

relating to labour unless the State Government thought otherwise.-- *Regional Director ESIC v. M/s Arudyog 1987 (1) LLJ 292.*

- A factory or establishment, to which this Act applies, shall continue to be governed by its provisions even if the number of workers employed falls below the specified limit or the manufacturing process therein ceases to be carried on with the aid of power subsequently.
- Where a workman is covered under the ESI scheme,
 - Compensation under the Workmen's Compensation Act cannot be claimed in respect of employment injury.
 - No benefits can be claimed under the Maternity Benefits Act.

Important Case laws

1. Where by some club not only sporting facilities but a kitchen is also maintained, wherein a big number of members come, it is not necessary that they are participating only in sports activities, they are also entertaining themselves and their guests by partaking beverages and tea served by the club. Activity in the kitchen has a direct connection with the activities carried on in the rest of the club premises. It is necessary that the club be registered under ESI Act as regards all the employees engaged by the club irrespective of the fact in which department they are working. Cricket Club of India satisfies the definition of the term 'factory' under s. 2(12) of the Act hence covered by it.-- *Cricket Club of India v. ESI Corporation 1994 (69) FLR 19.*
2. Where in an establishment activities like that of clearing and forwarding is going on, it would fall within the expression "shop" even though clearing of documents is done in customs house meant for export and import of goods. Person involved in such business is catering to the needs of exporters and importers and others wanting to carry the goods further. -- *AIR 1993 SC 252 .*
3. Anyone having product may approach advertising agency. The advertising agency will prepare an advertising campaign for him utilising the services of the experts it employs in this behalf. It sells the campaign to the client and receives the price thereof. Indubitably, the price will depend upon the nature of the campaign but that does not make any great difference. Essentially, the advertising agency sells its expert services to a client to enable the client to launch an effective campaign of his products without staining the language, the premises of an advertising agency can be said to be a "shop"--*ESI Corporation v. R.K. Swamy 1993 (67) FLR 1145 : 1993 (2) CLR 1068.*
4. Where a laid-off employee after signing the lay-off register was coming out of the factory premises and when crossing the road was hit by a scooter, injuries sustained by him were

taken as covered during the course of employment on the basis of theory of notional extension.-- *Satya Sharma v. ESI Corporation 1991 (63) FLR 339* .

5. If the work by the employee is conducted under the immediate gaze or overseeing of the principal employer or his agent, subject to other conditions as envisaged being fulfilled he would be an employee for the purpose of s. 2(9).-- *CES Corporation Ltd. v. Subash Chandra Bose 1992 (1) LLJ 475*.
6. A work that is conducive to the work of the factory or establishment or that is necessary for the augmentation of the work of the factory or establishment will be incidental or preliminary to or connected with the work of the factory or establishment. The casual employees shall also be brought within it and are entitled to the benefits which the Act grants. The casual labour employed to construct additional buildings for expansion of the factory are the employees under the Act.-- *Regional Director, ESIC v. South India Flour Mills Ltd. 1986 (53) FLR 178*.
7. Employees engaged for repairs, site clearing, construction of buildings, etc. of the principal employer are employees within the meaning of s. 2(9) of the Act. --*Kirloskar Pneumatic Co. Ltd. v. ESI Corporation 1987 (70) FJR 199*.
8. The expression "employed for wages or in connection with the work of a factory or establishment" is of very wide amplitude and its generality is not in any way prejudiced by the expression and includes any person employed for wages or any work connected with the administration of the factory or establishment or in connection with sale or distribution of the products of the factory or establishments. The word "includes" in the statutory definition of a term is generally used to enlarge the meaning of the preceding words and it is by way of extension and not with restriction. In order to determine whether the employees of the company working at its branch sales offices and carrying on acts of sale and distribution of goods manufactured by the company as well as the goods produced by the foreign company are "employees" what is pertinent is not whether they are "principally" and primarily engaged in sale and distribution of the products of the company but whether the business of sale and distribution either "principally" or "marginally" of the products of the foreign company is being done on behalf of the company. If the main business of the company itself at the branch sales offices, is to sell and distribute products of foreign company and the employees working have been employed by the company basically in connection with this work, it would be difficult to hold that the employees at branch sales offices are not "employees" within the meaning of the term defined in s. 2(9) of the Act notwithstanding the fact that the sale and distribution of the products of the company at

such offices are only marginal.-- *Director General, ESI Corporation v. Scientific Instrument Co. Ltd.* 1995 Lab. IC 651 .

9. Where the work of fixing the marble is extended to a contractor by a marble manufacturing company, duty of the contractor is only to complete the work while marble, cement etc., is supplied by the manufacturing company, workers employed by the contractor would be the employees of the factory as under s. 2(9) of the Act.-- 1992 (2) CLR 881.
10. There is no such difference as that of casual or temporary or permanent employee for the expression "employee" as defined under s. 2(9) of the Act. It is so wide as to include even a casual employee who is employed just for a day for wages. The test being whether the person is employed for wages on any work which is connected with the work of a factory or establishment which bears the application of the Act except those exempted by the definition.-- *ESI Corporation v. Suvarna Saw Mills* 1980 (57) FJR 154.
11. Where a department of publication and press run by the university concerned is engaged in the printing of text books, journals, registers, forms, etc., that would amount to manufacturing process.-- *Osmania University v. ESI Corporation* 1986 (1) LLN 72 .
12. Where there was no manufacturing of articles nor the hotel was manufacturing any article with the aid of power except maintaining one refrigerator to preserve milk and curd, and as there was no using of power in the kitchen for making the eatables and the refrigerator had been kept only for preservation of milk and curd, there was no manufacturing process.-- *Ritz Hotel v. ESI Corpn.* 1995 (1) Mah. LJ 63.
13. Wages paid for the holidays are wages as defined.-- *R.D., ESI Corporation v. Raj Keshaw Co.* 1991 Lab. IC 1991 Lab. IC 1989.
14. Overtime wages could not be treated as "wages" for the purpose of contribution under the Act.-- *Hind Art Press v. ESI Corporation* 1990 (1) LLJ 195.
15. The ESI Corporation is conferred with the power to recover arrears of contributions from the employer along with damages/interest on the contribution that remained due. Correspondingly it is under an obligation to pay with interest the arrears of benefits to the insured employees or his dependents.-- *ESI Corporation v. Bhag Singh* 1989 (2) LLJ 126.
16. Section 53 of the ESI Act (Bar against receiving or recovery of compensation or damages under any other law) does not bar the remedy under s. 110A of the Motor Vehicles Act, 1939.-- *Deputy General Manager KSRTC v. Gopal Mudaliar* 1983 (46) FLR 194.

Areas Covered

The ESI Scheme is being implemented area-wise by stages. The Scheme is being implemented in almost all union territories and states except Nagaland, Manipur, Tripura, Sikkim, Arunachal Pradesh and Mizoram.

Administration of the Act

The provisions of the Act are administered by the Employees State Insurance Corporation. It comprises members representing employees, employers, the central and state government, besides, representatives of parliament and medical profession. A standing committee constituted from amongst the members of the corporation, acts as an executive body. The medical benefit council, constituted by the central government, is another statutory body that advises the corporation on matters regarding administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters.

Registration

The employer should get his factory or establishment registered with the ESI Corporation within 15 days after the Act becomes applicable to it and also obtain the employer's code number. Application should be made in Form 01 and after having being satisfied with the application form, the regional office will allot a code number to the employer, which must be quoted in all documents and correspondence.

Identity Card

An employee is required to file a declaration form upon employment in factory or establishment to show that he is covered under the Act.

On registration every insured person is provided with a 'temporary identification certificate' which is valid ordinarily for a period of three months but may be extended, if necessary, for a further period of 3 months. Within this period, the insured person is given a permanent 'family photo identity card' in exchange for the certificate. The identity card serves as a means of identification and has to be produced at the time of claiming medical care at the dispensary / clinic and cash benefit at the local office of the corporation. In the event of change of employment, it should be produced before the new employer as evidence of registration under the scheme to prevent any duplicate registration. The identity card bears the signature/thumb impression of the insured person. Since medical benefit is also available to the families of Insured persons, the particulars of family members entitled to medical benefit are also given in the identity card affixed with a postcard size family photo. If the identity card is lost, a duplicate card is issued on payment as prescribed.

Employers' / Employees' Contribution

Like most of the social security schemes, the world over, ESI scheme is a self-financing health insurance scheme. Contributions are raised from covered employees and their employers as a fixed percentage of wages. Presently covered employees contribute 1.75% of the wages, whereas as the employers contribute 4.75% of the wages, payable to the insured persons. Employees earning less than and up to Rs. 50 per day are exempted from payment of contribution.

The contribution is deposited by the employer in cash or by cheque at the designated branches of some nationalized banks. The responsibility for payment of all contributions is that of the employer with a right to deduct the employees share of contribution from employees' wages relating to the period in respect of which the contribution is payable.

There are two contribution periods each of six months duration and two corresponding benefit periods. Cash benefits under the scheme are generally linked with contribution paid.

Contribution period - 1st April to 30th September, its corresponding Cash Benefit period is 1st January to 30th June of the following year.

Contribution period - 1st October to 31st March, its corresponding Cash Benefit period is 1st July to 31st December of the following year.

Certification of Return of Contribution by Auditor

Regulation 26 of Employees' State Insurance (General) Regulations, 1950 was amended by Notification No.N-12/13/1/2008-P&D to include certain details to be mentioned in the Return of Contribution to be submitted by employers. The salient features of amendments made in the Returns of Contribution are as under:-

1. Self-declaration by Employers regarding maintenance of records and registers, submission of Declaration Forms, employees engaged directly or through immediate employers and wages paid to the workers.
2. All the Employers employing 40 and more employees shall have to append a certificate duly certified by a Chartered Accountant, in the revised format of Returns of Contribution.
3. The Employers employing less than 40 employees will have to provide self- certification without any certification from the Chartered Accountants in Return of Contribution.

The Chartered Accountant should certify that he has verified the return from the records and registers of the company.

This notification has come into force with effect from 01-04-2008.

Benefits under the Scheme

Employees covered under the scheme are entitled to medical facilities for self and dependants. They are also entitled to cash benefits in the event of specified contingencies resulting in loss of wages or earning capacity. The insured women are entitled to maternity benefit for confinement. Where death of an insured employee occurs due to employment injury or occupational disease, the dependants are entitled to family pension. Various benefits that the insured employees and their dependants are entitled to, the duration of benefits and contributory conditions thereof are as under:

- Medical benefits
 - From day one of entering insurable employment for self and dependants such as spouse, parents and children own or adopted.
 - For self and spouse on superannuation subject to having completed five years in insurable employment on superannuation or in case of having suffered permanent physical disablement during the course of insurable employment.
- Sickness benefits
 - Sickness benefit is payable to an insured person in cash, in the event of sickness resulting in absence from work and duly certified by an authorised insurable medical officer/ practitioner.
 - The benefit becomes admissible only after an insured has paid contribution for at least 78 days in a contribution period of 6 months.
 - Sickness benefit is payable for a maximum of 91 days in two consecutive contribution period.
- Extended sickness benefit
 - Extended sickness benefit is payable to insured persons for the period of certified sickness in case of specified 34 long-term diseases that need prolonged treatment and absence from work on medical advice.
 - For entitlement to this benefit an insured person should have been in insurable employment for at least 2 years. He/ she should also have paid contribution for a minimum of 156 days in the preceding 4 contribution periods or say 2 years.
 - ESI is payable for a maximum period of 2 years on the basis of proper medical certification and authentication by the designated authority.

- Amount payable in cash as extended sickness benefit is payable within 7 days following the submission of complete claim papers at the local office concerned.
- Enhanced sickness benefit
 - This cash benefit is payable to insured persons in the productive age group for under going sterilization operation, viz., vasectomy/ tubectomy.
 - The contribution is the same as for the normal sickness benefit.
 - Enhanced sickness benefit is payable for 14 days for tubectomy and for seven days in case of vasectomy.
- Maternity benefit
 - Maternity benefit is payable to insured women in case of confinement or miscarriage or sickness related thereto.
 - For claiming this an insured woman should have paid for at least 70 days in 2 consecutive contribution periods i.e. 1 year.
 - The benefit is normally payable for 12 weeks, which can be further extended up to 16 weeks on medical grounds.
 - The rate of payment of the benefit is equal to wage or double the standard sickness benefit rate.
 - The benefit is payable within 14 days of duly authenticated claim papers.
- Disablement benefit
 - Disablement benefit is payable to insured employees suffering from physical disablement due to employment injury or occupation disease.
- Dependants benefit
 - Dependants benefit [family pension] is payable to dependants of a deceased insured person where death occurs due to employment or occupational disease.
 - A widow can receive this benefit on a monthly basis for life or till remarriage.
 - A son or daughter can receive this benefit till 18 years of age.
 - Other dependants like parents including a widowed mother can also receive the benefit under certain condition.
 - The rate of payment is about 70% of the wages shareable among dependants in a fixed ratio.
 - The first installment is payable within a maximum of 3 months following the death of an insured person and thereafter, on a regular monthly basis.
- Other benefits like funeral expenses, vocational rehabilitation, free supply of physical aids and appliances, preventive health care and medical bonus.

Obligations Of Employers

1. The employer should get his factory or establishments registered with the E.S.I. Corporation within 15 days after the Act becomes applicable to it, and obtain the employers Code Number.
2. The employer should obtain the declaration form from the employees covered under the Act and submit the same along with the return of declaration forms, to the E.S.I. office. He should arrange for the allotment of Insurance Numbers to the employees and their Identity Cards.
3. The employer should deposit the employees' and his own contributions to the E.S.I. Account in the prescribed manner, whether he has sufficient resources or not, his liability under the Act cannot be disputed. He cannot justify non-payment of E.S.I. contribution due to non-availability of finance.
4. The employer should furnish a Return of Contribution along with the challans of monthly payment, within 30 days of the end of each contribution period.
5. The employer should not reduce the wages of an employee on account of the contribution payable by him (employer).
6. The employer should cause to be maintained the prescribed records/registers namely the register of employees, the inspection book and the accident book.
7. The employer should report to the E.S.I. authorities of any accident in the place of employment, within 24 hours or immediately in case of serious or fatal accidents. He should make arrangements for first aid and transportation of the employee to the hospital. He should also furnish to the authorities such further information and particulars of an accident as may be required.
8. The employer should inform the local office and the nearest E.S.I. dispensary/hospital, in case of death of any employee, immediately.
9. The employer must not put to work any sick employee and allow him leave, if he has been issued the prescribed certificate.
10. The employer should not dismiss or discharge any employee during the period he/she is in receipt of sickness/maternity/temporary disablement benefit, or is under medical

treatment, or is absent from work as a result of illness duly certified or due to pregnancy or confinement.

Records To Be Maintained For Inspection By ESI authorities

1. Attendance Register / Muster Roll
2. Salary / Wage Register / Payroll
3. EC (Employee's & Employer's Contribution) Statement
4. Employees' Register
5. Accident Book
6. Return of Contribution
7. Return of Declaration Forms
8. Received Copies of Challans
9. Books of Account viz. Cash/Bank, Expense Register, Sales/Purchase Register, Petty Cash Book, Ledger, Supporting Bills and Vouchers, Delivery Challans (if any).
10. Form of annual information on company

Employees Insurance Court

Any dispute arising under the ESI Act will be decided by the Employees Insurance Court and not by a Civil Court. It is constituted by the State Government for such local areas as may be specified and consists of such number of judges, as the Government may think fit. It shall adjudicate on the following disputes and claims.

Disputes as to:

- i. Whether an employee is covered by the Act or whether he is liable to pay the contribution,
or
- ii. The rate of wages or average daily wages of an employee, or
- iii. The rate of contribution payable by the employer in respect of any employee, or
- iv. The person who is or was the principle employer in respect of any employee, or
- v. The right to any benefit and the amount and duration thereof, or
- vi. Any direction issued by the Corporation on a review of any payment of dependents benefit,
or

- vii. Any other matter in respect of any contribution or benefit or other due payable or recoverable under the Act.

Claims as to

- i. Recovery of contributions from the principal employer,
- ii. Recovery of contributions from a contractor,
- iii. Recovery for short payment or non-payment of any contribution under section 68,
- iv. Recovery of the value or amount of benefits received improperly under section 70,
- v. Recovery of any benefit admissible under the Act

No dispute shall be admitted unless the employer deposits with the Court 50% of the amount due from him as claimed by the Corporation.

An appeal will lie to the High Court within 60 days against an order of the Employees Insurance Court if it involves a substantial question of law.

Important Forms to be submitted under the Act

- Form 01 : Employers' Registration Form
- Form 01(A) : Form of Annual Information on Factory/Establishment
- Form 1 : Declaration Form
- Form 1A : Family Declaration Form
- Form 1B : Changes in Family Declaration Form
- Form 3 : Return of Declaration Forms
- Form 4 : Identity Card

Form 4(A)	Family Identity Card
Form 5	Return of Contributions
Form 6	Register of employees
Form 8	Special Intermediate Certificate
Form 10	Abstention verification in r/o Sickness Benefit/Temporary Disablement Benefit/MB
Form 12	Sickness of Temporary Disablement Benefit
Form 12A	Maternity Benefit for Sickness
Form 13	Sickness or Temporary disablement or maternity benefit for sickness
Form 13A	Maternity benefit for sickness
Form 14	Sickness or temporary disablement or maternity benefit for sickness
Form 14A	Maternity Benefit for Sickness
Form 16	Accident report from employer
Form 17	Dependant's or funeral benefit (Death Certificate)
Form 18	Dependant's Benefit (Claim Form)
Form 18A	Dependant's Benefit (Claim for periodical payments)
Form 19	Maternity Benefit (Notice of Pregnancy)
Form 20	Maternity Benefit (Certificate of Pregnancy)
Form 21	Maternity Benefit (Certificate of expected confinement)
Form 22	Claim for Maternity Benefit

Form 23	Maternity Benefit (Certificate of confinement or miscarriage)
Form 24	Maternity Benefit (Notice of work)
Form 25	Claim for Permanent Disablement Benefit
Form 26	Certificate for permanent disablement benefit
Form 27	Declaration and certificate for dependant's benefit

4c. EMPLOYEES PROVIDENT FUND AND MISC. PROVISIONS ACT, 1952

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

Applicability

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

Schemes under the Act

Three beneficial schemes-

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

Membership

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

Contribution to EPF

- Employees' share : 12% of the Basic + DA
- Employer's contribution : 12% to be deposited as :
 - 8.33% to be deposited in Pension Fund A/C No 10 and
 - the balance, ie, 3.67% to be deposited in Provident Fund A/C No 01 along with Employees' share of 12%
- Administration charges -
- @ 1.1% of the total wages/salary disbursed by deposit to A/C No 02,
- Employees Deposit Linked Insurance @ 0.5% of the total wages/salary by deposit to A/C No. 21 and
- Administration of EDLI @ 0.01% of the wages/ salary by deposit to A/C. No. 22.

Duties of employer

- Employer to furnish information about:
 - (a) Ownership and names of responsible persons of the establishment.
 - (b) Declaration and nomination.
 - (c) Joining and leaving of service by the members in form 5 and form 10 respectively
 - (d) Form 12A with monthly challans of deposit.
 - (e) Form 9 for details of employees.
 - (f) Form 3A/6A at the end of the financial year.
 - (g) Any other information as may be required under Para 76 of the scheme

Benefits to employees

- Provident Fund Benefits

- Pension Benefits
- Death Benefits

Provident Fund Benefits

- Employer also contributes to Members' PF @ 3.67% (1.67% in case of sick industry - eg: beedi)
- EPFO guarantees the Employer contribution and Govt. gives a decent interest to PF accumulations
- Member can withdraw from this accumulations to cater financial exigencies in life - No need to refund unless misused
- On resignation, the member can settle the account. i.e., the member gets his PF contribution, Employer Contribution and Interest

Pension Benefits

- Pension to Member
- Pension to Family (on death of member)
- Scheme Certificate
 - This Certificate shows the service & family details of a member
 - This is issued if the member has not attained the age of 58 while leaving an establishment and he applies for this certificate
 - Member can surrender this certificate while joining another establishment and the service stated in the certificate is added with the service he is gaining from the new establishment.
 - After attaining the age of 50 or above, the member can apply for Pension by surrendering this scheme certificate (if total service is at least 10 years)

- This is a better choice than Withdrawal Benefit, that if a member dies holding a valid scheme certificate, his family will get pension (Death when NOT in service)
- Withdrawal Benefit
- if not eligible for pension, member may withdraw the amount accumulated in his pension account
- the calculation of this amount is based only on (i) Last average salary and (ii) Service (Not based on actual amount available in Pension Fund Account)
- No amount is taken from Member to give Pension to the Member. Employer and Govt. contribute to Pension fund @8.33% and @1.16% respectively
- EPFO guarantees pension to members, even if the Employer has not contributed to Pension Fund.
- Pension calculation is similar to that of Govt. Employee

Death Benefits

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

4d. THE EMPLOYMENT EXCHANGES (COMPULSORY NOTIFICATION OF VACANCIES) ACT, 1959

The main purpose of the Act is to provide for the compulsory notification of vacancies to employment exchanges. The employer is required on a compulsory basis, to notify to the Employment Exchanges all vacancies other than vacancies in unskilled categories, temporary vacancies and vacancies proposed to be filled through promotion and tender to the Employment Exchanges, return relating to the staff strengths at regular intervals.

The Act extends to the whole of India.

Scheme of the Act

There are only 10 Sections in the Act.

Application of the Act

The Act covers the employers in establishments both in public and private sectors. The Act is applicable to establishments which are engaged in non-agricultural activities and employing 25 or more workers. The enforcement of the Act is the responsibility of States and Union Territories. Most of the States/Union Territories have set up special enforcement machinery for this purpose.

Act not to apply in relation to certain vacancies

The Act shall apply to the following category of vacancies:

- 1) In any employment in agriculture (including horticulture) in establishment in private sector other than employment as agricultural or farm machinery operatives;
- 2) In any employment in domestic service;
- 3) In any employment the total duration of which is less than 3 months;
- 4) In any employment which requires unskilled office work;
- 5) In any employment related to the staff of Parliament.

In addition, the Act shall not apply to the following vacancies unless the Central Government otherwise directs through notification in its Official Gazette:

- 1) Vacancies which are proposed to be filled through promotion
- 2) Vacancies which are proposed to filled through absorption of surplus staff of any branch or department of the same establishment

- 3) Vacancies which are proposed to be filled through the result of any examination conducted or interview held by, or on recommendation of, any independent agency such as Union or State Public Service Commission and the like.
- 4) Vacancies in an employment which carries a remuneration of less than sixty rupees in a month. (Section 3).

Notification of vacancies to Employment Exchanges

Section 4 of the Act provides for notification of vacancies to employment exchange. The employer in every establishment in public sector is required to notify any vacancy before filling it up, to the prescribed employment exchanges.

The Section further requires an employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector to notify to the prescribed employment exchanges from such date as may be specified in the notification issued by the appropriate Government in the Official Gazette.

Section 4(3) provides that the manner of notification of vacancies and the particulars of employments having such vacancies should be such as may be prescribed.

Section 4(4) says that the employer's obligation is only to notify the vacancy to the employment exchange. The Act does not impose any obligation on an employer to recruit any person through employment exchange to fill the vacancy merely because the vacancy has been notified as required by this Act.

Employment Exchanges to which vacancies are to be notified

Rule 3 of The Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960, says that the vacancies are to be notified either to the Central Employment Exchange or Local Employment Exchange, as the case may be.

The Central Employment Exchange means the Employment Exchange established by the Government of India, Ministry of Labour and Employment and to which the following vacancies shall be notified:

- Vacancies in posts of a technical and scientific nature carrying a basic pay of Rs. 1,400 or more per month occurring in establishments in respect of which the Central Government is the appropriate Government under the Act; and
- Vacancies which an employer may desire to be circulated to the employment exchanges outside the State or Union Territory to which the establishment is situated.

The Local Employment Exchange means the employment exchange (the Central Employment Exchange) notified in the Official Gazette by the State Government or the Administration or Union Territory as having jurisdiction over the area in which the establishment concerned is situated or over specified classes or categories of establishments of vacancies.

Vacancies of all types other than those which are required to be notified to Central Employment Exchange, shall be notified to these local employment exchanges.

Furnishing of Information or Returns

Section 5 requires an employer in every establishment in public sector to furnish, such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in the establishment to such employment exchanges as may be prescribed. In the case of private sector or every establishment pertaining to any class or category of establishments in private sector, the appropriate Government, by notification in the Official Gazette, may require that from such date as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment to such employment exchanges as may be prescribed and the employer shall thereupon, comply with such requisition.

The above return shall be furnished to the Director or other authorized officer of the Directorate administering employment exchanges in a State or Union Territory.

Right of Access to Records or Documents

Such officer of the Government as may be prescribed in this behalf, or any person authorized by him in writing, shall have access to any relevant record or document in the possession of any employer required to furnish any information or returns under Section 5 of this Act. Such officer is also empowered to enter at any reasonable time, any premises where he believes that such record or document to be and inspect and take copies of relevant records or documents or ask any question necessary for obtaining information required under that Section (Section 6).

Penalties (Section 7)

(1) If any employer fails to notify to the employment exchanges prescribed for the purpose any vacancy in contravention of sub-Section (1) or sub-Section (2) of Section 4, he shall be punishable for the first offence with fine which may extend to five hundred rupees and for every subsequent offence with fine which may extend to one thousand rupees.

(2) If any person - (a) required to furnish any information or return - (i) refuses or neglects to furnish such information or return, or

(ii) furnishes or causes to be furnished any information or return which he knows to be false, or

(iii) refuses to answer, or gives a false answer to, any question necessary for obtaining any information required to be furnished under Section 5; or

(b) impedes the right of access to relevant records or documents or the right of entry conferred by Section 6, he shall be punishable for the first offence with fine which may extend to two hundred and fifty rupees and for every subsequent offence with fine which may extend to five hundred rupees.

Cognizance of Offences - No prosecution for an offence under this Act shall be instituted except by, or with the sanction of, such officer of Government as may be prescribed in this behalf or any person authorised by that officer in writing (Section 8).

Protection of action taken in good faith - No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act (Section 9).

4e. THE FACTORIES ACT, 1948

Objective of the Act

- To ensure adequate safety measures and to promote the health and welfare of the workers employed in factories.

- To prevent haphazard growth of factories through the provisions related to the approval of plans before the creation of a factory.

Applicability of the Act

- ✓ Applicable to the whole of India including Jammu & Kashmir.
- ✓ Covers all manufacturing processes and establishments falling within the definition of 'factory'.
- ✓ Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

Scheme of the Act

The Act consists of 120 Sections and 3 Schedules.

Schedule 1 contains list of industries involving hazardous processes

Schedule 2 is about permissible level of certain chemical substances in work environment.

Schedule 3 consists of list of notifiable diseases.

Important provisions the Act

Facilities and Conveniences - The factory should be kept clean. [Section 11]. There should be arrangement to dispose of wastes and effluents. [Section 12]. Ventilation should be adequate. Reasonable temperature for comfort of employees should be maintained. [Section 13]. Dust and fumes should be controlled below permissible limits. [Section 14]. Artificial humidification should be at prescribed standard level. [Section 15]. Overcrowding should be avoided. [Section 16]. Adequate lighting, drinking water, latrines, urinals and spittoons should be provided. [Sections 17 to 19]. Adequate spittoons should be provided. [Section 20].

Welfare - Adequate facilities for washing, sitting, storing clothes when not worn during working hours. [Section 42]. If a worker has to work in standing position, sitting arrangement to take short rests should be provided. [Section 44]. Adequate First aid boxes should be provided and maintained [Section 45].