

Special provisions relating to employees abroad of companies and motor vehicles

Section 15-B:

The special provision related to employees abroad and motor vehicles will be applied to the persons or employees who are recruited by the companies registered in India and under the Motor Vehicles Act, 1998.

- i. The notice of the accident and the compensation claimed may be served on the agent of the company. Or the notice may be served on the local agent or the owner of the motor vehicle in the country of the accident.
- ii. In case the employee dies, the provisions made in this section 15-B shall apply. The claim for compensation may be made within one year after the news of the death of the claimant has been received.
- iii. Therefore, in case of any compensation claimed, the commissioner shall entertain the claim. Although as provided in the section is not much preferred in due time.

Returns as to Compensation Section 16:

The state government can direct any person who is employing an employee at a specified class, specified time and authority that is specified in the notification of official gazette. The state government may also direct to specify the number of injuries in respect of compensation and the amount that has been paid by the employer during the previous year as compensation.

Contracting out Section 17:

If an employee has made a contract or agreement before or after the commencement of the act, and if he voluntary ceases the right to compensation from the employer it shall be considered null and void. The employee cannot seek compensation for any personal injury arising out of or in the course of employment and the liability will be reduced of any person who is entitled to pay compensation under this Act.

Penalties Section 18-A:

Penalties Arise when whoever-

- Fails in maintaining a book that is required to maintain under sub Section 3 of Section 10
- The person fails to make a report that is needed to send under section 10B.
- Fails to inform the employee of his rights to claim compensation needed under Section 17A. He or she will be punished with fine which is not less than fifty thousand rupees that can be extended to one lakh rupees.
- No prosecution can take place under this section.

COMMISSIONERS

Section 19: Reference to Commissioner

The question arises about the liability of any person under the act, who will pay the compensation. A question arises about the person who is injured or not or how much amount is to be given or the duration of the compensation. Also about the extent of the disability the person who is suffering and will get compensation. All such issues are to be resolved by the commissioner.

Appointment of Commissioner Section 20:

Commissioner means a commissioner for employee compensation appointed under Section 20. The state government or the central government may appoint any person to be commissioner for workmen's or employees' compensation act in some specified areas. Every commissioner is identified as a public servant in the Indian Penal Code.

1. If the state government appoints more than one commissioner for any area, a specific order may regulate the business.
2. Any commissioner may choose a person or more persons who possess knowledge and assist him in holding the inquiry.

Venue of proceedings and transfer Section 21:

The provisions under the act will be subject to the commissioner as well if there is a matter related to rules and regulations. The rules made under the act before the commissioner for the area where-

1. The accident happened that resulted in the injury.
2. If the employee dies and if the dependent claims compensation it will reside.
3. Employer's office is registered.

No matter should be processed before a commissioner other than the commissioner who has jurisdiction in the area where the accident happened. It shall not happen without giving notice in the manner prescribed. If the employee is the mater of the ship or seaman or a captain or crew member of the aircraft or employee in a motor vehicle, meets with an accident outside India, then such matter shall be done by the commissioner.

Form of Application Section 22:

No other application for any matter of the commissioner for dependants should be made for compensation. Until and unless some question arises between the parties there is no settlement as per agreement.

The power of commissioner is required to further deposit in the cases which talks about fatal accidents- Section 22-A

When any amount is deposited by an employer as compensation payable in respect of an employee whose injuries resulted in his death, and the commissioner thinks that amount or sum was not sufficient, he may state a notice in writing giving reasons, he may call upon the employer to show why he could not make a further deposit within such time as stated in the notice. If the employer fails to satisfy the Commissioner, the Commissioner may make an award determining the total amount to be paid, and requires the employer to deposit the deficient amount.

Powers and Procedure of Commissioners Section 23:

He has the power to award compensation more than what is claimed by the employee if the facts warrant the award. A case dealing with the commissioner was Karnataka State Road Transport Corporation v. B.T. Somashekaraiah, 1994

Appearance of Parties Section 24:

A person may appear or become a witness for the purpose of examination, an application or act is required to be made by a person to a commission. It may be done on behalf of a legal practitioner or an official of the insurance company or registered trade union or an inspector appointed under Section 8 of the Factories Act, 1948, or any other officer which is specified by the state government with the permission of the commissioner or a person who is authorised to do so.

Method of Recording Evidence Section 25:

The commissioner makes a brief written message(memorandum) of the evidence of every witness as the examination process proceeds. The memorandum should be in written form and duly signed by the commissioner. The form so signed by the commissioner must be in his own handwriting and it will be a part of the record.

Time limit for disposal of cases relating to compensation Section 25A:

The Commissioner can dispose of the matter relating to compensation under this Act within a period of three months from the date of reference and intimate the decision in respect thereof within the said period to the employee.

Cost Section 26:

All costs, incidental to any proceedings before a Commissioner, shall, subject to rules made under this Act, be in the discretion of the Commissioner.

Power to submit cases Section 27:

A commissioner can submit a Question related to law so that the High Court can decide the compliance with the standards or rules if the High Court wants to do so.

Registration of agreements Section 28:

A memorandum should be sent by the employer to the commissioner when a lump sum amount is payable as compensation due by the agreement either half monthly payment or payment being payable to a woman or a person with a legal disability. The memorandum must be genuine and should be registered in the prescribed manner. However, a memorandum cannot be recorded before seven days after the communication has taken place between the commissioner and the concerned parties.

Effect of failure to register agreement Section 29:

The employer will be liable to pay the full amount of compensation if the registration of the agreement of memorandum is not sent to the commissioner as required under the section. The employer will pay the compensation as he is liable to pay under the provisions of the Act (Section 4) Until the commissioner directs to deduct more than half of the amount to be paid to the employee as compensation.

Appeals Section 30:

An appeal may lie to the High Court by following the orders of the commissioner.

1. A lump sum amount as compensation is awarded as an order, and redemption of half the monthly payment is away.
2. An order may refuse to allow gain of a half monthly compensation.
3. Distribution of compensation by order among the family members of the deceased, or disallowing of any claim of a person.

Substantial Question of Law

If there is difficulty in applying the facts to the law it will not amount to a substantial question of law. Reference case- Asmath Bedi(dead) v. Marimuthu. The period of limitation under section 30 is sixty days if a person makes an appeal. An appeal lies against the order of commissioner who will compensate only when a substantial question of law. The scope in section 30 of the Act for appealing against the order that is passed by the commissioner is very limited. An appeal shall not lie against any order unless a substantial question of law.

Can courts intervene on question of fact?

Yes, the courts can intervene on the question of fact. This was done in the case of Mangala Ben vs Dilip Motwani. It was first held that there is no substantial question of law. In the opinion of the Court, the finding of the Commissioner does not prove that the deceased was in the employment of the owner. The learned Commissioner further held that the claimant did not produce any evidence to prove that the deceased was employed for the purposes of Dilip Motwani's trade or business. He observed that in the absence of such evidence, the deceased cannot be held to be an employee. In the opinion of the court, the Commissioner committed error of law in holding that the burden lay on the claimant to prove that the deceased was employed for the purposes of the respondent's trade or business. The appellate court has no jurisdiction to entertain an appeal unless the same involves a substantial question of law, *Nisan Springs (Pvt) Ltd v. Om Jain*, 1990.

Effect of death of claimant

If the injury of the employee results in his death, the employer shall give compensation in addition to the compensation that is deposited with the commissioner. A sum of five thousand rupees and not less than that will be given to the eldest surviving dependant of the employee. Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

Review, Revision, Remand, and Writ

If an employee is not satisfied with the decision of the court regarding the compensation, he can appeal for review by the court. Review can be made only after the decree is passed by the court or an order is made. If there is an error in the decision by the court appeal can be made for revision which can be done only by the High Court. An employee can writ if he has been wrongly remanded. Remand means In custody of the court.

Appeal not accompanied with certificate by the Commissioner under Proviso (3)

If the appeal is not accompanied by a certificate by the commissioner that is payable and deposited with him then no appeal by the employer under clause (a) shall lie against the law. The period of limitation under the section for the appeal will be sixty days.

Condonation of delay

If the appeal by the employee is delayed it is known as condonation of delay. An appeal is filed when the employee is not satisfied by the decision of the court and want to appeal again for the decision. So when the employee gets delayed in appealing the suit it will be condoned.

Withholding of certain payments pending decisions of appeal Section 30-A:

The commissioner may withhold the payment of any amount which is deposited with him when an employer appeals under section 30 and it is directed by the High Court.

Recovery Section 31:

The commissioner can recover any amount payable by any person as arrears of land revenue. The commissioner will be deemed to be a public officer if there is an agreement for the payment of the compensation under the meaning of section 5 of the Revenue Act, 1890.

Power of the State Government to make rules Section 32:

The state government has the power to make rules and regulations for the purpose of this act. These rules provide all the matters without prejudice namely:

1. The state government prescribes certain intervals where an application may be made under Section 6 is subject to conditions when not accompanied by a medical certificate by a qualified practitioner.

2. The state government prescribes some intervals where an employee is required to submit himself to undergo certain medical examination of section 11.
3. The state government prescribes a procedure that needs to be followed by the commissioners. It is required when there is disposal of cases under the act and by the parties.
4. The state government regulates the transfer of matters. It also regulates cases from one commissioner to another and also transfer of money in some cases.

Publication of rules Section 34:

The power to make rules in Section 32 will be subject to the conditions of the rules which are made after previous publication. Rules so published in the Official Gazette will have an effect in the Act.

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation Section 35:

The Central Government may make rules for transfer money to any foreign country which is deposited with a commissioner under the act by a notification. A person who resides in a foreign country or is about to reside may be awarded the money deposited under the law relating to employees. The amount related to fatal accidents shall not be transferred without the consent of the employer under the commissioner.

Rules made by the Central Government to be laid before Parliament Section 36:

Every rule made under the act by the Central government is laid before each house of parliament while it is in session for thirty days. It may be done in one session or in two sessions before the expiry of the session. The houses may make any modifications in the rule or the houses may agree that the rule should not be made.

THE EMPLOYEES' STATE INSURANCE ACT, 1948

The Employees' State Insurance Act incorporates a number of sections, these sections provide for medical benefits and insurance for any employees working under factories registered under the ESI Corporation. This is an exciting prospect from both an employee's and a legal perspective as the beginning of a formal social security program in India.

Application and scope of the Act

The Employees' State Insurance Act, 1948 (ESI), enables the financial backing and support to the working class in times of medical distress such as:

1. Sickness.
2. Maternity Leave.
3. Disorders(mental or physical).
4. Disability.
5. Death.

It is a self-financed initiative, which serves as a type of social security scheme, to prevent the working class from any financial problems arising out of the above medical issues.

Constitutionality of the Act

The ESI Act serves as a constitutional instrument because of its practice of providing insurance and medical insurance. While the ESI Act is mostly executed through the ESI Corporation, the Central Government takes control of most of the proceedings. This control by the Central Government largely contributes to the constitutionality of the Act, because Insurance, be it public or private, is listed in the Seventh Schedule of the Indian Constitution as a Union List subject i.e. it can only be legislated by the Central Government.

Definitions

The Employees State Insurance Act contains several important definitions that explain the meaning of important provisions.

Appropriate Government Section 1

The definition of “appropriate government” divides powers between the Central and State governments effectively. The Central government is appropriate in cases of establishments that the Central government controls. It is the appropriate government for railway administration, major ports, mines, and oil fields as well. In all other cases, the appropriate government is the relevant State government.

Confinement Section 3

Pregnancy which leads to the birth of a living child is called “confinement” under this Act. It can also mean the birth of a child (living or dead) after 26 weeks of pregnancy.

Contribution Section 4

Principal employers under this Act have to pay a sum of money to the Employees State Insurance Act Corporation according to relevant provisions. This money is basically later payable to employees by the ESI Corporation for their benefits. Every employer to whom the Act applies has to make this contribution.

Corporation Section 6

This important definition describes the Employees State Corporation that this Act has set up. This corporation has several important powers and duties.

Dependant Section 6A

In case a worker under the Act dies during employment, the ESI Corporation pays some money to his dependants. In order to understand who must receive this money, we must know who these “dependants” are. According to the Act, dependants are certain relatives of a deceased worker. These include his widow, a son below 25 years of age, an unmarried daughter and his widowed mother. A son/daughter above 25 years can also be a dependant if he/she is wholly dependant on the worker. In certain cases, dependants can also be a minor illegitimate child, minor sibling, a parent other than widowed mother, etc.

Employment Injury Section 8

An employee can receive financial support under this Act for specific injuries that occur in employment only. Hence, the Act refers to them as “employment injuries”. These injuries must be a result of an accident or occupational disease arising in the course of employment. It is immaterial whether the workers contract these occupational diseases within India or outside.

Employee Section 9

This is a very important definition because only “employees” under the Act can claim compensation there under. An employee is basically a person who is employed for wages in relevant factories/establishments. Furthermore, there are some additional requirements depending on the nature of the employee’s services. For example, an employee may directly work permanently for the principal employer or may work temporarily on contract.

Exempted Employee Section 10

There are certain employees who are not liable to pay a contribution to the ESI Corporation under this Act. These employees are called as exempted employees.

Factory Section 12

A “factory” means any premises (or its precincts) wherein 10 or more employees work or have been working. These workers should be in employment for the preceding twelve months. Furthermore, some manufacturing process must take place on such premises. Mines or railway running sheds, however, cannot come under the definition of factories.

Insured Person Section 14

An insured person under this Act is basically an employee to whom contribution is payable. Furthermore, he can claim all other benefits under the Act.

Principal Employer Section 17

A principal employer is generally the owner or occupier of a factory to which the Act applies. It can also include the owner's managing agent or factory manager and legal representative of a deceased owner/occupier. In the case of departments of the Central government, the principal employer is the department's head. In all other establishments, the person in charge of supervision and control is usually the principal employer.

CORPORATION, STANDING COMMITTEE & MEDICAL COUNCIL

Establishment of Employees' State Insurance Corporation

The ESI Act exercises its function through the Employees' State Insurance Corporation, established via Section 3, a body created to maintain social security. It was established on 24 February, 1952. The corporation is supposed to grant relief to the employees in case of medical emergencies.

Constitution of Corporation

The composition of the ESIC is defined in Section 4, and it is as follows:

1. The Director-General.
2. Chairman, appointed by the Central Government.
3. Vice-Chairman appointed by the Central Government.
4. Not more than 5 persons nominated by the Central Government.
5. 1 person to represent each state.
6. 1 person representing the Union Territories.
7. 10 persons representing employers.
8. 10 persons representing employees.
9. 2 persons representing the medical profession.
10. 3 members of parliament (2: Lok Sabha and 1: Rajya Sabha).

Term of office of members of the Corporation

Section 5 the following members are appointed for up to a 4 year period:

1. Director-General.
2. Chairman.
3. Vice-Chairman.
4. The 5 people nominated by Central Government.
5. The members representing each state.
6. The members representing each Union Territory.

Eligibility for re-appointment or re-election

An outgoing member of ESIC, the Standing Committee of ESIC, or the Medical Benefit Council is automatically eligible for re-appointment or re-election into office as the case may be, at the pleasure of the appointing Central Government.

Authentication of orders, decisions, etc.

The signature of the Director-General of ESIC is the only necessary requirement to authenticate an outgoing order or a decision, there is no other way to authenticate or enforce an order. The Director-General can also temporarily delegate his authority to any other officer. In this case, the signature of the authorised officer will also suffice to authenticate an order.

Constitution of Standing Committee

The composition of the Standing Committee of ESIC is as follows:

1. A chairman appointed by Central Government.
2. 3 members within the corporation representing 3 state governments.
3. 3 members within the corporation representing employers.
4. 3 members within the corporation representing employees.
5. 1 member within the corporation representing the medical profession.
6. One MP belonging to the corporation.
7. The Director-General.

Terms of office of members of Standing Committee

The following members are appointed for a two year period:

1. The Chairman.
2. The 3 members representing the states.

Medical Benefit Council

The Medical Benefit Council is an advisory body on matters related to the administration of medical benefits under the ESI scheme. It consists of:

1. The Director-General of ESIC as Chairman.

2. The Director-General of Health Services as co-Chairman.
3. The Medical Commissioner of ESIC.
4. One member for each state appointed by State Government.
5. Three members representing employers.
6. Three members representing employees.
7. Three members including one woman representing the medical profession.

Tenure of the members of the Medical Benefit council

The following members of the Medical Benefit Council are appointed for a period of 4 years, these are:

1. The Director-General of ESIC as Chairman.
2. The Director-General of Health Services as co-Chairman.
3. The Medical Commissioner of ESIC.
4. One member for each state appointed by State Government.

Resignation of membership

The resignation of a member of the Corporation is complete when a notice for the same, in writing, is delivered to the Central Government, and his seat shall fall vacant upon acceptance of his resignation.

Cessation of Membership

A member of the ESIC shall cease to be a member of his respective body (Corporation, Standing Committee or Medical Council) upon failing to attend three consecutive meetings. However, the same member can be restored by the concerned body via the rules made by the Central Government. If in the opinion of the Central Government, any employer, employee or medical representative fails to represent their qualification, they shall cease to be members of ESIC.

Disqualification

A person can be disqualified as a member of ESIC if:

1. If he is declared to be of unsound mind by a qualified court.
2. If he is an undischarged insolvent.
3. If at any time, he has been convicted of an offence regarding moral turpitude.

Filling of vacancies

Any vacancy in the office of ESIC shall be filled by appointment or election, as the case may be. A member of ESIC can only hold the ex-member's spot in the

respective committee, if the original holder of that position was found to be eligible for the same. Otherwise, the position is void.

Principal Officers

The Principal Officers referred to under this Section are the Director-General and/or Financial Commissioner, to act as the CEO for ESIC. They serve as whole-time officers and are not permitted to undertake any work outside of office jurisdiction without the sanction of the Central Government. The time period for the appointment of any principal officer may not exceed 5 years. The operation of their fees, disqualification, and cessation of seats operate in the same manner as that of their subordinates.

Staff

ESIC has the jurisdiction to employ staff of officers as may be necessary for the optimum running of the corporation, however, according to the prerequisites in Section 17, the sanction for creating any staff position has to be acquired from the Central Government. Their salary shall be prescribed by the Central government within a particular range, which cannot be exceeded. The scale of pay will be determined on the basis of their educational qualifications, method of recruitment, duties, and responsibilities, etc.

Powers of the Standing Committee

The Standing Committee, with its powers defined in Section 18, shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation, while authorised and under the jurisdiction of the corporation. The Standing Committee shall submit for the consideration and decision of the Corporation all such cases and matters as may be specified in the regulations made in this behalf. The Standing Committee also, in its discretion, may submit any other case or matter for the decision of the Corporation.

Corporation's Power to promote measures for the health of insured persons

ESIC, in its jurisdiction, may take initiatives that promote health and welfare amongst its employees, while also promoting rehabilitation and re-employment for past employees who were injured or disabled in the course of employment. The funding and expenditure for such initiatives is at the discretion of the Central Government.

Meetings

ESIC, its Standing Committee, and its Medical Council shall meet periodically to observe rules and procedures in regard to the efficient functioning of the corporation. Such observations can be specified as per the regulations in regard to the meeting.

Supersession of the Corporation and Standing Committee

The supersession of the Corporation and the Standing Committee occurs when there is a persistent failure to perform the duties prescribed to both parties. In such a case, the Central Government, via a notification in the Official Gazette, can take the place of the corporation, or with the consultation of the corporation, can take the place of the Standing Committee. The supersession of the corporation will take place by rendering all of the seats of the corporation, previously occupied by the members, as vacant. In the case of the Standing Committee, a new one shall be constituted immediately as per Section 8 of the ESI Act.

Duties of the Medical Benefit Council

The Medical Council's functions are as follows:

1. Advise the other two ESIC bodies on matters relating to the implementation that would be beneficial in the medical field. It acquires certification for the grant of medical benefits.
2. Investigate against complaints lodged against medical practitioners with relevance to the medical relief offered.

Duties of Director General and the Financial Commissioner

The duties of the Director-General and Financial Commissioner are prescribed by the ESI Act itself in accordance with the Central Government. These tasks may concern various arenas from management to miscellaneous tasks.

Validity of the act of the Corporation

No act of any ESIC body shall be termed as invalid with respect to their own rules and regulations. Invalidity cannot be claimed on the eligibility or ineligibility of a particular member of that office.

Regional Boards, Local Committees, Regional and Local Medical Benefit Council

The Corporation may appoint Regional Boards, Local Committees and Regional and Local Medical Benefit Councils in such areas and in such manner, and delegate to them powers and functions.

Finance and Audit

Employees' State Insurance Fund

The Employees' State Insurance Fund is the primary monetary source for the ESIC to perform its functions. All contributions paid under this Act and all other money received on behalf of the Corporation shall be paid into this fund to be held and administered by the Corporation. These could be in the form of grants, donations or gifts by the government.

Expenses of the fund

The ESI Fund is responsible for maintaining the expenses of ESIC, which are as follows:

1. Payment of benefits and provision of medical treatment and attendance to insured persons and their families, if required.
2. Payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils.
3. Payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, etc.
4. Establishment and maintenance of hospitals, dispensaries, and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and their families, if required.

5. Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and their families, if required.

Administrative expenses

Administrative expenses are termed so, those expenses which cover the costs of administration of ESIC, prescribed by the Central Government.

Holding of Property

ESIC is subject to conditions prescribed by the Central Government, in terms of acquiring, hold, sell or transfer any property, movable or immovable, vested in or acquired by it, so as to fulfill the purposes of the corporation. The ESIC also has the ability to invest in property as and when required, under the jurisdiction of the Central government. It can also delegate property for the benefit of its staff..

Budget Estimates

Every year, ESIC frames and projects a potential budget showcasing how much expenditure it proposes to incur, and how it will discharge its liabilities during the following year. This is then submitted to the Central Government for approval.

Accounts

The Corporation shall maintain correct accounts of its income and expenditure in such form and in such manner as may be prescribed by the Central Government.

Audit

The Corporation prepares accounts regularly which are audited annually by the comptroller and Auditor-General of India, and any audit which leads to an expenditure will be payable to the above parties. Any person appointed by the Comptroller and Auditor-General to act on their behalf will temporarily have the same powers as the above parties and are authorised to demand the production of books, accounts, connected vouchers, and other documents and papers. They shall also be authorised to inspect any offices of ESIC at any time. The accounts of the Corporation, before being forwarded to the Central Government, have to be verified by the Comptroller and Auditor-General, or any of their representatives. After verification, the accounts can be forwarded to the Central Government along with any comments on the report, given by the above parties.

Annual report

The Corporation shall submit an annual report of its work and activities to the Central Government.

Budget etc. to be placed before Parliament

The annual report, the audited accounts of the Corporation along with the report of the Comptroller and Auditor-General of India, and the comments of the Corporation on such report under section 34 and the budget, as finally adopted by the Corporation, shall be placed before the Parliament.

Valuation of assets and liabilities

The Corporation shall, at intervals of three years, have a valuation of its assets and liabilities made by a valuer appointed with the approval of the Central Government: Provided that it shall be open to the Central Government to direct a valuation to be made at such other times as it may consider necessary.

Contributions

All employees employed in the factories which meet ESIC prescribed rules (under Section 2) are insured for all the benefits offered by it.

1. The contribution is a determinable amount of money payable by both the employer and the employee, as per the situation, to the corporation.
2. The rates, while usually prescribed by the government, are not set in stone, and are subject to change. Rates defined by the government are mostly set as the unit standard for the contribution payable by the employer.
3. In the case of the employee's contribution, the wage period in relation to the respective employee shall be held as a unit to determine the compensation payable, and are normally due on the last day of the wage period.
4. Failure to pay contributions by the employer will make him liable to pay an interest rate of 12%.

Principal employer to pay contribution in the first instance

1. The primary employer has to collectively pay the contribution, both his own and that of his employees, regardless of whether they are directly employed under him or are working through an immediate employer.

2. If a directly employed employee fails to pay his contributions, then the employer can recover that contribution only by deducting the wages of said employee.
3. The employer bears all the transfer costs of the payment to the Corporation.

Recovery of contribution from the immediate employer

In the case of an employee who is indirectly employed under the principal employer, via an immediate employer, the principal employer shall be entitled to recover the payment made on behalf of an indirect employee, from the immediate employer, as a debt payable to him. The immediate employer also has to prepare a list of all the employees under him and submit the same to the principal employer, before paying his dues. General provisions as to payment of contribution. In case an employee's wage falls below the prescribed wage range prescribed by the Central Government, the employee shall not be liable for his contribution and it shall not be payable.

Method of payment of contributions

The manner for payments which the Act provides regulations for, has been elaborated in the following conditions:

1. The nature and time of contribution being paid.
2. Payment which involves the usage of stamps or other adhesives fixed upon the books of accounts, or any other documents.
3. The evidence of the contributions, which reaches the Corporation, is to be dated.
4. The different entries in the books of accounts along with the details of the insured persons.
5. The replacement of documents which have been lost, destroyed or defaced.

Employers to furnish returns and maintain registers in certain cases

According to the provisions given as per the ESI Act, the principal and immediate employers are to submit all the investment profits, as well as any and all details relating to their employees in any factory under their jurisdiction. In case of failure to submit a return, that the corporation had reasonable cause to believe, should have been submitted, the corporation can require the employers to present all the details.

Social Security Officers and their functions

1. ESIC has the power to appoint persons as Social Security Officers. Their functions are mostly to serve a role in inspecting the function of the corporation.
2. If required, he can acquire any information from any employer as he sees fit.
3. He can enter any corporation at any time and can get all the accounts, books and other employment documents presented to him without any due notice. This can include information like wages, expenses, etc.
4. He can inspect and look into any matter regarding the employers and employees as and when required under the jurisdiction of the court.
5. He can make copies or take extracts from any register or account back as per his discretion.

Determination of Contribution in certain cases

A Social Security officer is restricted from exercising his functions and discharging his duties, if the accounting statements of the factory/establishment are not submitted, or not maintained in accordance with Section 44 of the ESI Act. As such, the Corporation may, with the available information, determine the contribution (defined under Section 39) amount payable to employees. However, this procedure will not take place until after the person in charge has been given a reasonable opportunity to be heard regarding the absence of such records.

Appellate Authority

In the scenario specified in Section 45A, once the employer in charge is heard, and he is not satisfied with the verdict given by the corporation, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of the verdict. He must also pay a sum of 25% of his calculated contribution, in order to file the appeal. In case he is successful, the corporation will also refund the contribution paid by him.

Recovery of contributions

Any and all contributions which are payable under the provisions of ESI Act, can be recovered, termed as 'arrear of land revenue'.

Issue of certificate to the Recovery Officer

In lieu of Section 45B, where the contribution is to be recovered, an authorised officer of the corporation issues a certificate bearing his signature and the amount to be recovered, to a Recovery Officer, who then proceeds to recover the amount specified from the factory where the default took place. He does this via:

1. Attachment or sale of the property of the factory, or the employer, as per the situation.
2. The arrest of the employer and getting him detained in prison.
3. Appointing a receiver for the management of the property acquired, be it from the factory or the employer.

Recovery Officer to whom the certificate is to be forwarded

For the contribution certificate to be forwarded to the Recovery Officer, the factory employer must be under the jurisdiction of the Officer in the following ways:

1. The location where the employer carries on his business and where the factory is located.
2. The location where the employer resides or he has any personal property situated within the Officer's jurisdiction.
3. The inability to recover the amount solely through the sale of property alone.

The inability to recover the amount solely through the sale of property alone

The analysis of the recovery amount, as per the certificate issued to the Recovery Officer, operates on his word only. The factory or any authority related to it cannot question the Officer on the correctness of the amount, and no objection shall be entertained. However, with a prior intimation, an arithmetical mistake can be corrected by an authorised officer, along with any orders about withdrawal or cancellation of a certificate.

Stay of proceedings under certificate and amendment or withdrawal thereof

It is at the discretion of the Recovery Officer, within the boundaries of the ESI Act, to halt legal proceedings if the time he has allocated for the recovery of an amount, has expired. The Recovery Officer is also entitled to receive constant updates about the status of payment of any due amount. If, as a result of an appeal, the amount due is decreased, then the Recovery Officer temporarily halts the recovery of the now decreased amount.

Other modes of recovery

Some of the other modes of recovery are elaborated within Section 45G. These are rarer modes of recovery, due to the primary modes of recovery often being preferred:

1. The defaulting employer may be required to pay a sum which was deducted from the arrears after the sale of the property.
2. There might not be any penalty issued but the defaulting employer would be required to pay the entire outstanding amount directly to the Director-General of the Corporation.
3. Any joint shareholders who held money with the defaulting employer might be forced to give up their shares to the Corporation until they are equal to the defaulting employer's shares, as compensation.

Application of certain provisions of the Income-tax Act

The arrears of the amount of contributors, which are to be sold to cover the remaining costs, can be affected by decisions from the Assessing Tax Officer or Tax Recovery Officer. They can make changes which shall apply to all the interests and damages.

Benefits Available Under the Act:

Section 46 of the ESI Act grants benefits to employees as social security in case of injury, which can be availed during the course of employment. There are 6 types of benefits that can be availed:

1. Medical benefit.
2. Sickness benefit.
3. Maternity benefit.
4. Dependants' benefits.
5. Disablement benefits.
6. Other benefits.

Medical Benefits

These benefits are guaranteed to the employee as soon as he/she is hired, with the benefits extending to their family members as well. This benefit covers the payment of all treatment expenses in lieu of medical issues faced by the employee

Sickness Benefits

The employees covered by the ESI Act can avail periodical payments in case of sickness as per Section 46(1)(a), as long as the medical condition is verified by the appointed medical practitioner. The compensation is approximately 70% of their wages, with the upper limit for availing compensation being 91 days in a year. In a period of 6 months of employment, the employee must have been working for a minimum of 78 days, else the benefit cannot be claimed.

Maternity Benefits

As per Section 46(1)(b) of the ESI Act, an insured woman can claim periodical payments in case of occurrence of any of the following situations:

1. confinement (labour leading to birth or birth after 26 weeks)
2. miscarriage
3. sickness arising out of pregnancy
4. premature birth of child

The benefit is payable for three months, with an extension of one month, if required. The minimum work duration must be 70 days in the year preceding the year of pregnancy.

Dependants' Benefits

Section 46(1)(d) prescribes periodical payments (often made monthly) to the dependants/family members of the person who dies during the course of employment, with the cause of death being an employment injury or an occupational hazard. Compensation is generally 90% of the employee's wages.

Disablement Benefits

In case an employee suffers an injury during the course of employment which results in their disablement. The nature of the disablement may be temporary or permanent. Unlike the other benefits, there is no minimum work contribution required to avail the disablement benefit, although eligibility for the same will be determined by the Medical Board. This determination also affects the amount of compensation granted, if any, with the general percentage of wages granted being around 90%.

Other Benefits

‘Other benefits’ refer to the miscellaneous benefits apart from the five major benefits that can be availed by the employees. These are as follows:

1. **Funeral Expenses:** Compensation of Rs. 10,000 is granted to the eldest surviving member of an employee’s family to perform his last rites.
2. **Vocational Rehabilitation:** The benefit is payable to disabled employees undergoing rehabilitation.
3. **Old age medical care:** This benefit is available for retired employees, or those who left employment after suffering an injury, with general compensation being Rs. 120 p/m.

Scheme for other beneficiaries

Section 53 of the ESI Act acts as a deterrent for employees, in order to prevent them or their families from claiming benefits provided under the Act, so long as they are still insured under the reliefs offered by the ESI Act. Section 61 acts like an extension to Section 53, in the sense that while Section 53 only bars employees from receiving compensation under the Employees Compensation Act, Section 61 bars employees from receiving compensation from any other enactment so long as they are still insured under the ESI Act.

Power to frame scheme

The Central Government holds the power to frame schemes for other beneficiaries and their family members, mostly for providing medical facilities in ESI hospitals. However, this must be within the framework of the ESI Act and must be notified in the Official Gazette.

Scheme for other beneficiaries

Schemes implemented for beneficiaries may cover for a number of matters such as:

- a) The time and nature of the usage of medical facilities.
- b) The presentation of particulars and details about the beneficiary and his family as per the needs of the Corporation.
- c) Miscellaneous matters which may be necessary to fully implement the scheme.

Power to amend schemes

Via a notification in the Official Gazette, the Central Government may add to, amend, introduce variations, or rescind the scheme.

Adjudication of Disputes and Claims

Constitution of Employees' Insurance Court

Via a notification in the Official Gazette, an Employees' Insurance Court will be constituted by the State Government, with a set amount of judges as per the decision of the State Government. The same court may be appointed for two or more local areas, or two courts or more courts may be appointed for the same local area.

Power of Employees' Insurance Court

The Employees' Insurance Court will function with the same powers as that of a Civil Court, in which, to enforce the provisions of the ESI Act, it can enforce witness attendance, compel document and material evidence to be presented, it can administer an oath and can record evidence. All expenses incurred before a proceeding are subject to the discretion and liability of the court itself.

Reference to High Court

An Employees' Insurance Court, according to Section 81 may submit any question of law for the decision of the High Court and if it does so, the answer to the question shall hold precedence before any judgment.

Appeal

Section 82 defines that no appeal can be laid down as against an order from the Employees' Insurance Court. However, appeals from the High Court can stand if they involve a substantial question of law.

Penalties and Punishments

Sections 84, 85, and 85A cover all the punishments for default listed within the ESI Act.

1. **False Statement:** Any person caught increasing the payment or benefit to avoid payment by himself is known to make a false statement. Punishable with up to six months and/or with fine not greater than Rs. 2000. Insured persons convicted of this will not be entitled to cash benefits.
2. **Failure to pay contribution:** Persons failing to pay the contribution, unlawfully deducts wages or benefits, unfairly punishes an employee, obstructs inspector's duties, etc. can be punishable for up to three years, no less than one year with a fine up to Rs. 10000.
3. **Subsequent Punishment:** If a person is found committing the same offence twice, he shall be punished with imprisonment for a term extending up to two years with a fine of Rs. 5000 for each subsequent offence.

Power to recover damages

If an employer fails to pay the contributions due in any aspect, whether it be from his side or his employee's side, the Corporation can recover the deficit from him by way of penalty. However, this recovery of contribution will not take place until after the person in charge has been given a reasonable opportunity to be heard regarding the failure to pay the contribution.

Power of Court to make orders

Along with the power of the court to recover damages, it also has provisions to enforce judicial orders. If the defaulting employer fails to meet the time conditions for payments that have been stated by the Court, the employer will be deemed to have committed another offence, which can be punishable with imprisonment and/or fines.

Prosecution

Section 86 dictates that any sort of prosecution cannot take place under the provisions of ESI Act unless it has previously obtained the sanction of the Insurance

Commissioner or any other authorized authority such as the Director-General of the Corporation. No court lower than a First Class Magistrate can try an offence under the ESI Act, and no Court will take cognizance of any offence reported under this Act.

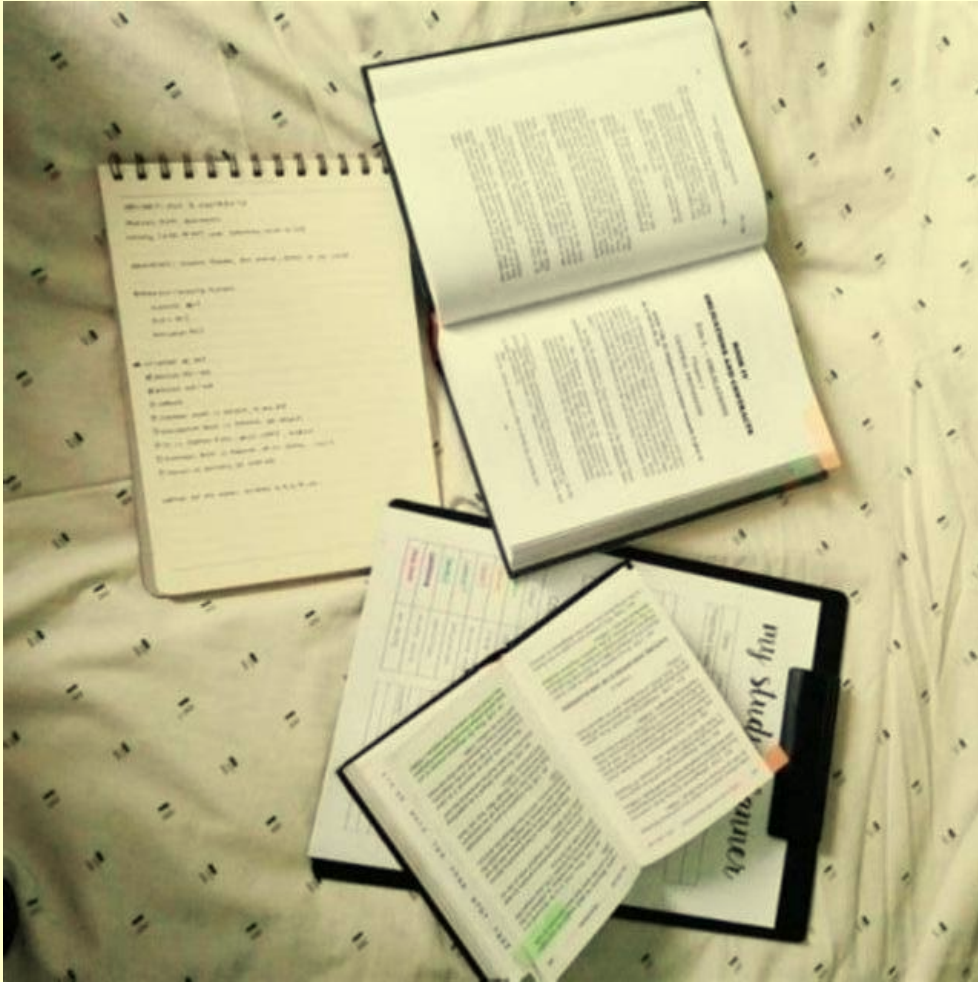
Offences by companies

Taking inference from the concept of business entity, where every company is its own individual i.e. it is a separate legal entity of its own and can sue or be sued in a court of law accordingly. As such, when an offence is said to have been committed by a company, all of its managerial employees, who were responsible for the company at the time, will be tried along with the company, deemed to be guilty of the same offence. They are liable for punishment accordingly.

Comparative Analysis

The ESI is a later Act and has a wider coverage. It is more comprehensive. It also provides for more compensation than what a workman would get under the Workmen's Compensation Act. The benefits which an employee can get under the ESI Act are more substantial than the benefits which he can get under the Employees Compensation Act. The only disadvantage, if at all it can be called a disadvantage, is that he will get compensation under the ESI Act by way of periodical payments and not in a lump sum as under the Workmen's Compensation Act. If the Legislature in its wisdom thought it better to provide for periodical payments rather than lump sum compensation its wisdom cannot be doubted. Even if it is assured that the workmen had a better right under the Employees Compensation Act in this behalf it was open to the Legislature to take away or modify that right. While enacting the ESI Act the intention of the Legislature could not have been to create another remedy and a forum for claiming compensation for an injury received by the employee by accident arising out of and in the course of his employment.”

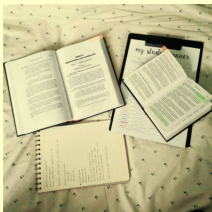
ESI Act, 1948	Employees Compensation Act, 1923
Objectives of the Act : To provide benefits to the employees in case of sickness, maternity and employment injury caused by accident or occupational disease.	Objectives of the Act: To provide compensation to workmen for injury caused by accident or occupational disease.
Act Covers: Employment injury or death caused by accident or occupational disease, sickness and maternity.	Act Covers: Employment injury or death caused by accident or occupational disease.
Wage limit under the Act: Rs. 15,000 p.m.	Wage limit under the Act at present: No wage limit.
Nature of Scheme Offered: Contributory wherein both the employer and the employee contribute 4.75% and 1.75% of wages, respectively.	Nature of Scheme Offered: Non contributory and the employer has to pay the entire compensation.
Benefits covered under the Act: Covers six benefits sickness benefit, medical benefit, maternity, benefit, disablement benefit, death benefit and other benefits	Benefits covered under the Act: Covers disablement benefit and dependent's benefit only.
Who is responsible for making payment: ESIC.	Who is responsible for making payment: Employer
Compensation is paid periodically.	Compensation is paid as one time lump sum payment in cash
Rehabilitation and re-employment: Provision for rehabilitation and re-employment of insured persons who have been disabled.	Rehabilitation and re-employment: No such provision under the Act.
Nature of claim process: Easy and convenient.	Nature of claim process: Complex and time consuming.
Act administered through: ESI Corporation, Standing Committee, Medical Benefit Council and Court.	Act administered through: Commissioners.



Law College Notes & Stuffs

Exclusive group for Law Students

Join Us Here for More Materials



Law College Notes & Stuffs

UNIT-V:

THE PAYMENT OF WAGES ACT, 1936

Object of the Act:

The Payment of Wages Act regulates the payment of wages to certain classes of persons employed in industry and its importance cannot be under-estimated. The Act guarantees payment of wages on time and without any deductions except those authorized under the Act. The Act provides for the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government for the acts and permission for which fines may be imposed by him and also sealing of the fines, and also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages, penalty for malicious and vexatious claims. The Act does not apply to persons whose wage is Rs. 24,000/- or more per month. The Act also provides to the effect that a worker cannot contract out of any right conferred upon him under the Act.

Application of the Act:

It extends to the whole of India. It applies in the first instance to the payment of wages to persons employed in any factory to persons employed (otherwise than in a factory) upon any railway by a railway administration or either directly or through a sub-contractor by a person fulfilling a contract with a railway administration and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of section 2.

The State Government may after giving three months' notice of its intention of so doing by notification in the Official Gazette extend the provisions of this Act or any of them to the payment of wages to any class of persons employed in any establishment of class of establishments specified by the Central Government or a State Government under sub-clause (h) of clause (ii) of section 2.

Definitions:

Some of the important definitions under the Act

Employed person sec 2 (i) includes the legal representative of a deceased employed person

Employer sec 2 (ia) includes the legal representative of a deceased employer

Industrial or other establishments Sec 2 (i1) means any -

- a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
- b) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;
- c) Dock wharf or jetty;
- d) inland vessel mechanically propelled;
- e) mine quarry or oil-field;
- f) plantation;
- g) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;
- h) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;
- i) any other establishment or class of establishments which the Central Government or a State Government the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette. may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

Wages Sec 2 (vi)

wages” means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a

person employed in respect of his employment or of work done in such employment, and includes-

- a) any remuneration payable under any award or settlement between the parties or order of a Court;
- b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made;
- e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include—

1. any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
2. the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of 1[the appropriate Government
3. any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
4. any travelling allowance or the value of any travelling concession;
5. any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
6. any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

Responsibility for payment of wages [Section 3]

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid.

1. In the case of the factory, manager of that factory shall be liable to pay the wages to employees employed by him.
2. In the case of industrial or other establishments, persons responsibility of supervision shall be liable for the payment of the wage to employees employed by him.
3. In the case of railways, a person nominated by the railway administration for specified area shall be liable for the payment of the wage to the employees.
4. In the case of contractor, a person designated by such contractor who is directly under his charge shall be liable for the payment of the wage to the employees. If he fails to pay wages to employees, person who employed the employees shall be liable for the payment of the wages.

Fixation of wage-periods:

Sec 4 provides that, every person responsible for the payment of wages under section 3 shall fix periods in respect of which such wages shall be payable. No wage-period shall exceed one month. That means wage can be paid on daily, weekly, fortnightly (for every 15 days) and monthly only. Wage period for payment of wages to employees by employer should not exceed 30 days i.e. one month according to this act. But wages cannot be paid for quarterly, half yearly or once in a year.

Time of payment of wages:

Sec 5 provides that, the wages of every person employed

1. In railway factory or industrial or other establishment, if there are less than 1000 employees, wages of employees should be paid before the expiry of the 7th day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 7 days i.e. before 7th date if wage is paid on 1st in previous month)

2. In other railway factory or industrial or other establishment, if there are more than 1000 employees, wages of employees should be paid before the expiry of the 10th day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 10 days i.e. before 10th date if wage is paid on 1st in previous month)
3. For employees of port area, mines, wharf or jetty, wages of employees should be paid before the expiry of the 7th day after the last day of the wage period.

If the employee is terminated or removed for the employment by the employer the wage of that employee should be paid within 2 days from the day on which he was removed or terminated. Except the payment of wage of the terminated employee, all the wages of the employees should be paid by their employer on the working day only.

Wages to be paid in current coin or currency notes:

Sec 6 of the act states that, all wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

Deductions which may be made from wages:

At the time of payment of the wage to employees, employer should make deductions according to this act only. Employer should not make deductions as he like. Every amount paid by the employee to his employer is called as deductions.

The following are not called as the deduction

1. Stoppage of the increment of employee.
2. Stoppage of the promotion of the employee.
3. Stoppage of the incentive lack of performance by employee.
4. Demotion of the employee
5. Suspension of the employee

The above said actions taken by the employer should have good and sufficient cause.

Deduction made by the employer should be made in accordance with this act only. The following are said to be the deductions and which are acceptable according to Sec 7(2) of the Act, namely

1. Fines,
2. Deductions for absence from duty,
3. Deductions for damage to or loss of goods made by the employee due to his negligence,
4. Deductions for house-accommodation supplied by the employer or by government or any housing board,
5. Deductions for such amenities and services supplied by the employer as the State Government or any officer,
6. Deductions for recovery of advances connected with the excess payments or advance payments of wages,
7. Deductions for recovery of loans made from welfare labour fund,
8. Deductions for recovery of loans granted for house-building or other purposes,
9. Deductions of income-tax payable by the employed person,
10. Deductions by order of a court,
11. Deduction for payment of provident fund,
12. Deductions for payments to co-operative societies approved by the State Government,
13. Deductions for payments to a scheme of insurance maintained by the Indian Post Office
14. Deductions made if any payment of any premium on his life insurance policy to the Life Insurance Corporation with the acceptance of employee,
15. Deduction made if any contribution made as fund to trade union with the acceptance of employee,
16. Deductions, for payment of insurance premia on Fidelity Guarantee Bonds with the acceptance of employee,
17. Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employee of fake currency,
18. Deductions for recovery of losses sustained by a railway administration on account of failure by the employee in collections of fares and charges,

19. Deduction made if any contribution to the Prime Minister's National Relief Fund with the acceptance of employee,
20. Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees with the acceptance of employee.

The total amount of deductions from wages of employees should not exceed 50%, but only in case of payments to co-operative societies, deduction from wages of employee can be made up to 75%.

In *Align Components Pvt. Ltd., and another Vs. Union of India and others* (WRIT PETITION STAMP NO.10569 OF 2020) it is contended that though the Managements are willing to offer work to the workers and though the workers would be willing to perform the work, restrictions have been imposed on the continuance of the manufacturing activities so as to restrict the spread of Covid-19 and as a consequence of which, the Managements have been mandated to reduce/shut down their manufacturing activities. In this backdrop, though these petitioners pray for exemption from paying monthly wages for the period of restriction of manufacturing activities, the learned Advocate for the petitioners submits on instructions that these petitioners are willing to pay 50% of the gross wages or the minimum rates of wages prescribed under the Minimum Wages Act, whichever is higher.

Court held that Apex Court is dealing with a similar cause of action, I would not be inclined to interfere with the impugned order and would expect the petitioners to pay the gross monthly wages to the employees, save and except conveyance allowance and food allowance, if being paid on month to month basis in the cases of those workers who are not required to report for duties."

"It is clarified that since the State of Maharashtra has partially lifted the lock down recently in certain industrial areas in the State of Maharashtra, the workers would be expected to report for duties as per the shift schedules subject to adequate protection, from Corona Virus infections, by the employer. In the event such workers voluntarily remain absent, the Management would be at liberty to deduct their wages for their absence subject to the procedure laid down in Law while initiating such action. This would apply even to areas where there may not have been a lock down."

Fines: Sec 8

Fine should be imposed by the employer on employee with the approval of the state government or prescribed authority. Employer should follow the rules mentioned below for and before imposing of fine on the employee.

1. Notice board of fines on employee should be displayed in the work premises and it should contain activities that should not be made by employee.
2. Fine should not be imposed on the employee until he gives the explanation and cause for the act or omission he made.
3. Total amount of fine should not exceed 3% of his wage.
4. Fine should not be imposed on any employee who is under the age of 15 years.
5. Fine should be imposed for one time only on the wage of the employee for the act or omission he made.
6. Fines should not be recovered in the way of installments from the employee.
7. Fine should be recovered within 60 days from the date on which fine were imposed.
8. Fine should be imposed on day act or omission made by the employee.
9. All fines collected from the employee should be credited to common fund and utilize for the benefit of the employees.

Deductions for absence from duty (Sec 9)

1. Deductions can be made by the employer for the absence of duty by the employee for one day or for any period.
2. The amount deducted for absence from the duty should not exceed a sum which bears the same relationship to the wage payable in respect of the wage-period as this period of absence does to such wage-period. (Example: if the salary of an employee is 6000/- per month and he was absent for duty for one month. Deduction from the salary for absence of duty should not exceed 6000/-)
3. Employee present for the work place and refuses to work without proper reason shall be deemed to be absent from duty.

4. If 10 or more persons together absent for the duty without any notice and without reasonable cause, employer can make 8 day of wages as deduction from their wage.

Deductions for damage or loss (Sec 10)

Employer should give an opportunity to the employee to explain the reason and cause for the damage or loss happened and deductions made by employer from the employee wage should not exceed the value or amount of damage or loss made by the employee.

All such deduction and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.

Deductions for services rendered (Sec 11)

House-accommodation amenity or service provided by the employer should be accepted by the employee, than only the employer can make deduction from the wage of the employee. Deduction should not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied.

Deductions for recovery of advances (Sec 12)

In case of advance paid to the employees by the employer before employment began, such advance should be recovered by the employer from the first payment of the wages /salary to the employee. But employer should not recover the advance given for the travelling expense for the employee.

Deductions for recovery of loans (Sec 12A)

Deductions for recovery of loans granted for house-building or other purposes shall be subject to any rules made by the State Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.

Deductions for payments to co-operative societies and insurance schemes (Sec 13)

Deductions for payments to co-operative societies or deductions for payments to scheme of insurance maintained by the Indian Post Office or with employee acceptance deductions made for payment of any premium on his life insurance policy

to the Life Insurance Corporation shall be subject to such conditions as the State Government may impose.

Maintenance of registers and records (Sec 13A)

Every employer should maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

Every register and record required to be maintained and preserved for a period of three years after the date of the last entry made therein. It means for every transaction made within employer and employee should have 3 years of record.

Inspectors (Sec 14)

The state government may appoint an inspector for purpose of this act. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860. The inspector of this act is having powers mentioned below

1. Inspector can make enquiry and examination whether the employers are properly obeying the rules mentioned under this act.
2. Inspector with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act.
3. Inspector can supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment.
4. Seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer.

Sec 14A provides that, every employer shall afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.

Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims (Sec 15)

To hear and decide all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid, including all matters, incidental to such claims, there will be an officer mentioned below appointed by the appropriate government.

- a) any Commissioner for Workmen's Compensation; or
- b) any officer of the Central Government exercising functions as
 - i. Regional Labour Commissioner; or
 - ii. Assistant Labour Commissioner with at least two years' experience; or
- c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or
- d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or
- e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:

Appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

If any employer does opposite to the provisions of this act, any unreasonable deduction has been made from the wages of an employed person, or any payment of wages has been delayed, in such case any lawyer or any Inspector under this Act or official of a registered trade union authorized to write an application to the authority appointed by government for direction of payment of wages according to this act. Every such application shall be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made. Time of making an application can be accepted if there is reasonable cause.

After receiving of the application the authority shall give an opportunity to hear the applicant and the employer or other person responsible for the payment of wages and conducts the enquiry if necessary. It is found that there is mistake with employer; authority shall order the employer for payment of the wage or refund to the employee of the amount deducted unreasonably or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit. There will not be any compensation payable by employer if there is a reasonable and genuine cause in delay in the payment of wages.

Powers of authorities appointed under Section 15 (Sec 18)

Every authority appointed under sub-section (1) of Section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973.

Appeal (Sec 17)

In the following situation the parties who ever dissatisfied can appeal to the district court

- a. If the application dismissed by above authorities
- b. Employer imposed with compensation exceeding 300/- rupees by the authorities.
- c. If the amount exceeding 25/- rupees withheld by the employer to single unpaid employee. 50/- in case of many unpaid employees

Reasons for penalty

1. Delay in payment of wages
2. Un reasonable deductions
3. Excess deduction for absence of duty
4. Excess deduction for damage or loss to employer
5. Excess deduction for house-accommodation amenity or service

Punishable with fine which shall not be less than 1000/- rupees but which may extend to 7500/- rupees

1. If Wage period exceed one month.
2. Failure in payments of wages on a working day.
3. Wages not paid in form of current coin or currency notes or in both.
4. Failure to maintain record for collected fines from employee.
5. Improper usage of fine collected from employees.
6. Failure of employee to display notice containing such abstracts of this Act and of the rules made.

Punishable with fine which may extend 3000/- rupees

1. Whoever obstructs an Inspector in the discharge of his duties under this Act
2. Whoever willfully refuses to produce on the demand of an Inspector any register or other document
3. Whoever refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorized by or under this Act

Whoever repeats the same offence committed before. Imprisonment for a term which shall not be less than one month but which may extend to 6 months and fine which shall not be less than 3750/- rupees but which may extend 22500/-rupees.

THE FACTORIES ACT, 1948

Introduction:

Factories Act is one of the earliest labour welfare legislations. The object of the act is to secure health, safety, welfare, proper working hours, and other benefits to workers. The Act requires that workers should work in healthy and sanitary conditions and for that purposes. It provides that precaution should be taken for safety of workers and prevention of accidents.

Definition of Factory:

Section 2(m) defines the term “factory” means any premises, including the precincts thereof, in any part of which manufacturing process is carried on with or without the aid of power, provided that at least 10 or 20 persons respectively are employed or were employed on any day of the preceding 12 months.

Meaning of occupier of factory

Section 2(n) defines the term “occupier of factory” means a person who has ultimate control over affairs of factory. It includes a partner in case of a firm and director in case of a company, that if a factory is run by a company, then only the director of the company can be treated as occupier. The occupier shall ensure, as far as possible health, safety, and welfare of workers while they are working in a factory. The name of the occupier of the factory is required to be informed to the Chief Inspector of Factories. The occupier will be held responsible if the provisions of the Factories Act, 1948 are not complied with.

Definition of Worker

Section 2(l) defines “worker” means a person employed, directly or by or through any agency with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process.

Definition of Manufacturing Process:

Section 2(k) defines “manufacturing process” means any process for-

- i. making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- ii. pumping oil, water, sewage, or any other substance; or
- iii. generating, transforming or transmitting power; or
- iv. composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding; or
- v. constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- vi. preserving or storing any article in cold storage.

Hazardous Process:

Section 2(cb) defines “hazardous process” means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, by-products, wastes or effluents thereof would

- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution of the general environment:

PROVISIONS REGARDING THE HEALTH OF WORKERS

Sections 11 to 20 of the Act contain certain provisions intended to ensure that the conditions under which work is carried on in factories do not affect the health of the workers injuriously. The summary of the provisions are explained below

1. Cleanliness :Sec 11

Every factory shall be kept clean and free from dirt, and the outflow of drains etc. The floors must be cleaned. Drainage shall be provided. Inside walls, partitions and ceilings must be repainted at least once in five years. When washable water paint

is used they must be painted once every three years and washed at least every period of six months.

2. Disposal of wastes and effluents :Sec 12

The waste materials produced from the manufacturing process must be effectively disposed off.

3. Ventilation and Temperature :Sec 13

There must be provision for adequate ventilation by the circulation of fresh air: The temperature must be kept at a comfortable level. Hot parts of machines must be separated and insulated.

4. Dust and Fume :Sec 14

If the manufacturing process used gives off injurious or offensive dust and fume steps must be taken so that they are not inhaled or accumulated. The exhaust fumes of internal combustion engines must be conducted outside the factory.

5. Artificial humidification :Sec 15

The water used for this purpose must be pure. It must be taken from some source of drinking water supply. The State Government can frame rules regarding the process of humidification etc.

6. Over Crowding :Sec 16

There must be no overcrowding in a factory. In factories existing before the commencement of the Act there must be at least 350 c.ft of space per worker. For factories built afterwards, there must be at least 500 c.ft of space. In calculating the space, an account is to be taken of space above 14 ft. (or 5 metres) from the floor

7. Lighting :Sec 17

Factories must be well lighted. Effective measures must be adopted to prevent glare or formation of shadows which might cause eyestrain.

8. Drinking water: Sec 18

Arrangements must be made to provide a sufficient supply of whole some drinking water. All supply' points of such water must be marked "drinking water". No such points shall be within 20 ft. (or 7.5 metres) of any latrine, washing place etc. Factories employing more than 250 workers must cool the water during the hot weather.

9. Latrines and Urinals: Sec 19

Every factory must provide' sufficient number of latrines and urinals. There must be separate provision for male and female workers. Latrine and urinals must be

kept in a clean and sanitary condition in factories. Employing more than 250 workers, they shall be of prescribed sanitary types.

PROVISIONS REGARDING THE SAFETY OF WORKERS

Sections 21 to 40A, 40B and 41 of the Act lay down rules for the purpose of securing the safety of workers. Summary of the provisions of the Factories Act regarding the safety of the workers are stated below: (Sections 21 to 41).

1. Fencing to machinery

All dangerous machinery must be securely fenced e.g., moving parts- of prime movers and flywheels connected to every prime mover electric generators etc. (Sec 21) Work on or near machinery in motion. Work on or near machinery in motion must be carried out only by specially trained adult male workers wearing tightly fitting clothes.-Sec.22.

2. Employment of young person's on dangerous machines

No young person shall work at any dangerous machine' unless he has been specially instructed as to the dangers and the precautions to be observed has received sufficient training about the work and is under the supervision of some person having thorough knowledge and experience of the machine. (Sec. 23)

3. Striking gear and devices for cutting off power

In every factory suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every workroom. (Sec. 24)

4. Self-acting machines

Moving parts of a self-acting machine must not be allowed to come within 45 cms. of any fixed structure which is not part of the machine. (Sec. 25)

5. Casing of new machinery

In all machinery installed after the commencement of the Act. certain parts must be sunk, encased or otherwise effectively guarded e.g., set screw bolt toothed gearing etc. (sec. 26)

6. Women and children near cotton Openers

Women and children must not be allowed to work near cotton openers, except in certain cases. (Sec. 27)

7. Hoists, lifts, chains etc

Every hoist and lift must be so constructed as to be safe. There are detailed rules as to how such safety is to be secured. There are similar provisions regarding lifting machines. Chains, ropes and lifting tackle. (Sec. 28 and 29).

8. Revolving machinery

Where grinding is carried on the maximum safe working speed of revolving machinery connected therewith must be notified. Steps must be taken to see that the safe speed is not exceeded. (Sec. 30)

9. Pressure plant

Where any operation is carried on at a pressure higher than the atmospheric pressure, steps must be taken to ensure that the safe working pressure is not exceeded. (sec. 31)

10. Floors, stairs and means of access

All floors, steps, stairs, passage and gangways shall be of sound construction and properly maintained. Handrails shall be provided where necessary. Safe means of access shall be provided to the place where the worker will carry on any work. (Sec. 32)

11. Pits, sumps openings in floors etc

In every factory fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reasons of its depth, situation, construction or contents, is or may be a source of danger, shall be either securely covered or securely fenced. (sec 33)

12. Excessive weights

No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury. (2) The Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process. (sec 34)

13. Protection of eyes

In respect of any such manufacturing process carried on in any factory as may be prescribed, being a process which involves- (a) risk of injury to the eyes from particles or fragments thrown off in the course of the process, or (b) risk to the eyes by reason of exposure to excessive light, the Government may by rules require that

effective screens or suitable goggles shall be provided for the protection of persons employed on, or in the immediate vicinity of the process. (sec 35)

14. Precautions against dangerous fumes

No person shall be allowed to enter any chamber tank etc. where dangerous fumes are likely to be present unless it is equipped with a manhole or other means of going out. In such space no portable electric light of more than 24 volts shall be used. Only a lamp or light of flame proof construction can be used in such space. For people entering such space suitable breathing apparatus, reviving apparatus etc. shall be provided. Such places shall be cooled by ventilation before any person is allowed to enter.(secs. 36 and 36A)

15. Explosive or inflammable gas etc

Where a manufacturing process produces inflammable gas, dust, fume etc. steps must be taken to enclose the machine concerned, prevent the accumulation of substances and exclude all possible sources of ignition. Extra precautionary measures are to be taken where such substances are worked at greater than the atmospheric pressure. (Sec. 37)

16. Precaution in case of fire

Fire escapes shall be provided. Windows and doors shall be constructed to open outwards. The means of exit in case of the fire shall be clearly marked in red letters. Arrangements must be made to give warning in case of fire -sec. 38

17. Specifications of defectives etc. and safety of buildings and machinery

If any building or machine is in a defective or dangerous condition, the inspector of factories can ask for the holding of tests to determine how they can be made safe. He can also direct the adoption of the measure necessary to make them safe. In case of immediate danger, the use of the building or machine can be prohibited. (Secs. 39 and 40)

18. Maintenance of Buildings

If the Inspector of Factories thinks that any building in a factory, or any part of it is in such a state of disrepair that it is likely to affect the health and welfare of the workers he may serve on the occupier or manager or both in writing specifying the measures to be done before the specified date. (Sec. 40A)

Safety Officers:

The State Government may notify to the occupier to employ a number of Safety Officers in a factory

- i. where in one thousand or more workers are ordinarily employed or
- ii. where in any manufacturing process or operation which involves the risk of bodily injury, poisoning disease or any other hazard to health of the persons employed in the factory .-Sec. 40B.

PROVISIONS REGARDING THE WELFARE OF WORKERS

1. Washing facilities

In every factory adequate and suitable facilities for washing shall be provided and maintained for the use of the workers therein; separate and adequately screened facilities shall be provided for the use of male and female workers; such facilities shall be conveniently accessible and shall be kept clean. The Government may, in respect of any factory or class or description of factories or of any manufacturing process, prescribe standards of adequate and suitable facilities for washing. (Sec 42)

2. Facilities for storing and drying of wet clothing

The State Government may in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing. (sec 43)

3. Facilities for sitting

In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work. If, in the opinion of the Chief Inspector, the workers in any factory engaged in a particular manufacturing process or working in a particular room are able to do their work efficiently in a sitting position, he may, by order in writing, require the occupier of the factory to provide before a specified date such seating arrangements as may be practicable for all workers so engaged or working. (Sec 44)

4. First aid appliances

There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboards equipped with the prescribed contents, and the number of such boxes or cupboard to be provided and

maintained shall not be less than one for every one hundred and fifty workers ordinarily employed in the factory.(sec 45).

5. Canteens

That in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. (Sec. 46)

6. Shelters

In every factory where more than 150 workers are employed there must be provided adequate and suitable shelters or rest rooms and a lunch room (with drinking water supply) where workers may eat meals brought by them. Such rooms must be sufficiently lighted and ventilated and must be maintained in a cool and clean condition~. The standards may be fixed by the State Government. (Sec. 47)

7. Creches

In every factory where more than 30 women a employed, a room shall be provided for the use of the children (below 6 years) of such women. The room shall be adequate size well lighted and ventilated, maintained in a clean and sanitary condition and shall be in charge of a woman trained in the care of children and infants. The standards shall be laid down by the State Government. (Sec. 48)

Welfare officers

Welfare officers must be appointed in every factory where 500 or more workers are employed. The State Government may prescribe the duties, qualifications etc. of such officers. (Sec. 49)

WORKING HOURS OF ADULTS

Weekly hours Sec: 51

No adult worker shall be required or allowed to work in a factory for more than forty-eight hours in any week.

Weekly holidays: Sec 52

No adult worker shall be required or allowed to work in a factory on the first day of the week, (hereinafter referred to as the said day), unless he has or will have a holiday for a whole day on one of the three days immediately before or after the said day, and the manager of the factory has, before the said day or the substituted day.

Whichever is earlier delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted, and displayed a notice to that effect in the factory. Provided that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

Notices may be cancelled by a notice delivered at the office of the Inspector and a notice displayed in the factory not later than the day before the said day or the holiday to be cancelled, whichever is earlier.

Where any worker works on the said day and has had a holiday on one of the three days immediately before it, that said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

Compensatory holidays: Sec 53

Where, as a result of the passing of an order or the making of a rule under the provisions of this Act exempting a factory or the workers therein from the provisions of section 52, a worker is deprived of any of the weekly holidays for which provision is made in sub-section (1) of that section, he shall be allowed, within the month in which the holidays were due to him or within the two months immediately following that month, compensatory holidays of equal number to the holidays so lost. (2) The State Government may prescribe the manner in which the holidays for which provision is made in sub-section (1) shall be allowed.

Daily hours

Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day: Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this section may be exceeded in order to facilitate the change of shifts.(sec 54)

Intervals for rest

The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at half an hour(sec 55).

Spread over

The periods of work of an adult worker in a factory shall be arranged that inclusive of his intervals for rest under section they shall not spread-over more than ten and half hours in any day. The Chief Inspector may for specified reasons increase the spread over up to twelve hours. (Sec. 56)

RULES REGARDING EMPLOYMENT OF ADULTS NIGHT SHIFTS

Where a worker in a factory works on a shift which extends beyond midnight his weekly holiday and compensatory holiday means a period of holiday for 24 consecutive hours beginning when his shift ends, and --the following day for him shall be deemed to be the period of 24 hours beginning when such shift ends and the hours he has worked after midnight shall be counted in his previous day.(sec. 57)

Overlapping Shifts

Work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time. The State Government or the Chief Inspector may grant exemption from this rule. (Sec. 58).

Double Employment

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.(Sec. 60)

Notice of Periods of Work

There must be displayed in every factory a notice showing periods of work of adults, classification of workers in groups according to nature of their work, shifts and relays etc. Change made in the system of work must be notified to the Inspector before change. The manager of every factory must maintain a Register of Adult Workers showing the name of each worker, the nature of his work, the group in which he is included, the relay in which he is allotted etc. The hours of work of an adult worker- must correspond with the notice referred to above and the Register.- Sections 61, 62, 63.

No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered' in the register of adult workers.-Sec. 62 (1A) added by the Factories (Amendment) Act, 1976.

Exemptions

By sections 64 and 65, the State Government has been given power to exempt for limited periods certain factories from compliance with some of the provisions relating to hours of work and employment. Such exemptions are necessary in special cases, for example in the case of workers engaged in urgent repairs or in preparatory and complementary work.

In some industries work is of an intermittent character and the enforcement of all the rules stated above will create hardship. The nature of the work in certain industries requires exceptional treatment, e.g., workers engaged in engine rooms and boilers or in the printing of newspapers.

EMPLOYMENT OF YOUNG PERSONS

Prohibition of employment of young children (sec 67-68)

No child who has not completed his fourteenth year shall be required or allowed to work in any factory. Non-adult workers to carry tokens.- A child who has completed his fourteenth year or an adolescent shall not be required or allowed to work in any factory unless- (a) a certificate of fitness granted with reference to him under section 69 is in the custody of the manager of the factory, and (b) such child or adolescent carries while he is at work a token giving a reference to such certificate.

Certificates of fitness (sec 69)

A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by a manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

The certifying surgeon, after examination, may grant to such young person, in the prescribed form, or may renew a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his fourteenth year, that he has attained the prescribed physical standards and that he is fit for such work; a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his fifteenth year, and is fit for full day's work in a factory:

Provided that unless the certifying surgeon has personal knowledge of the place where the young person proposes to work and of the manufacturing process in which he will be employed, he shall not grant or renew a certificate under this sub-section until he has examined such place.

A certificate of fitness granted or renewed shall be valid only for a period of twelve months from the date thereof; may be made subject to conditions in regard to the nature of the work in which the young person may be employed, or requiring re-examination of the young person before the expiry of the period of twelve months.

A certifying surgeon shall revoke any certificate granted or renewed under sub-section if in his opinion the holder of it is no longer fit to work in the capacity stated therein in a factory. Where a certifying surgeon refuses to grant or renew a certificate or a certificate of the kind requested or revokes a certificate, he shall, if so requested by any person who could have applied for the certificate, or the renewal thereof, state his reasons in writing for so doing. Where a certificate under this section, with reference to any young person is granted or renewed subject to such conditions. The young person shall not be required or allowed to work in any factory except in accordance with those conditions. Any fee payable for a certificate under this section shall be paid by the occupier and shall not be recoverable from the young person, his parents or guardian.

Effect of certificate of fitness granted to adolescent (sec 70)

An adolescent who has been granted a certificate of fitness to work in a factory as an adult who while at work in a factory carries a token giving reference to the certificate, shall be deemed to be an adult for all the purposes.

No female adolescent or male adolescent who has attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m.

Provided that the State Government may, by notification in the Official Gazette, in respect of any factory or group or class or description of factories,-

- i. vary the limits laid down in this sub-section so, however, that no such section shall authorise the employment of any female adolescent between 10 p.m. and 5 a.m.;
- ii. grant exemption from the provisions of this sub- section in case of serious emergency where national interest is involved.
- iii. An adolescent who has not been granted a certificate of fitness to work in a factory as an adult under the aforesaid clause shall, notwithstanding his age, be deemed to be a child for all the purposes of this Act.

Working hours for children: Sec 71

No child shall be employed or permitted to work,

- i. in any factory for more than four and a half hours in any day; during of at least twelve consecutive hours which shall include the interval between 10 p.m. and 6 a.m.
- ii. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each; and
- iii. each child shall be employed in only one of the relays which shall not except with the previous permission in writing of the Chief Inspector, be changed more frequently than once in a period of thirty days.
- iv. The provisions of section 52 shall apply also to child workers, and no exemption from the provisions of that section may be granted in respect of any child.
- v. No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory.
- vi. No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

Notice of periods of work for children: Sec 72

There shall be displayed and correctly maintained in every factory in which children are employed in accordance with the provisions of sub- section (2) of section 108 a notice of periods of work for children, showing clearly for every day the periods during which children may be required or allowed to work.

The periods shown in the notice required by sub-section it shall be fixed beforehand in accordance with the methods laid down for adult workers in section 61, and shall be such that children working for those periods would not be in contravention of the provisions. The provisions of sub-sections (8), (9) and (10) of section 61 shall apply also to the notice required by sub-section (1) of this section.

Register of child workers: Sec 73

The manager of every factory in which children are employed shall maintain a register of child workers, to be available to the Inspector at all times during working hours or when any work is being carried on in a factory showing

- a) the name of each child worker in the factory,
- b) the nature of his work,
- c) the group, if any, in which he is included,
- d) where his group works on shifts, the relay to which he is allotted, and
- e) the number of his certificate of fitness granted under section 69.

No child worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of child workers. No child shall be employed in any factory otherwise than in accordance with the notice of periods of work of children displayed in the factory and the entries made before hand against his name in the register of child workers of the factory. (sec 74).

Power to require medical examination: Sec 75

Where an Inspector is of the opinion that any person working in a factory without a certificate of fitness is a young person, or that a young person working in a factory with a certificate of fitness is no longer fit to work in the capacity stated therein, he may serve on the manager of the factory a notice requiring that such person or young person, as the case may be, shall be, examined by a certifying surgeon, and such person or young person shall not, if the Inspector so directs, be employed, or permitted to work, in any factory until he has been so examined and has been granted a certificate of fitness or a fresh certificate of fitness, as the case may be, under section 69, or has been certified by the certifying surgeon examining him not to be a young person.