercised jointly by the employer and employee continue to contribute on salary exceeding fifteen thousand rupees per month:
 - The aforesaid members have to contribute at the rate of 1.16 per cent on salary exceeding fifteen thousand rupees as an additional contribution from and out of the contributions payable by the employees for each month under the provisions of the Act or the rules made there under
 - The fresh option shall be exercised by the member within a period of six months from the 1st day of September, 2014.
 - The period specified above may, on sufficient cause being shown by the member, be extended by the Regional Provident Fund Commissioner for a further period not exceeding six months.
 - If no option is exercised by the member within a period of six months from the 1st day of September, 2014 (including the extended period), it shall be deemed that the member has not opted for contribution over wage ceiling and the contributions to the

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Pension Fund made over the wage ceiling in respect of the member shall be diverted to the Provident Fund account of the member along with interest as declared under the Employees' Provident Fund Scheme from time to time.

➤ The members' monthly pension shall be determined on a pro-rata basis for the pensionable service up to the 1st day of September, 2014 at the maximum pensionable salary of six thousand and five hundred rupees per month and for the period thereafter at the maximum pensionable salary of fifteen thousand rupees per month.

Lesson-7 Payment of Bonus Act, 1965

The Payment of Bonus (Amendment) Act, 2015 envisages enhancement of eligibility limit under section 2(13) from Rs.10,000/- per month to **Rs.21,000/-** per month and Calculation Ceiling under section 12 from Rs. 3500 to **Rs.7000** or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher. The Payment of Bonus (Amendment) Act, 2015 also mandates previous publication of draft subordinate legislations, framed under the enabling provisions under the said Act, in the Official Gazette for inviting objections and suggestions before their final notification under Section 38 of the Act for the welfare of labour.

Lesson-9

Employees' Compensation Act, 1923

Duty of employer to inform employee of his rights

Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.

Appeals

An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;
- (aa) an order awarding interest or penalty under Section 4A;
- (b) an order refusing to allow redemption of a half-monthly payment;
- (c) an order providing for the distribution of compensation among the dependants of a deceased employee or disallowing any claim of a person alleging himself to be such dependant;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Subsection (2) of Section 12; or
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions. (Section 30)

Such appeal should be filed within 60 days of order. The section empowers appellate Court to infer with findings recorded by commissioner only in case of substantial error of law (LLJ II 1998 Kar. 764). The provisions of Section 5 of Limitation Act, 1963 shall be applicable to appeals under the Section.

No appeal shall lie unless the following requirements are fulfilled:

- (i) A substantial question of law is involved in the appeal.
- (ii) In case of order, other than order refusing to allow redemption of a half-monthly payment, unless the amount in dispute in the appeal is not less than **ten thousand rupees or such higher amount as the Central Government may, by notification in the Official Gazette, specify.**
- (iii) The memorandum of appeal should be accompanied by a certificate by the Commissioner to the effect that the applicant has deposited with him the amount payable under the order appealed against. Deposit of compensation amount is alone

contemplated: deposit of penalty or interest is not condition precedent for filing appeal (LLJ I 1999 Kar. 60).

(iv) The appeal does not relate to any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

Jurisdiction conferred on High Court being special any further appeal against the judgement is barred. No. leave petition was therefore held maintainable (LLJ I 1998 1122 Pat.). Finding whether the claimant was a employee arrived by commissioner on material on record is a fact hence no further appeal is allowed (LAB IC 1998 Ori. 3254).

Note: - Section 30A of the Employee's Compensation Act, 1923 has been deleted as per the Employee's Compensation (Amendment) Act, 2017.

Lesson-11

Maternity Benefit Act, 1961

INTRODUCTION

Article 39(e) & (f) of the Constitution of India provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Maternity Benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Maternity Benefit Act, 1961 is applicable to mines, factories, circus industry, plantations, shops and establishments employing ten or more persons. It can be extended to other establishments by the State Governments.

Definition

“Appropriate Government” means in relation to an establishment being a mine or an establishment wherein persons are employed for the exhibition of equestrian acrobatic and other performances the Central Government and in relation to any other establishment the State Government. {Section 3(a)}

“Child” includes a still-born child. {Section 3(b)}

“Commissioning Mother” means a biological mother who uses her egg to create an embryo implanted in any other woman. {Section 3(ba)}

“Employer” means –

- (i) in relation to an establishment which is under the control of the government a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed the head of the department;
- (ii) in relation to an establishment under any local authority the person appointed by such authority for the supervision and control of employees or where no person is so appointed the chief executive officer of the local authority;
- (iii) in any other case the person who or the authority which has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager managing director managing agent or by any other name such person; { Section 3(d)}

“Establishment” means –

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian acrobatic and other performance;
- (iva) a shop or establishment; or
- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of section 2 to be applicable{ Section 3(e)};

“Maternity benefit” means the payment referred to in sub-section (1) of section 5 { Section 3(h)};

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

- (1) such cash allowances (including dearness allowance and house rent allowances) as a woman is for the time being entitled to
- (2) incentive bonus and
- (3) the money value of the concessional supply of food grains and other articles but does not include –
 - (i) any bonus other than incentive bonus;
 - (ii) over-time earnings and any deduction or payment made on account of fines;
 - (iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and
 - (iv) any gratuity payable on the termination of service; { Section 3(n)}

Employment of or work by women prohibited during certain periods

Section 4 of the Act provides that no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. It also specifies that no women shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.

It may be noted that if a pregnant women makes request to her employer, she shall not be given to do during the period of one month immediately preceding the period of six weeks, before the date of her expected delivery, any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

Right to payment of maternity benefits

Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

The average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

A woman shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery. However the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery. If a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. Where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period. If the child also dies during the said period, then, for the days up to and including the date of the death of the child.

A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

Notice of claim for maternity benefit

Section 6 deals with notice of claim for maternity benefit and payment thereof. As per the section any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in prescribed form, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit. The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof, that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

Nursing breaks

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

Crèche Facility

Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities. The employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act

Abstract of Act and rules there under to be exhibited

As per section 19 an abstract of the provisions of this Act and the rules made there under in the language or languages of the locality shall be exhibited in a conspicuous place by the employer in every part of the establishment in which women are employed

Registers

Every employer shall prepare and maintain such registers, records and muster-rolls and in prescribed manner under section 20 of the Act.

Penalty for contravention of Act by employer

Section 21 provides that if any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of the Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees. However, the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

If any employer contravenes the provisions of the Act or the rules made there under, he shall, if no other penalty is elsewhere provided by or under the Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both. Where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

LESSON ROUND UP

- The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. Such benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working.
- Maternity benefit means the payment referred to in sub-section (1) of section 5.
- Employer shall not knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy.
- Every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.
- The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery.
- Any woman employed in an establishment and entitled to maternity benefit under the provisions of the Act may give notice in writing in prescribed form, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under the Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.
- Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.
- Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities.
- Every employer shall prepare and maintain such registers, records and muster-rolls and in prescribed manner under the Act.

Lesson 12

The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986

Introduction

Government has enacted the Child Labour (Prohibition & Regulation) Amendment Act, 2016 which came into force w.e.f. 1.9.2016. After the enactment of the Child Labour (Prohibition & Regulation) Amendment Act, 2016, the Child Labour (Prohibition & Regulation) Act, 1986 renamed as the ***Child and Adolescent Labour (Prohibition and Regulation) Act, 1986***.

The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. It extends to whole of India.

It prohibits employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibits employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively.

Definition

Section 2 of the Act defines various terms used in the Act, some of the definitions are given here under:

Appropriate Government means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.

Adolescent means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

Child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

Day means a period of twenty-four hours beginning at midnight.

Establishment includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

Occupier in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop.

Workshop means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

Prohibition of employment of children in any occupations and processes

Section 3 of the Act provides that no child shall be employed or permitted to work in any occupations or process except:-

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed.

However no such work shall effect the school education of the child.

It may be noted that the expression:

(a) **“family”** in relation to a child, means his mother, father, brother, sister and father’s sister and brother and mother’s sister and brother;

(b) **“family enterprise”** means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

(c) **“artist”** means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).”

Prohibition of employment of adolescents in certain hazardous occupations and processes

Section 3A provides that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.

The hazardous occupations or processes set forth in the Schedule are as under:

(1) Mines.

(2) Inflammable substances or explosives.

(3) Hazardous process.

Explanation.—For the purposes of this Schedule, “hazardous process” has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

However, the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under the Act.

Hours and Period of work

Section 7 provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that:

- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.
- No adolescent shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

Weekly holidays

As per section 8 every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Notice to Inspector

Section 9 provides that every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars namely:

- The name and situation of the establishment;
- The name of the person in actual management of the establishment;
- The address to which communications relating to the establishment should be sent; and
- The nature of the occupation or process carried on in the establishment.

Maintenance of register

Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing –

- the name and date of birth of every adolescent so employed or permitted to work;
- hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;
- the nature of work of any such adolescent; and
- such other particulars as may be prescribed

Display of notice containing abstract of sections 3A and 14

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3A and 14.

Penalties

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.

The parents or guardians of any child or adolescent shall not be liable for punishment, in case of the first offence.

Whoever, having been convicted of an offence under section 3 or section 3A commits a like offence afterwards; he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

The parents or guardians having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.

Whoever fails to comply with or contravenes any other provisions of the Act or the rules made there under, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

District Magistrate to implement the provisions

Section 17A of the Act provides that the appropriate Government may confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

LESSON ROUND UP

- The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. It extends to whole of India.
- Adolescent shall not permit to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.
- Every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.
- Every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice.
- Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment.
- Contravention of the provisions of Section 3 of the Act shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.
- Contravention of the provisions of Section 3A of the Act shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.

Lesson-16

The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 passed by the Rajya Sabha on November 26, 2014; the Lok Sabha on November 28, 2014 and received the assent of the President on the 9th December, 2014 amended the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the **Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988**. The Amendment Act now includes 7 more Labour Acts under the purview of the Principal Act. Also, the coverage of Principal Act has been expanded from the establishments employing upto 19 workers to 40 workers. The Amendment Act also gives an option to maintain the registers electronically and to file the returns electronically which leads to ease of compliance as well as better enforcement of the labour laws.

Definitions

Section 2 of the Act defines various terms used in the Act, the definitions are given here under:

Employer

Employer, in relation to a Scheduled Act, and in relation to any other Scheduled Act, means the person who is required to furnish returns or maintain registers under that Act {Section 2 (a)}.

Establishment

Establishment has the meaning assigned to it in a Scheduled Act, and includes – (i) an “industrial or other establishment” as defined in Sec. 2 of the Payment of Wages Act, 1936; (ii) a “factory” as defined in Sec. 2 of the Factories Act, 1948 ;(iii) a factory, workshop or place where employees are employed or work is given out to workers, in any scheduled employment to which the minimum wages Act, 1948 , applies. (iv) a “plantation” as defined in Sec. 2 of the Plantations Labour Act, 1951; and (v) a “newspaper establishment” as defined in Sec. 2 of the Working Journalists and other

Newspaper Employees (conditions of Service) and Miscellaneous Provisions Act, 1955{Section 2 (b)}.

Form

Form means a Form specified in the Second Schedule {Section 2 (c)}. Following forms are specified in the second schedule. They are as under:

- Form I -Annual Return (*To be furnished to the Inspector or the authority specified for this purpose under the respective Scheduled Act before the 30th April of the following year*)
- Form II -Register of persons employed-cum-employment card
- Form III- Muster roll-cum-wage register

Scheduled Act

Scheduled Act means an Act specified in the first Schedule and is in force on commencement of this Act in the territories to which such Act extends generally, and includes the rules made there under{Section 2 (d)}.

Following are the sixteen Acts specified in the first schedule. They are as under:

1. The Payment of Wages Act, 1936
2. The Weekly Holidays Act, 1942
3. The Minimum Wages Act, 1948
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
7. The Motor Transport Workers Act, 1961
8. The Payment of Bonus Act, 1965 (
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Contract Labour (Regulation and Abolition) Act, 1970
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
14. The Dock Workers (Safety, Health and Welfare) Act, 1986
15. The Child Labour (Prohibition and Regulation) Act, 1986
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

Small Establishment

Small establishment means an establishment in which not less than ten and not more than *forty* persons are employed or were employed on any day of the preceding twelve months {Section 2 (e)}.

Very Small Establishment

Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.{Section 2 (f)}.

Exemption from furnishing or maintaining of returns and registers required under certain labour laws

Section 4(1) of the Act provides that notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act. It may be noted that such employer—

- (a)** furnishes, in lieu of such returns, annual return in Form I; and
- (b)** maintains at the work spot, in lieu of such registers,—
 - (i)* registers in Form II and Form III, in the case of small establishments, and
 - (ii)* a register in Form III, in the case of very small establishments,;

Every such employer shall continue to issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

Furnishing or maintaining of returns and registers in electronic form

As per Section 4 (2) of the Act, the annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (1), may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.

It may be noted that in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

Under section 4(3) the employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

Penalty

As per section 6 of the Act, any employer who fails to comply with the provisions of the Act shall, on conviction, be punishable, in the case of the first conviction, with fine which may extend to rupees five thousand ; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty-five thousand, or with both.

Test Your Knowledge

Which establishment covered under the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988?

Answer: *The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 applies to –*

(i) Small Establishment - The Establishment in which not less than 10 and not more than 40 persons are employed or were employed on any day in preceding 12 months.

(ii) Very Small Establishment - The Establishment in which not more than 09 person are employed or were employed on any day in preceding 12 months.

Test Your Knowledge

Which returns are to be submitted by the Employer of Small Establishment and Very Small Establishment?

Answer: *In both the Establishments, Annual Return in Form I is required to be submitted.*

Test Your Knowledge

Which Registers are required to be maintained at the work spot by the employer of a Small Establishment?

Answer: The Registers required to be maintained at the work spot by the employer of a Small Establishment are as under –

Form II and Form III.

Test Your Knowledge

Which Register is required to be maintained at the work spot by the employer of a Very Small Establishment?

Answer: The Register required to be maintained at the work spot by the employer of a Small Establishment is as under – Form III

Lesson-18

Apprentices Act, 1961

The Apprentices Act 1961 was enacted with the objective of regulating the programme of training of apprentices in the industry by utilising the facilities available therein for imparting on-the-job training. The Act was amended in 1973 and 1986 to include training of graduates, technicians and technician (vocational) apprentices respectively under its purview. It was further amended in 1997 and 2007 to amend various sections of the Act as regards definition of “establishment”, “worker”, number of apprentices for a designated trade and reservation for candidates belonging to Other Backward Classes, etc. Comparing the size and rate of growth of economy of India, the performance of Apprenticeship Training Scheme is not satisfactory and a large number of training facilities available in the industry are going unutilised depriving unemployed youth to avail the benefits of the Apprenticeship Training Scheme. Employers are of the opinion that provisions of the Act are too rigid to encourage them to engage apprentices and provision relating to penalty creates fear amongst them of prosecution and they have suggested to modify the Apprentices Act suitably. In order to make the apprenticeship more responsive to youth and industry, the Apprentices Act, 1961 has been amended and brought into effect from 22nd December, 2014. These amendments have been made with the objective of expanding the apprenticeship opportunities for youth. Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.

The amendments are as under:

Definitions

Section 2 of the Act defines various terms used in the Act, some of the amended definitions are given here under:

Appropriate Government

Appropriate Government means –

(1) in relation to –

(a) the Central Apprenticeship Council, or

(aa) the Regional Boards, or

(aaa) the practical training of graduate or technician apprentices or of technician (vocational) apprentices, or;

(b) any establishment of any railway, major port, mine or oilfield, or

(bb) any establishment which is operating business or trade from different locations situated in four or more States, or

(c) any establishment owned, controlled or managed by –

- (i) the Central Government or a department of Central Government,
 - (ii) a company in which not less than fifty-one per cent of the share capital is held by the Central Government on partly by that Government and partly by one or more State Governments,
 - (iii) a corporation (including a co-operative society) established by or under a Central Act which is owned, controlled or managed by the Central Govt;
- the Central Government
- (2) in relation to –
- (a) a State Apprenticeship Council, or
 - (b) any establishment other than an establishment specified in sub-clause (1) of this clause, the State Govt; { Section 2(d)}.

Designated Trade

Designated trade means any trade or occupation or any subject field in engineering or non engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act {Section 2(e)}.

Graduate or Technician Apprentice

Graduate or technician apprentice means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or non-engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any designated trade{Section 2(j)}.

Industry

Industry means any industry or business in which any trade, occupation or subject field in engineering or non-engineering or technology or any vocational course may be specified as a designated trade or optional trade or both{Section 2(k)}.

Optional Trade

Optional trade means any trade or occupation or any subject field in engineering or non engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act{Section 2(l)}.

Portal-site

Portal-site means a website of the Central Government for exchange of information under this Act {Section 2(III)}.

Technician (Vocational) Apprentice

Technician (vocational) apprentice means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognised by the All-India Council and undergoes apprenticeship training in designated trade {Section 2(pp)}.

Trade Apprentice

Trade Apprentice means an apprentice who undergoes apprenticeship training in any designated trade {Section 2(q)}.

Worker

Worker means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly from the employer but shall not include an apprentice referred to in clause (aa) {Section 2(r)}.

Qualifications for being engaged as an apprentice

Section 3 provides that a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-

- (a) is not less than fourteen years of age, and for designated trades related to hazardous industries, not less than eighteen years of age; and
- (b) satisfies such standards of education and physical fitness as may be prescribed: Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

Contract of apprenticeship

Section 4 of the Act deals with Contract of apprenticeship. Section 4 states that -

- (1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.
- (2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).
- (3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract: Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.
- (4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of

apprenticeship shall be entered on the portal-site within seven days, for verification and registration.

(4A) In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within fifteen days from the date of its receipt.

(4B) The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.

As per section 4(6) where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

Regulation of optional trade

Section 5A provides that the qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions relating to the apprentices in optional trade shall be such as may be prescribed.

Engagement of apprentices from other States

Under section 5B the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

Period of apprenticeship training

As per section 6 the period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be as follows-

(a) In the case of trade apprentices who, having undergone institutional training in a school or other institution recognised by the National Council, have passed the trade tests or examinations conducted by that Council or by an institution recognised by that Council, the period of apprenticeship training shall be such as may be prescribed.

(aa) in the case of trade apprentices who, having undergone institutional training in a school or other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority or courses approved under any scheme which the Central Government may, by notification in the Official Gazette specify in this behalf, have passed the trade tests or examinations conducted by that Board or State Council or authority or by any other agency authorised by the Central Government, the period of apprenticeship training shall be such as may be prescribed;

(b) in the case of other trade apprentices, the period of apprenticeship training shall be such as may be prescribed;

(c) in the case of graduate or technician apprentices, technician (vocational) apprentices and the period of apprenticeship training shall be such as may be prescribed.

Number of apprentices for a designated trade and optional trade

Section 8 empowers the Central Government to prescribe the number of apprentices to be engaged by the employer for designated trade and optional trade. Several employers may join together either themselves or through an agency, approved by the Apprenticeship Adviser, according to the guidelines issued from time to time by the Central Government in this behalf, for the purpose of providing apprenticeship training to the apprentices under them.

Practical and basic training of apprentices

Section 9 deals with practical and basic training of apprentices. Section 9 states that:

- Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.
- The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.
- Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.
- In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.

- Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne-
 - (i) If such employer employs two hundred and fifty workers or more, by the employer;
 - (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;
- Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section 6 shall, in every case, be borne by the employer.
- Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentices technician (vocational) apprentices shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who holds degree or diploma in non-engineering.

Hours of work, overtime, leave and holidays

Section 15 of the Act deals with hours of work, overtime, leave and holidays. Section 15 provides that:

- (1) The weekly and daily hours of work of an apprentice while undergoing practical training in a workplace shall be as determined by the employer subject to the compliance with the training duration, if prescribed.
- (2) No apprentice shall be required or allowed to work overtime except with the approval of the Apprenticeship Adviser who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest.
- (3) An apprentice shall be entitled to such leave and holidays as are observed in the establishment in which he is undergoing training.

Records and returns

Section 19 of the Act provides that every employer shall maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed.

Until a portal-site is developed by the Central Government, every employer shall furnish such information and return in such form as may be prescribed, to such authorities at such intervals as may be prescribed.

Every employer shall also give trade-wise requirement and engagement of apprentices in respect of apprenticeship training on portal-site developed by the Central Government in this regard.

Holding of test and grant of certificate and conclusion of training

Section 21(1) provides that every trade apprentice who has completed the period of training may appear for a test to be conducted by the National Council or any other agency authorised by the Central Government to determine his proficiency in the designated trade in which he has undergone apprenticeship training.

Every trade apprentice who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council or by the other agency authorised by the Central Government.

The progress in apprenticeship training of every graduate or technician apprentice shall be assessed by the employer from time to time. Every graduate or technician apprentice or technician (vocational) apprentice who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

Offer and acceptance of employment

As per section 22(1) of the Act every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

Section 22(2) states that notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to the period of remuneration agreed to between the apprentice and the employer.

Offences and penalties

Section 30 deals with offences and penalties. Section 30 provides that-

(1) If any employer contravenes the provisions of the Act relating to the number of apprentices which he is required to engage under those provisions, he shall be given a month's notice in writing, by an officer duly authorised in this behalf by the appropriate Government, for explaining the reasons for such contravention.

(1A) In case the employer fails to reply the notice within the period specified under subsection (1), or the authorised officer, after giving him an opportunity of being heard, is not satisfied with the reasons given by the employer, he shall be punishable with fine of five hundred rupees per shortfall of apprenticeship month for first three months and thereafter one thousand rupees per month till such number of seats are filled up.

(2) If any employer or any other person-

(a) required to furnish any information or return- (i) refuses or neglects to furnish such information or return, or (ii) furnishes or causes to be furnished any information or return which is false and which is either knows or believes to be false or does not believe to be true, or (iii) refuses to answer, or give a false answer to any question necessary for obtaining any information required to be furnished by him, or

(b) refuses or wilfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or

(c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or

(d) employs an apprentice on any work which is not connected with his training, or

(e) makes payment to an apprentice on the basis of piece-work, or

(f) requires an apprentice to take part in any output bonus or incentive scheme.

(g) engages as an apprentice a person who is not qualified for being so engaged, or

(h) fails to carry out the terms and conditions of a contract of apprenticeship he shall be punishable with fine of one thousand rupees for every occurrence.

(2A) The provisions of this section shall not apply to any establishment or industry which is under the Board for Industrial and Financial Reconstruction established under the Sick Industrial Companies (Special Provisions) Act, 1985.
