

# INDEX

Chapter No.	Chapter name	Starting page	Ending page
7.	Factories Act, 1948	03	24
8.	Payment of Gratuity Act, 1972	25	43
9.	Employees' Provident Funds and Miscellaneous Provisions Act, 1952	44	58
10.	Employees State Insurance Act, 1948	59	78
11.	The Code on Wages, 2019	79	112

SHRESHTA

## 7. FACTORIES ACT, 1948

**Q NO 1. WHAT ARE THE OBJECTIVES OF FACTORIES ACT 1948?**

**ANSWER:**

1. The factories Act has been enacted primarily with the object of protecting workers employed in the factories against industrial and occupational hazards and to regulate the working conditions in factories. This Act promotes the welfare of the workers.
2. **OBJECTIVES:** The main objectives of the Factories Act, 1948 are:
  - a. To ensure adequate safety measures of workers employed in the factories.
  - b. To promote the health and welfare of the workers employed in factories.
  - c. Also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc.,
3. **CASE LAW:** In the case of **RAVI SHANKAR SHARMA V. STATE OF RAJASTHAN**, AIR 1993 Raj 117, and Court held that Factories Act is a social legislation and it provides for the health, safety, welfare and other aspects of the workers in the factories. In short, the Act is meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises.

**Q NO 2. STATE THE SCOPE, EXTENT AND COMMENCEMENT OF THE ACT?**

**ANSWER:**

1. **APPLICABILITY:** The Factories Act, 1948 extend to whole of India including Jammu and Kashmir and came into effect from 01.04.1949. Unless otherwise provided it is also applicable to factories belonging to Central/State Governments (Section 116).
2. **SCOPE:** This Act covers all manufacturing processes and establishments falling within the definition of 'factory' as defined under Section 2(m) of the Act.

**Q NO 3. IMPORTANT DEFINITIONS UNDER FACTORIES ACT, 1948**

**ANSWER:**

**CHILD:** A person who has not completed 15<sup>th</sup> years of age

**ADOLESCENT:** A person who has completed his 15<sup>th</sup> year of age but has not completed his 18<sup>th</sup> year

**YOUNG PERSON:** A Person who is either a child or an adolescent.

**ADULT:** A person who has completed his 18<sup>th</sup> year of age

## COMPETENT PERSON:

Section 2(ca) defines the expression 'competent person' in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to-

1. The qualifications and experience of the person and facilities available at his disposal; or
2. Qualifications and experience of the persons employed in such institution and facilities available therein, with regard to the conduct of such tests, examinations and inspections, and more than one person or institution can be recognized as a competent person in relation to a factory;

## HAZARDOUS PROCESS

Section 2(cb) defines the expression 'hazardous process' as 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, bye-products, wastes, or effluents thereof would-

1. cause material impairment to the health of the persons engaged in or connected therewith, or
2. result in the pollution of the general environment.

The State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission, or variation of any industry, specified in the said Schedule;

## Q NO 4. DEFINE THE TERM MANUFACTURING PROCESS (JUNE 2018)

**MEANING:** Section 2(k) defines the expression 'manufacturing process' as any process for-

1. 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
2. pumping oil, water, sewage or any other substance; or
3. generating, transforming or transmitting power; or
4. composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
5. constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
6. preserving or storing any article in cold storage.

**CASE LAW: V.P. GOPALA RAO VS PUBLIC PROSECUTOR, (1970) SC** Sun cured tobacco leaves subjected to process of moistening, stripping, breaking up, adaption, packing, with a view to transport to company's main factory for their use in manufacturing cigarette, held to be manufacturing process.

**'M/S QAZI NOORUL HASAN HAMID HUSSAIN PETROL PUMP V. DEPUTY DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION' – 2003 LLR 476** It was held that the definition 'manufacturing process' does not depend upon and is not correlated with any end product being manufactured out of a manufacturing process. It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport, delivery or disposal. It cannot be restricted an activity which may result into

manufacturing something or production of a commercially different article. The 'manufacturing process' cannot be interpreted in a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.

**DELHI ELECTRICITY SUPPLY UNDERTAKING VS. MANAGEMENT OF DESU, AIR (1973) SCC 365**

Process undertaken at electricity generating station, zonal and Sub-station, transferring and transmitting electricity is not a manufacturing process and are not thus to be factories.

**Q NO 5. DEFINE THE TERM WORKER**

**ANSWER:**

**DEFINITION:** Section 2(l) defines the term 'worker' as a person employed, directly or by or through any agency (including a contractor) 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 but does not include any member of the armed forces of the Union.

**CASE LAW: LAL MOHAMMED V. INDIAN RAILWAY CONSTRUCTION CO. LIMITED' – AIR 1999 SC**

**355.** All the workers employed by a construction company would squarely attract the definition of the term 'workman' as found in Section 2(l) of the Act as they are working for remuneration in a manufacturing process carried out by the project.

**Q NO 6. DEFINE THE TERM FACTORY**

**FACTORIES ACT, 1948 IS APPLICABLE TO ALL THE FACTORIES WHEREIN 50 OR MORE WORKERS ARE WORKING. (JUNE-2013)**

**ANSWER**

**DEFINITION:** Section 2(m) defines the term 'factory' as any premises including the precincts thereof-

1. whereon 10 or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
2. whereon 20 or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, -
3. **EXCLUDES:** but does not include
  - 1) Mine subject to the operation of the Mines Act, 1952
  - 2) Mobile unit belonging to the armed forces of the Union
  - 3) Railway running shed
  - 4) Hotel, restaurant or eating place.

**NOTE:** For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;

**CASE LAW: SEELAN RAJ V. PRESIDING OFFICER, I ADDITIONAL LABOR COURT, CHENNAI' – 2001 LLR 418.** For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

**4. POWER OF CENTRAL GOVERNMENT:** The State Government may make rules relating to approval, licensing and registration of factories and no factory can run without such license or approval. Power to de-license and deregister is also with the State Government.

#### **Q NO 7. WHO IS OCCUPIER? (DEC-2012)**

#### **ANSWER**

Section 2(n) defines the term 'occupier' of a factory as the person who has ultimate control over the affairs of the factory.

1. In the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
2. In the case of a company, any one of the directors shall be deemed to be the occupier;
3. In the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier;
4. In the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, -
  - i) The owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under
  - ii) The owner of the ship or his agent or master or other office-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier

**CASE LAW:** In '**CONTAINER CORPORATION OF INDIA LIMITED V. LT. GOVERNOR, DELHI' – 2002 LLR 1068** it was held that in the case of a company, which owns a factory, it is only one of the directors of the company who can be notified as the occupier of the factory for the purpose of the Act and the company cannot nominate any other employee to be the occupier of the factory.

**CASE LAW:** In '**INDIAN OIL CORPORATION V. LABOR COMMISSIONER' –AIR 1998 SC 2456** it was held that for the purpose of Section 2(n) what is to be seen is who has the 'ultimate control' over the affairs of the factory. Relevant provisions regarding establishment of the Indian Oil Corporation Limited and its working, leave no doubt that the ultimate control over all the affairs of the Corporation, including opening and running of the factories, is with the Central Government. Acting through the Corporation is only a method employed by the Central Government for running its petroleum industry. In the context of Section 2(n) it will have to be held that the all the activities of the Corporation are really carried on by the Central Government with a corporate mask.

**NOTE:** The important test whether a person is occupier or not is the possession or vesting in of the ultimate control of the factory. The control should be an ultimate one.

**Q NO 8. STATE THE DUTIES OF OCCUPIER:**

**ANSWER**

**DUTIES OF OCCUPIER (SECTION 7):** The occupier shall, at least 15 days before he begins to occupy or use any premises as a factory, send to the Chief Inspector, a written notice containing the name and situation of the factory, the name and address of the occupier, the nature of manufacturing process, the details of workers etc., Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within 7 days from the date on which such person takes over charge.

**GENERAL DUTIES (SECTION 7A):**

1. He should ensure safety, health and welfare of all workers who are working in his factory.
2. He should maintain plant and machinery of the factory so that they are safe and without risk.
3. Handling, storage, transport of all materials should be safe and without risk.
4. He should provide, maintain and monitor the working environment in the factory without risk and hazard to workers and adequate in facilities.
5. The occupier should prepare, revise appropriately and display his general policy regarding the safety, security and health of the workers working in his factory.

Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

**Q NO 9. WHAT ARE THE POWERS EXERCISED BY AN INSPECTOR UNDER FACTORIES ACT, 1948?**

**ANSWER**

**POWERS OF THE INSPECTOR (SECTION 8):** The State Government may appoint such persons as possess the prescribed qualification to be Inspectors for the purpose of this Act and may assign to them such local limits as it may think fit. Section 9 prescribes the powers of the Inspector as detailed below-

1. To enter into any place which is used, or which he has reason to believe is used as a factory;
2. Make examination of the premises, plant, machinery, article or substance;
3. Inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not and take on the spot statements of any person which he may consider necessary for such inquiry;
4. Require the production of any document relating to factory;
5. Seize or take copies of any register, record or other documents of any portion thereof as he may consider necessary;
6. To take possession of any article or substance or part thereof and detain it for so long as is necessary for such examination;
7. To exercise such other powers as may be prescribed.

**Q NO 10. WHO ARE CERTIFIED SURGEONS? WHAT ARE THEIR DUTIES?**

**CRITICALLY EXAMINE THE DUTIES OF CERTIFIED SURGEON UNDER THE FACTORIES ACT, 1948**

**(JUNE-2018)**

**ANSWER**

Section 10 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively.

**DUTIES OF CERTIFIED SURGEONS:**

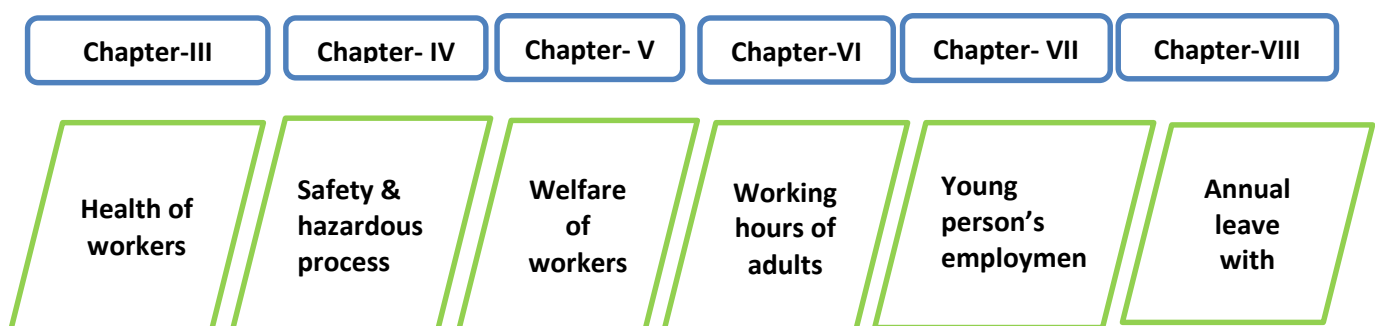
1. The examination and certification of young persons;
2. The examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;
3. The exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where-

**MEDICAL SUPERVISION BY A CERTIFIED SURGEON**

- i) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
- ii) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
- iii) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

**WELFARE MEASURES**

**FACTORIES ACT TAKES CARE OF WORKERS AS PER FOLLOWING ASPECTS:**



**Q NO 11. WHAT ARE THE MEASURES TO BE TAKEN IN CONSIDERING THE HEALTH ASPECTS OF THE WORKERS?**

**ANSWER:**

Chapter III of the Act deals with measures to be taken considering the health aspects of the workers. The following are to be taken care of by the occupier of the factory:



1. cleanliness;
2. disposal of waste and effluents;
3. ventilation and temperature;
4. dust and fume;
5. artificial humidification;
6. overcrowding;
7. lighting;
8. drinking water;
9. latrines and urinals;
10. spittoons

### **CLEANLINESS (SECTION 11) (DEC-2017)**

Every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

1. Removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same;
2. Cleaning of the floor of every workroom – once in every week by washing with disinfectant or by some other effective method;
3. Providing effective drainage for removing water to the extent possible;
4. To ensure that interior walls and roofs etc., are kept clean the following is to be complied with-
  - i) White wash or color wash should be carried out at least once in every period of 14 months;
  - ii) Where surface has been painted or varnished, repair or revarnish should be carried out once in every 5 years, if washable then once in every period of 6 months;
  - iii) Where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
  - iv) All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of 5 years;

**NOTE:** The dates on which such processes are carried out shall be entered in the prescribed register.

### **DISPOSAL OF WASTES AND EFFLUENTS (SECTION 12)**

The effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal.

### **VENTILATION AND TEMPERATURE (SECTION 13)**

The effective and suitable provision shall be made in every factory for securing and maintaining every workroom with adequate ventilation by the circulation of fresh air and such a temperature as will secure to workers therein reasonable conditions of comfort and prevent to health. In case of the work involves the production excessively high temperatures, adequate measures shall be taken to protect the workers by separating their process which produces such high temperatures from the workroom by insulating the hot parts or by other effective means.

## DUST AND FUME

Section 14 provides that in every factory if there is given off any dust or fume or other impurity of such nature in the process of manufacturing and it is likely to be injurious or offensive to the workers employed, any dust in substantial quantities, offensive to the workers

1. effective measures shall be taken to prevent its inhalation and accumulation in any work room.
2. Exhaust appliance shall be applied as near as possible to the point of origin of dust, fume or other impurity and such points shall be enclosed so far as possible.

## ARTIFICIAL HUMIDIFICATION

Section 15 provides that if the humidity of the air is artificially increased, the State Government may make rules-

1. prescribing standards of humidification;
2. regulating the methods used for artificially increasing the humidity of the air;
3. directing prescribed tests for determining the humidity of the air to be correctly carried out and recorded;
4. prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the workrooms.

## OVERCROWDING (DEC 2010)

Section 16 provides that no room in any factory shall be overcrowded to an extent injurious to the health of the workers employed therein. There shall be in every workroom in a factory at least 14.2 cubic meters of space for every worker employed therein.

## LIGHTING

Section 17 provides that in every part of a factory where workers are working or passing there shall be provided and maintained sufficient and suitable lighting (nature or artificial or both).

1. All glazed windows and skylights used for the lighting shall be kept clean on both the inner and outer surfaces and free from obstruction.
2. Effective provisions shall be made for the prevention of glare, either directly from a source of light or by reflection from a smooth or polished surface and the formation of shadows to such an extent as to cause eye strain or the risk of accident to any worker.

## DRINKING WATER ARRANGEMENTS

Section 18 provides that effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed a sufficient supply of wholesome drinking water. Where more than 250 workers are employed, provision shall be made for cool drinking water during hot weather. The water points shall be away 6 meters from any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination.

## LATRINES AND URINALS

Section 19 provides that in every factory-

1. sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at factory;
2. separate enclosed accommodation shall be provided for male and female workers;
3. they shall be adequately lighted and ventilated;
4. they shall be maintained in a clear and sanitary conditions at all times;
5. sweepers shall be employed to keep clean latrines, urinals and washing places.

where more than 250 workers are employed

- I. all latrine and urinal accommodation shall be of prescribed types.
- II. The flows and internal walls and the sanitary blocks shall be laid in glazed tiles to provide a smooth polished impervious surface.
- III. The latrines and urinals shall be washed and cleaned at least once in every 7 days with suitable detergents or disinfectants or with both.

## SPITTOONS

Section 20 provides that there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.

## Q NO 12. WHAT ARE THE PROVISIONS RELATED TO THE SAFETY MEASURES OF THE WORKING PLACE IN FACTORY?

### ANSWER

Chapter IV of the Act prescribes the procedures to be adopted on the safety of the working place in a factory.

The factory is to take safety measures in respect of the following-

1. Fencing of machinery;
2. Work on or near machinery in motion;
3. Employment of young persons on dangerous machines;
4. Striking gear and devices for cutting off power;
5. Self-acting machines;
6. Casing of a new machinery;
7. Prohibition of employment of women and children near cotton openers;
8. Lifting machines, chains, ropes and lifting tackles;
9. Revolving machinery;
10. Floors, stairs and means of access;
11. Pits, sumps openings in floors etc.,;
12. Excessive weights;
13. Protection of eyes;
14. Precaution against dangerous fumes, gases, etc.,

15. Precautions regarding the use of portable electric light;
16. Explosive or inflammable dust, gas etc.,
17. Precaution in case of fire;
18. Safety on buildings and machinery;
19. Maintenance of buildings;
20. Appointment of safety officers.

**Q NO 13. WRITE A SHORT NOTE ON HAZARDOUS PROCESSES**

**ANSWER**

Chapter IVA provides for making provisions relating to hazardous process.

1. The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a Site Appraisal Committee.
2. The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within 90 days of the receipt of such application.
3. The Committee has the power to call for any information from the person making an application.
4. When the application is got approved by the State Government, it shall not be necessary to obtain a further approval from the Central Board of the State Board of pollution authorities.

**Q NO 14. WHAT ARE RESPONSIBILITIES OF AN OCCUPIER IN A FACTORY? (JUNE-2017)**

**ANSWER**

The occupier has to follow the procedure-

1. to lay down a detailed policy with respect to the health and safety of the workers;
2. to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
3. to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.
4. to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

**Section 41C** provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He has to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

**Q NO 15. WHAT ARE THE POWERS OF THE CENTRAL GOVERNMENT  
EXPLAIN THE RIGHT OF WORKERS TO WARN ABOUT IMMINENT DANGER UNDER FACTORIES  
ACT,1948 (JUNE-2015)**

**ANSWER**

1. Section 41D provides that the Central Government is having power to inquire to the standards of health and safety observed in a factory.
2. Section 41E provides to provide emergency standards in respect of a factory
3. Section 41F provides for fixing the maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing process in any factory.
4. Section 41G provides that the occupier shall set up a Safety Committee consisting of equal number of representations of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that effect.
5. Section 41H provides that the workers have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to accident, they may bring the same to the notice of his occupier, agent, manager or any other person who is in charge of the factory or the process. Immediate action shall be taken and a report to the Inspector having jurisdiction.

**Q NO 16. WHAT ARE THE PROVISIONS RELATED TO WELFARE MEASURES TO BE TAKEN BY THE  
FACTORY?**

**ANSWER**

Chapter V provides the welfare measures to be taken in a factory for the workmen employed in the factory.

The following are the welfare measures prescribed in the Act to be provided by the factory to their workmen-

1. washing facilities;
2. facilities for storing and drying clothing;
3. facilities for sitting;
4. first aid appliances;
5. canteens;
6. shelters, rest rooms and lunch rooms;
7. crèches;
8. appointment of welfare officers.

**WASHING FACILITIES**

1. Section 42 provides that in every factory adequate and suitable facilities for washing shall be provided and maintained for the use of the workers.
2. Separate and adequately screened facilities shall be provided for the use of male and female workers.
3. The washing facility shall be conveniently accessible and shall be kept clean.

## FACILITIES FOR STORING AND DRYING CLOTHING

Section 43 provides that 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.

## FACILITIES FOR SITTING

Section 44 provides that suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they make take advantage of any opportunities for rest which may occur in the course of their work.

## FIRST AID APPLIANCES

1. Section 45 provides that first aid appliances shall be provided and maintained so as to be readily accessible during all working hours or cupboards equipped with the prescribed contents
2. the number of such boxes or cupboards to be provided and maintained shall not be less than for every 150 workers at any one time in the factory.
3. Each first aid box or cupboard shall be kept in charge of a separate reasonable person who holds a certificate in the first aid treatment recognized by the State Government and he should always be readily available during the working hours of the factory.

In a factory where more than 500 workers are employed an ambulance of the prescribed size containing the prescribed equipment, nursing staff etc., shall be provided and made readily available at all times.

## CANTEENS

**AS PER FACTORIES ACT, CANTEEN IS MANDATORY IN ALL THE FACTORIES. COMMENT (DEC-2010)**

1. Section 46 provides that if more than 250 workers are employed in a factory a canteen or canteens shall be provided and maintained by the occupier for the user of the workers.
2. The items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs shall be borne by the employer.

**CASE LAW:** Modes of setting up a canteen is not specified in factories Act. It can be inhouse or outsourced. (**'FERRO ALLOYS CORPORATION LIMITED V. GOVERNMENT OF ANDHRA PRADESH LABOR EMPLOYMENT AND TECHNICAL EDUCATION (LABOR II) DEPARTMENT' – 2003 (96) FLR 160**)

## SHELTERS, REST ROOMS AND LUNCH ROOMS

**AS PER FACTORIES ACT, ADEQUATE SHELTERS, REST ROOMS AND LUNCH ROOMS ARE MANDATORY IN ALL THE FACTORIES. DO YOU AGREE? GIVE CORRECT ANSWER (JUNE-2013)**

1. Section 47 provides that if more than 150 workers are employed adequate and suitable shelters or rest rooms and a suitable lunch room with provision for drinking water shall be provided and maintained for the use of the workers.

2. It shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

### CRÈCHES

**CRECHES ARE COMPULSORY IN A FACTORY WHERE WOMEN EMPLOYEES ARE EMPLOYED. COMMENT (DEC-2009)**

1. Section 48 provides that if more than 30 women workers are employed there shall be provided and maintained a suitable room for the use of children under the age of 6 years of such women.
2. It shall be adequately ventilated and shall be maintained in clear and sanitary conditions and under the charge of women trained in the care of children and infants.

### WELFARE OFFICERS

**AS PER PROVISION OF FACTORIES ACT, EVERY FACTORY IS TO APPOINT AT LEAST ONE WELFARE OFFICER-DO YOU AGREE? ANSWER CITING RULES. (JUNE-2009)**

Section 49 provides that if 500 or more than workers are employed in a factory, the occupier shall employ in the factory such number of welfare officers as may be prescribed.

**CASW LAW:** Assistant Personnel Officer cannot be held that he was in fact appointed as a Labor Welfare Officer simply because as a Assistant and Personnel Officer he was looking after the problems of the laborers and the welfare of the laborers. (**'SHYAM VINYL LIMITED V. T. PRASAD' – (1993) 83 FJR 18 (SC)**)

**Q NO 17. WRITE A SHORT NOTE ON WORKING HOURS OF ADULTS**

### ANSWER

Chapter VI of the Act provides for the working hours of adults. This chapter provides for working hours in a day, weekly working hours, weekly holidays, intervals for rest. Spread over of duty, night shift etc.,

1. Section 54 provides that no adult worker shall be required or allowed to work in factory for more than 9 hours in any day.
2. Section 55 provides that the periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed 5 hours and that the worker shall work for more than 5 hours before he has had an interval for rest of at least half an hour.
3. Section 56 provides that the periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest, they shall not spread over more than 10 and half hours in any day.
4. Section 51 provides that no adult worker shall be required or allowed to work in a factory for more than 48 hours in any week.

**CASE LAW:** Increase of 15 minutes working will not be violative of Section 51 of the Act (**'RICHA & COMPANY V. SHRI SURESH CHAND' – 2009 LLR 333 (SN) (DEL HC)**)

## WEEKLY HOLIDAYS

Section 52 provides that no adult worker shall be required or allowed to work in a factory on the first day of the week unless-

1. He has or will have a holiday for a whole day on one of the 3 days immediately before or after the said day; and
2. The manager of the factory, has, before the said day or the substituted day whichever is earlier-
  - I. 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
  - II. Displayed a notice to that effect in the factory.

**CASE LAW: 'MOTOR AND MACHINERY MANUFACTURERS LIMITED V. STATE OF WEST BENGAL' – 1964 (2) LLJ 562)** Primary object of the Section 52 is to provide weekly holiday for the workers and such day was fixed to be the first day of the week i.e., Sunday. But for any special reasons, it becomes necessary to make Sunday the working day, a substitutional holiday is made compulsory. But the intendment of the section is not that the employers will at their sweet convert successive on all the Sundays primarily intended to be holidays as working days and make any other working day of the week a holiday instead of Sunday

## COMPENSATORY HOLIDAYS

Section 53 provides that if a worker is deprived of any of the weekly holidays, he shall be allowed within the month in which the holidays were due to him or within 2 months immediately following that month, compensatory holidays of equal number to the holidays so lost shall be given.

## SHIFT DUTY

Section 57 provides that where a worker in a factory works on a shift which extends beyond midnight-

1. for the purposes of Section 52 and 53, a holiday for a whole day shall mean in his case a period of 24 consecutive hours beginning when his shift ends;
2. 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 the previous day.

Section 58 provides that the 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.

## OVERTIME

1. Section 59 provides that where a worker works for more than 9 hours in any day or for more than 48 hours in any week, he shall, in respect of the overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.
2. ordinary rate of wages =basic wages +such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as



the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

3. Where any workers are paid on a piece rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done and such time rates shall be deemed to be ordinary rate of wages of those workers.

**CASE LAW: 'NATIONAL TEXTILES CORPORATION (D.P.&R) LIMITED UNIT- MAHALAKSHMI MILLS, BEAWAR V. LABOR COURT, JAIPUR' 1997 LLR 518** it was held that Section 59 creates an obligation on the employer to pay extra wages for overtime if a worker works for more than 9 hours in any day or for more than 48 hours in any week.

## **DOUBLE EMPLOYMENT**

Section 60 imposes restriction that 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.

## **REGISTER OF ADULT WORKERS**

Section 62 provides that a register of adult workers shall be maintained, showing-

1. the name of each adult worker in the factory;
2. the nature of the work;
3. the group, if any, in which he is included;
4. where his group works on shifts, the relay to which he is allotted;
5. such other particulars as may be prescribed.

## **EMPLOYMENT OF WOMEN**

Section 66 provides that the provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions-

1. no exemption from the provisions of Section 54 (9hours a day) may be granted in respect of any woman;
2. no woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m.;
3. the State Government may authorize the employment of any women between the hours of 10 p.m. and 5 a.m.;
4. there shall be no change of shifts except after a weekly holiday or any other holiday.

## **Q NO 18. WRITE PROVISIONS RELATED TO EMPLOYMENT AND PROHIBITION OF EMPLOYMENT OF YOUNG PERSONS**

### **ANSWER**

Chapter VII of the Act deals with the employment of young persons.

#### **Prohibition of employment of young children**

Section 67 provides that no child who has not completed his 14th year shall be required or allowed to work in any factory.

### **ADOLESCENT WORKER**

Section 68 provides that a child who has completed his 14th year or an adolescent shall not be allowed to work in any factory unless-

1. a certificate of fitness granted is in the custody of the manager of the factory; and
2. such child or adolescent carries while he is at work a token giving a reference to such certificate.

### **CERTIFICATE OF FITNESS TO THE YOUNG PERSON AND ADULT**

1. Section 69(1) provides that a certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the 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.
2. Section 69(2) provides that the certifying surgeon, after examination, may grant to such young person, in the prescribed form or may renew-
  - I. a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his 14th year, that he has attained the prescribed physical standards and that he is fit for such work;
  - II. a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his 15th year and is fit for a full day's work in a factory.
    - i) The certificate granted by the certifying surgeon shall be valid for a period 12 months from the date thereof.
    - ii) Certified surgeon shall revoke any certificate granted or renewed if in his opinion the holder of it is no longer fit to work in capacity stated therein in a factory.
    - iii) If certifying surgeon refuses to give certificate, he has to give reasons for the same.
    - iv) If a certificate is given under certain conditions, the young person shall not be allowed in any factory except in accordance with those conditions.
    - v) The occupier is to pay the fee for getting the certificate from the certifying surgeon and the same shall not be recovered from the young person, his parents or guardian.

## WORKING HOURS FOR CHILDREN (JUNE-2010)

1. Section 71 provide that no child shall be employed or permitted to work in any factory for more than 4 and a half hours in any day and during night.
2. The period of work of all children employed in a factory shall be limited to 2 shifts which shall not spread over more than 5 hours each.
3. Each child shall be employed in only one of the relays which shall not, except with the previous permission.
4. No female child shall be allowed to work in any factory except between 8 a.m. and 7 p.m.

## REGISTER OF CHILD WORKERS

Section 73 provides that the Manager of every factory in which children are employed shall maintain a register of child workers showing-

1. the name of each child worker in the factory;
2. the nature of his work;
3. the group, if any, in which he is included;
4. where his group works on shifts, the relay to which he is allotted; and
5. the number of his certificate of fitness granted under Section 69.

## Q NO 19. WRITE A PROVISION RELATING TO ANNUAL LEAVE WITH WAGES

### ANSWER

Chapter VIII of the Act deals with annual leave granted workers with wages.

### **ANNUAL LEAVE**

Section 79 provides that every worker who has worked for a period 240 days or more in a factory during a calendar year shall be allowed leave with wages for a number days calculated at the rate of-

1. Adult - one day for every 20 days of work performed by him during the previous calendar year;
2. Child- one day for every 15 days of work performed by him during the previous calendar year.

The following shall be deemed to be days on which the worker has worked for the purpose of computation of the period of 240 days or more-

- i) Any days of lay off, by agreement or contract or as permissible under the standing orders;
- ii) In the case of a female worker, maternity leave for any number of days not exceeding 12 weeks; and

iii) The leave earned in the year prior to that in which the leave is enjoyed

but the above shall not be entitled for a worker to earn leave. The leave admissible shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

Note: In calculating the leave fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

## CARRY FORWARD OF LEAVE

1. If a worker does not in any calendar year take the whole of the leave allowed to him any leave not taken by him shall be carried over to the succeeding year.
2. The total number of leave that may be carried forward shall not exceed 30 days in the case of an adult or 40 in the case of a child. A worker, who has applied for leave with wages but has not been granted, shall be entitled to carry forward the leave refused without any limit.

## AVAILING OF LEAVE

1. A worker may, at any time, apply in writing to the Manager not less than 15 days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year.
2. Such application shall be made not less than 30 days before the date on which he wishes his leave to begin, if he is employed in a public utility service.
3. An application for leave shall not be refused unless refusal is in accordance with the scheme for the time being in operation.

## WAGES DURING LEAVE PERIOD

1. Section 80 provides that a worker shall be entitled to wages at a rate equal to the daily average of his total full-time earnings for the days on which he actually worked during the month immediately preceding his leave, exclusive of any over time and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles.
2. In case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of the total full-time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked.

## ADVANCE PAYMENT

Section 81 provides that a worker who has been allowed leave for not less than 4 days, in case of an adult, and 5 days, in the case of a child, shall, before leave begins be paid the wages due for the period of the leave allowed.

## ENCASHMENT OF LEAVE

1. Section 79(3) provides that if a worker is discharged or dismissed from services or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, shall be entitled to the wages in lieu of the quantum of leave to which he was entitled immediately before such termination of his services.
2. Such payment shall be made before the expiry of

- i) In case of discharge, dismissal or quitting the 2<sup>nd</sup> working day
- ii) In case of superannuation or death while in service, before the expiry of 2 months from the date of such superannuation or death.

**Q NO 20. WRITE DOWN THE PROVISIONS RELATED TO PENALTIES UNDER FACTORIES ACT, 1948**

**ANSWER**

Section 92 provides that

Contravention of provisions of this Act or rules or of any order in writing → Occupier & manager shall each be guilty & punishable with imprisonment upto 2 years or fine upto Rs. 1 lacs or both.

If continued after conviction → Further fine upto to Rs. 1,000 per day till it is continued.

If contravention resulted in accident-causing death → Fine shall not be less than Rs. 25,000.

If contravention resulted in accident-causing serious injury → Fine shall not be less than Rs. 25,000.

**CASE LAW: GENERAL MANAGER, WHEEL & AXLE PLANT, BANGALORE V. STATE OF KARNATAKA**

Where an offence punishable u/s 92 has been committed by officer of Railways & he is public servant as per Sec 21 of IPC, obtaining a sanction to prosecute him is mandatory.

**LIABILITY OF OWNERS**

Section 93 provides that where in any premises separate buildings are leased to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services, such as approach roads, drainage, water supply, lighting and sanitation. The owners of the premises shall be liable as if they were the occupier or manager of a factory for any contravention of the provisions of this Act.

**ENHANCED PENALTY**

Section 94 provides that If any person who has been convicted of any offence punishable u/s 92 is again guilty of an offence involving a contravention of same provision → punishable on subsequent conviction with imprisonment upto 3 years or fine from 10,000 – 2 Lacs or both

Court may impose a fine of less than Rs. 10,000 for adequate & special reasons recorded in writing, No cognizance shall be taken of any conviction made more than 2 years before the commission of the offence for which the person is subsequently convicted.

**PENALTY FOR OBSTRUCTING INSPECTOR**

Section 95 provides that whoever-

1. willfully obstructs an Inspector in exercise of any power conferred on him; or
2. fails to produce on demand any registers or other documents in his custody before the Inspector, or
3. conceals or prevents any worker in a factory from appearing before; or
4. being examined by, an Inspector shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs.10,000 or with both.

## PENALTY FOR CONTRAVENTION OF THE PROVISIONS RELATING TO HAZARDOUS PROCESS

Section 96A provides that Failure to comply with any provisions of Sec 41B, 41C or 41H or rules made thereunder Punishable with imprisonment upto 7 years & fine upto Rs. 2 lacs

Additional fine upto Rs. 5,000 per day during which such failure or contravention continues

If contravention continues beyond 1 year after date of conviction → Imprisonment upto 10 years

## OFFENCES BY WORKERS

Section 97 provides that if any worker employed in a factory contravenes any provision of this Act or any rules or by order made there under, imposing any duty or liability on workers, he shall be punishable with fine which may extend to Rs.500.

## PENALTY FOR USING FALSE CERTIFICATE OF FITNESS

Section 98 provides that whoever knowingly uses or attempts to use, as a certificate of fitness granted to himself a certificate granted to another person or who, having procured such a certificate, knowingly allows it to be used, or an attempt to use it to be made, by another person, shall be punishable with imprisonment for a term which may extend to 2 months or with fine which may extend to Rs.1,000 or with both.

## PENALTY FOR PERMITTING DOUBLE EMPLOYMENT OF CHILD

Section 99 provides that if a child works in a factory on any day on which he has already been working in another factory, the parent or guardian of the child or the person having custody of or control over him or obtaining any director benefit from his wages, shall be punishable with fine which may extend to Rs.1000 unless it appears to the Court that the child so worked without the consent or connivance of the parent, guardian or person.

## EXERCISE

### ⊙ Multiple Choice Question:

1. Age of adolescent worker is-  
a) 10  
b) 14  
c) 18  
d) 21
2. Certificate of fitness to be young worker is to be granted by-  
a) Occupier of the factory  
b) Inspector of the factory  
c) Certifying surgeon  
d) None of the above
3. White wash or color wash should be carried out atleast once in every period of-  
a) 14 months;  
b) 24 months;  
c) 48 months;  
d) 60 months
4. Where more than 10 workers are employed provision shall be made for cool drinking water during hot weather.  
a) 100  
b) 250  
c) 500  
d) 1000



6. A child who has completed his 14<sup>th</sup> year of an adolescent shall not be allowed to work in any factory unless \_\_\_\_\_ granted in the custody of the manager of the factory.
7. \_\_\_\_\_ shall be provided and maintained for the use of children not under the age of 6 years if more than \_\_\_\_\_ women workers are employed.
8. Occupier is the person who has \_\_\_\_\_ over the affairs of the factory.
9. The total number of leave that may be carried forward shall not exceed \_\_\_\_\_ days in the case of adult or \_\_\_\_\_ in the case of child worker.
10. \_\_\_\_\_ shall examine an application for an establishment of a factory involving hazardous process.

⊙ **Short Essay Type Questions**

1. What are the responsibilities of an occupier in a factory?
2. List the welfare measures to be taken by an Occupier in a factory.
3. Write a short note on -
  - (a) hazardous processes
  - (b) Manufacturing Process and Factory
  - (c) prohibition of employment of young persons under this Act

⊙ **Essay Type Questions**

1. Discuss the obligations and the right of the worker under the Factories Act.
2. What are the powers that can be exercised by an Inspector under this Act?
3. What are the measures to be taken to keep the factory clean?
4. Critically examine the duties of certified surgeon.
5. Briefly discuss the provisions in respect of first aid appliances.

**Answer:**

**Multiple Choice Question**

1. b; 2. c; 3. a; 4. b; 5. d; 6. a; 7. b; 8. c; 9. d; 10. c.

**State TRUE or FALSE**

1. True; 2. False; 3. False; 4. True; 5. False; 6. False; 7. True; 8. False; 9. True; 10. True.

**Fill in the blanks**

1. 1000; 2. 250; 3. 9; 4. Twice; 5. 6 a.m. and 5 p.m.; 6. A certificate of fitness; 7. Crèche, 30; 8. Ultimate control; 9. 30, 40; 10. Site Appraisal Committee.



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

**Q NO 1. STATE THE OBJECT AND COMMENCEMENT OF THE ACT?**

### **ANSWER**

1. The term 'gratuity' is derived from the Latin word 'gratuitous'.
2. 'Gratuity' is the payment made by the employer to the employee at the time of termination of his service either by retirement on superannuation or on resignation or on termination of the service.
3. This is the old age retiral social security benefit. A lump sum is payable in consideration of the past services rendered by the employee. The payment of gratuity will be a relief to the retired employee or to the family members of the employee who dies during his service. For this purpose, the Payment of Gratuity Act, 1972 was enacted.
4. **COMMENCEMENT:** To carry out the provisions of the Act the Central Government made 'The Payment of Gratuity Rules, 1972 which came into force with effect from 16th September, 1972.'
5. **CASE LAW: 'BURHANPUR TAPTI MILLS LIMITED V. BURHANPUR TAPTI MILLS MAZDOOR SANGH' – 1964 (11) TMI 79 - SUPREME COURT** – it was held that it is a gratuitous payment extended to an employee on retirement or discharge, in addition to the retiral benefits payable to the employee.
6. **OBJECT:** An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto, employing 10 or more persons (with aid of power) and 20 (without aid of power).

**Q NO 2. STATE THE APPLICABILITY OF PAYMENT OF GRATUITY ACT, 1972 (DEC-2010)**

### **ANSWER:**

Payment of Gratuity act, 1972 applies to:

1. Every factory, mine, oil fields, plantation, Port and Railway company;
2. Every shop and establishment; or
3. Any other establishments

And for matters connected there with or incidental thereto, employing 10 or more persons (with aid of power) and 20 (without aid of power)

**Q NO 3. DEFINITIONS**

### **ANSWER**

#### **APPROPRIATE GOVERNMENT**

Section 2(a) defines the term 'appropriate Government' as-

In relation to an establishment-

1. belonging to, or under the control of, the Central Government,

2. having branches in more than one State,
  3. of a factory belonging to, or under the control of, the Central Government,
  4. of a major port, mine, oilfield or railway company - the Central Government,
- In any other case - the State Government;

## EMPLOYEE

1. Section 2(e) of the Act defines the term 'employee' as any person, other than an apprentice, who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.
2. **CASE LAW:** In '**AHMEDABAD PRIVATE PRIMARY TEACHERS ASSOCIATION V. ADMINISTRATIVE OFFICER**' – AIR 2004 SC 1426 it was held that teacher was held to be not an employee under the Act. The teachers are clearly not intended to be covered by the definition of employee. But the Payment of Gratuity (Amendment) Act, 2009 has amended the definition of 'employee, including teachers in educational institutions within the purview of the Act.

## EMPLOYER

Section 2(f) defines the term 'employer', in relation to any establishment, factory, mine, oilfield, port, Railway Company or shop-

1. Belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by appropriate Government for the supervision or control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned;
2. Belonging to, or under the control of, any local authority, the person appointed by such authority for supervision and control of employees or where no person has been so appointed, the Chief Executive Officer of the local authority;
3. In any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oil field, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person.

## FAMILY

Section 2(h) defines the term 'family' in relation to an employee, shall be deemed to consist of-

1. In case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any;

2. In the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.
3. **INCLUDES:** The lawfully adopted son by employee is permitted by personal law.
4. **EXCLUDES:** The child of employee adopted by another person if permitted by personal law of that other person.
5. **NOTICE BY THE EMPLOYEE TO THE EMPLOYER:** Rule 5 provides that a notice under the proviso to sub clause (ii) of clause (h) of section 2 shall be in Form D and sent in triplicate by the employee to the employer, who shall, after recording its receipt on one copy thereof, return the copy to the employee and send the second copy to the controlling authority of the area.
6. **WITHDRAWAL OF THE NOTICE:** Rule 5(2) provides that an employee may withdraw the notice referred to in sub-rule (1) by giving another notice in triplicate in Form 'E' to the employer, who shall follow the same procedure as in sub- rule (1).

## RETIREMENT

Section 2(q) of the Act defines the term 'retirement' as termination of the service of an employee otherwise than on superannuation.

## SUPERANNUATION

Section 2(r) defines the term 'superannuation' as in relation to an employee, the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment.

## WAGES

Section 2(s) defines the term 'wages' as all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, over time wages and any other allowance.

## CONTINUOUS SERVICE

Section 2A deals with the continuous service. According to this section-

1. An employee shall be said to be in 'continuous service' for a period if he has, for that period been in un- interrupted service, including service which may be interrupted on account of :
  - i) Sickness
  - ii) Accident
  - iii) Leave
  - iv) Absence from duty without leave
  - v) Lay off
  - vi) Strike
  - vii) Lock out
  - viii) Cessation of work not due to any fault of the employee

2. where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) for any period of 1 year or 6 months, he shall be deemed to be in continuous service under the employer:

- i) for the said period of one year, if the employee during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - i) 190 days in the case of an employee employed below the ground in mine or in an establishment which works for less than 6 days a week; and
  - ii) 240 days in any other case;
- ii) for the period of 6 months, if the employee during the period of 6 calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than-
  - i) 95 days, in the case of an employee below the ground in a mine or in an establishment which works for less than 6 days in a week; and
  - ii) 120 days in any other case.

for the purpose of clause (2), the number of days on which the employee has actually worked under an employer shall include the days on which-

- i) He has been laid off under an agreement or as permitted by the standing orders
- ii) He has been on leave with full wages, earned in the previous year;
- iii) He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- iv) In the case of a female, she has been on maternity leave, so however, that the total period of such maternity leave does not exceed 26 weeks.

3. Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1) for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75%, of the number of days on which the establishment was in operation during such period.

## DISABLEMENT

Disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

### Q NO 4. WHEN IS GRATUITY PAYABLE? (JUNE-2010)

#### ANSWER

Section 4(1) provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years, -

- 1. on his superannuation, or
- 2. on his retirement; or
- 3. resignation, or
- 4. on his death or disablement due to accident or disease;

**NOTE:** The completion of continuous service of 5 years shall not be necessary where the termination of the employment of any employee is due to death or disablement. In the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to the heirs.

**Q NO 5. WRITE ABOUT THE COMPUTATION OF GRATUITY AMOUNT PAYABLE**

**EXPLAIN THE MANNER IN WHICH GRATUTY IS PAYABLE TO EMPLOYEES IN A SEASONAL AS WELL AS IN OTHER ESTABLISHMENTS. ALSO STATE THE MAXIMUM AMOUNT OF GRATUITY PAYABLE UNDER THIS ACT. (DEC-2016)**

**ANSWER**

1. Section 4(2) provides that for every completed year of service or part thereof in excess of 6 months, the employer shall pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned.
2. In the case of piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.
3. In the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.
4. Section 4(3) provides that the amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.
5. Ministry of Labour & Employment vide Notification No. S.O. 1420(E) dated 29th March 2018 has notified that the amount of gratuity payable to an employee under the Act shall not exceed Rs.20 lakhs.
6. Section 4(4) provides that for the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.
7. Section 4(5) provides that nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

**Q NO 6. WRITE A SHORT NOTE ON FORFEITURE OF GRATUITY (DEC-2012)**

**ANSWER**

Section 4(6) provides that notwithstanding anything contained in sub-section (1),-

1. The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

2. The gratuity payable to an employee may be wholly or partially forfeited, -
- i) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
  - ii) If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

3. CASE LAW:

- i) **KSRTC, BANGALORE V. DEPUTY LABOR COMMISSIONER AND THE APPELLATE AUTHORITY, BANGALORE AND OTHERS'** The right of receiving the gratuity by the employee is the statutory right. Once it is eligible to receive the gratuity the employee is entitled to receive the same unless otherwise restricted by the provisions of law.
- ii) **'D.S. Nakara V. Union of India' – 1982 (12) TMI 151 - SUPREME COURT** the Supreme Court held that gratuity is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing, corresponding to ageing process and when, one falls, back on savings. Such payment cannot be withheld unless specifically permitted by any statutory provision.
- iii) **'D.V. KAPOOR V. UNION OF INDIA' – 1990 (8) TMI 390 - SUPREME COURT OF INDIA** it was held that the right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that this gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which, the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction.

If circumstances require forfeiting either partially or fully a specific order shall be passed by the employer in this regard. For this purpose, the employer shall issue a show cause notice to the employee indicating the grounds for forfeiture of gratuity and he shall be given a reasonable opportunity of being heard. The final decision will be taken on the basis of reply, if any, given by the employer and the order of forfeiture shall be passed and intimated to the employee.

- iv) **'KARNATAKA STATE ROAD TRANSPORT CORPORATION, BANGALORE V. DEPUTY LABOR COMMISSIONER AND THE APPELLATE AUTHORITY, BANGALORE AND OTHERS' – 2012-III-LJ-384 (KANT)** the Court held that having regard to the mandate of Section 4(6) of the Act before forfeiting the gratuity amount, the petitioner employer ought to have extended an opportunity of hearing to the employee over the proposal to forfeit the amount of gratuity. Even otherwise, the statutory provision for forfeiture of gratuity when construed strict the petitioner corporation was required to prove before the Controlling Authority the extent of damage or loss cause by the employee for the acts of alleged misconduct by reason of which the employer is disentitled to gratuity.

## Q NO 7. HOW GRATUITY AMOUNT IS CALCULATED?

### ANSWER

#### **Amount of gratuity payable**

1. Gratuity is calculated on the basis of the continuous service rendered by the employee, for every completed year of service or part in excess of 6 months at the rate of 15 days wages last drawn.
2. The maximum amount of gratuity allowed under the Act is Rs.20 lakhs with effect from 29.03.2018.
3. **FORMULA FOR CALCULATION OF GRATUITY** = Last wage drawn × 15/26 × completed years of service In calculation of gratuity one month is taken as 26 days.

## Q NO 8. EXPLAIN THE PROVISIONS OF PAYMENT OF GRATUITY AND RULES RELATED TO NOMINATION.

### ANSWER

**RULES RELATED TO NOMINATION:** Section 6 provides for filing nomination for receiving the gratuity after the death of the employee. The following are the points to be noted in respect of nomination-

1. Each employee, who has completed 1 year of service, shall make nomination in Form – F
2. He may distribute the amount of gratuity payable to him under this Act amongst more than one nominee;
3. If an employee has a family at the time of making a nomination, the nomination shall be made in favor of one or more members of his family, and any nomination made by such employee in favor of a person who is not a member of his family shall be void.;
4. If at the time of making a nomination the employee has no family, the nomination may be made in favor of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favor of one or more members of his family;
5. A nomination may be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so;
6. If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest;
7. Every nomination, fresh nomination, or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

**RULE 6 (1)** provides that a nomination shall be submitted in duplicate by personal service by the employee, after taking proper receipt or by sending through registered post acknowledgement due to the employer,

- i) In the case of an employee who is already in employment for a year or more on the date of commencement of these rules, ordinarily, within 90 days from such date, and
- ii) In the case of an employee who completes one year of service after the date of commencement of these rules, ordinarily within 30 days of the completion of one year of service.

Nomination in Form 'F' shall be accepted by the employer after the specified period, if filed with reasonable grounds for delay, and no nomination so accepted shall be invalid merely because it was filed after the specified period.

**RULE 6(2)** provides that within 30 days of the receipt of nomination in Form 'F' under sub-rule (1), the employer shall get the service particulars of the employee, as mentioned in the form of nomination, verified with reference to the records of the establishment and return to the employee, after obtaining a receipt thereof, the duplicate copy of the nomination in form 'F' duly attested either by the employer or an officer authorized in this behalf by him, as a token of recording of the nomination by the employer and the other copy of the nomination shall be recorded.

**RULE 6(3)** provides that an employee who has no family at the time of making a nomination shall, within 90 days of acquiring a family submit in the manner specified in sub-rule (1), a fresh nomination, as required under sub-section (4) of section 6, duplicate in Form 'G' to the employer and thereafter the provisions of sub-rule (2) shall apply mutatis mutandis as if it was made under sub-rule (1).

**RULE 6(4)** provides that a notice of modification of a nomination, including cases where a nominee predeceases an employee, shall be submitted in duplicate in Form 'H' to the employer in the manner specified in sub-rule (1), and thereafter the provisions of sub-rule (2) shall apply mutatis mutandis.

**RULE 6(5)** provides that a nomination or a fresh nomination or a notice of modification of nomination shall be signed by the employee or, if illiterate, shall bear his thumb impression, in the presence of two witnesses, who shall also sign a declaration to that effect in the nomination, fresh nomination or notice of modification of nomination, as the case may be.

**RULE 6(6)** provides that a nomination, fresh nomination or notice of modification of nomination shall take effect from the date of receipt thereof by the employer.

#### **Q NO 9. DETERMINATION OF THE AMOUNT OF GRATUITY**

##### **ANSWER**

##### **PROCEDURE FOR DETERMINATION OF THE AMOUNT OF GRATUITY (SECTION 7):**

1. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of gratuity.
2. Employer shall give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.
3. The notice shall be in Form L.
4. The employer shall arrange to pay the amount of gratuity within 30 days from the date of it becoming payable to the person to whom it is payable.
5. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum.



6. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.
7. If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

**Q NO 10. STATE THE NATURE OF DISPUTES THAT MAY BE DECIDED BY THE CONTROLLING AUTHORITY (JUNE-2014)**

**ANSWER**

1. The controlling authority may decide the following disputes:
  - i) Dispute as to amount of gratuity payable to an employee
  - ii) Dispute as to admissibility of any claim
  - iii) Dispute as to person entitled to receive gratuity
2. If there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the Controlling Authority.
3. The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable to an employee.
4. If as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, the controlling authority shall direct the employer to pay such amount as is in excess of the amount deposited by him.  
Then the Controlling Authority shall pay the amount of the deposit-
  - i) To the applicant where he is the employee; or
  - ii) Where the applicant is not the employee, to the nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

**Q NO 11. APPLICATION BY EMPLOYEE TO EMPLOYER FOR THE PAYMENT OF GRATUITY**

**ANSWER**

**Application for Gratuity (Rule 7)**

1. An employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to act on his behalf, shall apply, ordinarily within 30 days from the date the gratuity became payable, in Form 'I' to the employer. Where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before 30 days of the date of superannuation or retirement.
2. A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within 30 days from the date of gratuity

became payable to him, in Form 'J' to the employer. An application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

3. A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within 1 year from the date of gratuity became payable to him, in Form 'K' to the employer.
4. Where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified above shall be deemed to be operative from the date of such commencement.
5. A belated application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.
6. An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due.

#### **Q NO 12. NOTICE ISSUED BY EMPLOYER FOR PAYMENT OF GRATUITY**

##### **ANSWER**

1. Within 15 days of the receipt of an application under rule 7 for payment of gratuity, the employer shall-
  - i) If the claim is found admissible on verification, issue a notice in Form 'L' to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or
  - ii) If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.
2. In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form 'L' under clause (1) of sub-rule (1) shall be re fixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.
3. If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. In that 'case, the time limit specified for issuance of notices under sub-rule (1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer.
4. A notice in Form 'L' or Form 'M' shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgement due.
5. A notice under sub-section (2) of section 7 shall in Form 'L

### Q NO 13. MODE OF PAYMENT OF GRATUITY

#### ANSWER

1. Rule 9 provides that the gratuity payable under the Act shall be paid in cash or, if so desired by the payee, in Demand Draft or bank Cheque to the eligible employee, nominee or legal heir, as the case may be.
2. In case the eligible employee, nominee or legal heir, as the case may be, so desires and the amount of gratuity payable is less than one thousand rupees, payment may be made by postal money order after deducting the postal money order commission there for from the amount payable.
3. Intimation about the details of payment shall also be given by the employer to the controlling authority of the area.
4. In the case of nominee, or an heir, who is minor, the controlling authority shall invest the gratuity amount deposited with him for the benefit of such minor in term deposit with the State Bank of India or any of its subsidiaries or any Nationalized Bank.

### Q NO 14. APPLICATION FOR DIRECTION UNDER PAYMENT OF GRATUITY ACT, 1972

#### ANSWER

1. Rule 10 provides that if the employer-
  - i) Refuses to accept nomination; or
  - ii) To entertain an application for gratuity; or
  - iii) Rejects the eligibility of gratuity; or
  - iv) Indicates less amount than the eligible amount of gratuity in the notice; or
  - v) Fails to issue notice
2. The eligible person to receive the gratuity may file an application in Form – N within 90 days from the date of occurrence of the cause, to the Controlling authority for the issue of directions to the employer. Additional copies are to be sent along with the application for the purpose of issuing the same to the opposite parties.
3. If the said application is filed after the limitation period of 90 days, the Controlling Authority may admit the application if the applicant shows sufficient cause for the delay in filing the application.
4. The said application may be submitted to the Controlling authority in person or it may be sent through registered post with acknowledgment due.

### Q NO 15. DIRECTIONS ISSUED BY AUTHORITY UNDER PAYMENT OF GRATUITY ACT, 1972

#### ANSWER

1. On receipt of an application under rule 10 the controlling authority shall, by issuing a notice in Form 'O', call upon the applicant as well as the employer to appear before him on a specified date, time and place, either by himself or through his authorized representative together with all relevant documents and witnesses, if any.

2. Any person desiring to act on behalf of an employer or employee, nominee or legal heir, as the cases may be, shall present to the controlling authority a letter of authority from the employer or the person concerned, as the case may be, on whose behalf he seeks to act together with a written statement explaining his interest in the matter and praying for permission so to act.
3. The controlling authority shall record thereon an order either according his approval or specifying, in the case of refusal to grant the permission prayed for, the reasons for the refusal.
4. A party appearing by an authorized representative shall be bound by the acts of the representative.
5. After completion of hearing on the date fixed under sub-rule (1), or after such further evidence, examination of documents, witnesses, hearing and enquiry, as may be deemed necessary, the controlling authority shall record his finding as to whether any amount is payable to the applicant under the Act. A copy of the finding shall be given to each of the parties.
6. If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the controlling authority may proceed to hear and determine the application ex parte.
7. If the applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application. Such an order may, on good cause being shown within 30 days of the said order, be reviewed and the application re-heard after giving not less than 14 days' notice to the opposite party of the date fixed for rehearing of the application.
8. The sittings of the controlling authority shall be held at such times and at such places as he may fix and he shall inform the parties of the same in such manner as he thinks fit.
9. The controlling authority may authorize a clerk of his office to administer oaths for the purpose of making affidavits.
10. The controlling authority may, at any stage of the proceedings before him, either upon or without an application by any of the parties involved in the proceedings before him, and on such terms as may appear to the controlling authority just, issue summons to any person in Form 'P' either to give evidence or to produce documents or for both purposes on a specified date, time and place.
11. Any notice, summons, process or order issued by the controlling authority may be served either personally or by registered post acknowledgement due or in any other manner as prescribed under the Code of Civil Procedure, 1908.
12. Where there are numerous persons as parties to any proceeding before the controlling authority and such persons are members of any trade union or association or are represented by an authorized person, the service of notice on the Secretary, or where there is no Secretary, on the principal officer of the trade union or association, or on the authorized person shall be deemed to be service on such persons.
13. If a finding is recorded that the applicant is entitled to payment of gratuity under the Act, the controlling authority shall issue a notice to the employer concerned in Form 'R' specifying the amount payable and directing payment thereof to the applicant under intimation to the controlling authority within thirty days from the date of the receipt of the notice by the employer. A copy of the notice shall be endorsed to the applicant employee, nominee or legal heir, as the case may be.

**Q NO 16. STATE THE POWERS OF THE CONTROLLING AUTHORITY**

**ANSWER**

For the purpose of conducting an inquiry the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, in respect of the following matters, namely: -

1. Enforcing the attendance of any person or examining him on oath;
2. Requiring the discovery and production of documents;
3. Receiving evidence on affidavits;
4. Issuing commission for the examination of witnesses.

**Q NO 17. RECOVERY OF GRATUITY IN CASE OF DEFAULT IN PAYMENT**

**ANSWER**

**RECOVERY OF GRATUITY (SECTION 8)**

1. Where an employer fails to pay the gratuity, the employee/nominee/legal heir, may apply to the controlling authority.
2. On an application made by the aggrieved person the controlling authority issue a certificate for the amount to the Collector, who shall recover the same, together with compound interest thereon at the rate of 9 per cent per annum, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.
3. Before issuing such certificate, the controlling authority shall give the employer an opportunity of being heard

**Q NO 18. WRITE A SHORT NOTE ON APPEAL UNDER PAYMENT OF GRATUITY ACT,1972**

**ANSWER**

1. Any person aggrieved by an order may, within 60 days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.
2. The appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of 60 days, extend the said period by a further period of 60 days.
3. The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

**Q NO 19. DISCUSS PENAL PROVISIONS UNDER PAYMENT OF GRATUITY ACT, 1972**

**ANSWER**

ACT/OMISSION CONSTITUTING AN OFFENCE	PENALTY
1. Any person knowingly, makes any false statement or false representation, for the purpose of avoiding any payment to be made by himself under the act, or of enabling any other person to avoid such payment	Imprisonment up to <u>6 months</u> or fine up to Rs. <u>1000 or both</u>
2. Violation of provisions of this law or rules by employer	Imprisonment of <u>3 months to 1 year</u> and/or fine of <u>Rs. 10,000 to 20,000</u>
3. Nonpayment of gratuity payable under the act	Imprisonment for a term which shall <u>not be less than 3 months</u> unless the court trying the offence, for reasons to be recorded by it in writing is of opinion that a lesser term of imprisonment or the imprisonment is justified.

**Q NO 20. EXPLAIN THE PROVISIONS RELATING TO THE EXEMPTION OF THE EMPLOYER FROM LIABILITY IN CERTAIN CASES**

**ANSWER**

- where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than 3 clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court-
  - That he has used due diligence to enforce the execution of this Act, and
  - That the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;  
In seeking to prove as aforesaid,
- the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor.
- If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding 3 months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

#### **Q NO 21. COGNIZANCE OF OFFENCES**

##### **ANSWER**

##### **COGNIZANCE OF OFFENCES (SECTION 11)**

1. No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government.
2. Where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorize the controlling authority to make a complaint against the employer
3. The controlling authority shall, within 15 days from the date of such authorization, make such complaint to a magistrate having jurisdiction to try the offence.
4. No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

#### **Q NO 22. PROTECTION OF GRATUITY**

##### **ANSWER**

1. Section 13 provides that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.
2. Section 13A provides that notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act 2009 receives the assent of the president, the gratuity shall be payable to an employee in pursuance of this notification of the Government of India in the Ministry of Labor and Employment vide SO 1080 dated the 3rd day of April 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the payment of gratuity (Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly.
3. Nothing contained in this section shall extend or be construed to extend to affect any person with any punishment or penalty whatsoever by reason of the non-employment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.

#### **Q NO 23. DISPLAY OF ABSTRACT OF THE ACTS AND RULES**

##### **ANSWER**

The employer shall display an abstract of the Act and the rules made there under as given in Form 'U' in English and in the language understood by the majority of the employees at conspicuous place at or near the main entrance of the establishment.

## **Q NO 24. MISLLEANEOUS PROVISIONS**

### **ANSWER**

#### **IMPORTANT AMENDMENTS:**

The amendment has increased the ceiling limit of the maximum amount of gratuity payable in 2010. This upper cap prescribed by Section 4(3) of the Act, has been removed. Section 4(5) of the Act prescribes that if the terms of employment contract provide for a higher amount of gratuity over and above the ceiling limit stated in the Act, then the employee will be entitled to such higher amount. This transition has been introduced for the implementation of the 7th Central Pay Commission, whereby the ceiling of gratuity for Central Government employees has been enhanced from Rs.10 lakhs to Rs.20 lakhs. Instead of mentioning and specifying the ceiling amount in Act, the amendment empowers the Central Government to notify the ceiling proposed so that the limit can be revised from time to time keeping in view the increase in wage and inflation, and future Pay Commissions.

Also, the period of maternity leaves for females in continuous service which was twelve weeks under section 2A of the earlier Act, the amendment has modified the maternity leave period from twelve weeks to twenty-six weeks in order to keep the Act in tune with the recently amended Maternity Benefit Act.

#### **EXEMPTION**

Section 5 of the Act gives powers to the appropriate Government to give exemption to any establishment from the purview of this Act, if it is satisfied that the employees in such establishment are in receipt of gratuity or pensionary benefits not less favorable than the benefits covered under this Act.

#### **NOTICE OF OPENINGS, CHANGE AND CLOSURE OF THE ESTABLISHMENT**

Rule 3 provides that within 30 days of the rules becoming applicable to an establishment, a notice in Form A shall be submitted by the employer to the Controlling Authority of the area.

A notice in Form B shall be submitted by the employer to the controlling authority of the area within 30 days of any change in the name, address, employer, or nature of business.

Where an employer intends to close down the business, he shall submit a notice in Form C to the controlling authority of the area at least 60 days before the intended closure.

#### **DISPLAY OF NOTICE**

Rule 4 provides that the employer shall display conspicuously a notice at or near the main entrance of the establishment in bold letters in English and in a language understood by the majority of the employees specifying the name of officer with designation authorized by the employer to receive on his behalf notices under the Act or the rules.



● **Multiple Choice Question:**

- **State TRUE or FALSE**

- SHRESHTA For CA and CMA | SHRESHTA Professional Courses | CMA Inter | P5 BUSINESS LAW AND ETHICS

7. The Controlling Authority may pay the gratuity to a minor, a nominee to receive the gratuity after the death of an employee.
8. For the purpose of calculation of gratuity 26 days are taken as a month.
9. The employer can make agreement with the employer to pay gratuity below the amount fixed by the Act.
10. Gratuity is a lump sum payable on consideration of the past services rendered by the employee.

⊙ **Fill in the blanks**

1. The gratuity is payable to an employee after he has rendered continuous service for not less than \_\_ years.
2. The maximum amount of gratuity payable is.
3. The employer shall arrange to pay gratuity within \_\_ from the date of its becoming payable to the eligible person.
4. Appeal, against the order of the Controlling Authority may be filed within \_\_ days from the date of receipt of the order.
5. If the gratuity is not paid in time the employer is liable to pay interest at \_\_ per annum.
6. Nomination is to be made by an employee in Form \_\_.
7. Gratuity is calculated for every completed year of service or part in excess of six months at the rate of \_\_ wages last drawn.
8. Section 4A may exempt the employer employing \_\_ or more persons who establishes an approved gratuity fund.
9. An employee, within \_\_ of acquiring a family shall submit a fresh nomination.
10. If there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the \_\_.

⊙ **Short Essay Type Questions**

1. Discuss the grounds on which the gratuity may be forfeited.
2. Describe the procedure for mode of payment of gratuity.
3. Write a short on approved gratuity fund.

⊙ **Essay Type Questions**

1. Define 'continuous service'. Elucidate the requirement of minimum no of days for continuous service in respect of regular employment and seasonal employment.
2. Explain the provisions relating to 'nomination'.
3. What are the powers of the Controlling Authority in deciding an application for payment of gratuity?
4. What is the remedy available if the employer rejects the application of an employee for payment of gratuity?
5. Explain the procedure for an employer to determine the gratuity payable to the employee.
6. Explain the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity.
7. Discuss the penal provisions under this Act.

**Answer:**

**Multiple Choice Question:**

1. d; 2. d; 3. c; 4. a; 5. b; 6. b; 7. a; 8. c; 9. b; 10. c.

**State TRUE or FALSE**

1. False; 2. True; 3. True; 4. False; 5. False; 6. True; 7. False; 8. True; 9. False; 10. True.

**Fill in the blanks**

1. 5; 2. Rs.10 lakhs; 3. 30 days; 4. 60 days; 5. 10%; 6. F; 7. 15 days; 8. 500; 9. 90 days; 10. Controlling Authority.

SHRESHTA

# **9. EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952**

## **INTRODUCTION**

1. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation to provide for the institution of Provident Fund, Pension Fund and Deposit Linked Insurance Fund for employees working in factories and other establishments.
2. The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress.
3. The following three schemes have been framed under the Act by the Central Government:
  - i) The Employees' Provident Fund Schemes, 1952;
  - ii) The Employees' Pension Scheme, 1995; and
  - iii) The Employees' Deposit-Linked Insurance Scheme; 1976.
4. The three schemes mentioned above confer significant social security benefits on workers and their dependents.
5. These schemes taken together provide to the employees an old age and survivorship benefits, a long-term protection and security to the employee and after his death to his family members, and timely advances including advances during sickness and for the purchase/ construction of a dwelling house during the period of membership.
6. The Act is now applicable to employees drawing pay not exceeding Rs.15,000 per month. The Act extends to whole of India. The term pay includes basic wages with dearness allowance, retaining allowance (if any), and cash value of food concession.

## **Q NO 1. WHAT ARE THE ENTITIES TO WHICH EPF ACT IS APPLICABLE?**

### **ANSWER**

#### **APPLICABILITY**

Subject to exceptions mentioned in Section 16, this Act applies to-

1. Every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed; and
2. Any other establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf.
3. The Central Government may apply the provisions of this Act to any establishment employing such number of persons less than 20 as may be specified in the notification. Not less than 2 months' notice is to be given by the Central Government to such establishments;
4. Where it appears to the Central Provident Fund Commissioner, that the employer and the majority of the employees have agreed that the provisions of this Act should be made applicable to their establishment, he may, by notification, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement;

5. Once the Act is covered to any establishment it shall continue to apply notwithstanding the number of the persons employed therein shall at any time falls below 20.

**CASE LAW:**

**‘GOODS SHEPHERD PUBLIC SCHOOL V. EPF ORGANIZATION’ – 2014 LLR 611 (DEL HC)** it was held that a school rightly covered under PF when the principal has affirmed about employment of 20 employees.

**‘M/S NASIRUDDIN BEEDI MERCHANT LIMITED V. CPF COMMISSIONER’ – AIR 2001 SC 850**, the Supreme Court held that this Act would apply even in respect of home workers engaged through contractors and cannot be objected any more.

**‘ANNAMMA IYPE V. REGIONAL PROVIDENT FUND COMMISSIONER’ – 1993 LLR 287** it was held that wherein an establishment the strength of the employees at a particular time is below 20, it cannot be contended by the employer that the establishment is no longer within the purview of the Act.

**Q NO 2. STATE THE CLASSES OF ESTABLISHMENTS TO WHICH EPF ACT IS NOT APPLICABLE**

**ANSWER**

**NON-APPLICABILITY OF THE ACT (SECTION 16)**

1. Any establishment registered under the Co-operative Societies Act, 1912 or under any other law for time being in force in any State relating to co-operative Societies, employing less than 50 persons and working without the aid of the power; or
2. Any other establishment belong to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
3. Any other establishment set up under the Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

**Q NO 3. EXPLAIN THE MEANING OF THE FOLLOWING TERMS**

**ANSWER**

**APPROPRIATE GOVERNMENT**

Section 2(a) defines the term ‘appropriate Government’

1. In relation to an establishment belonging to, or under the control of, the Central Government or in relation to an establishment connected with-
  - i) a railway company;
  - ii) a major port;
  - iii) a mine or an oil field; or
  - iv) a controlled industry; or
  - v) in relation to an establishment having departments or branches in more than one State, the appropriate Government is the ‘Central Government’;

2. In relation to any other establishment, the appropriate Government is the 'State Government'.

### **AUTHORIZED OFFICER**

Section 2(aa) defines the term 'authorized officer' as-

1. The Central Provident Fund Commissioner;
2. Additional Central Provident Fund Commissioner;
3. Deputy Provident Fund Commissioner;
4. Regional Provident Fund Commissioner; or

such other officer as may be authorized by the Central Government, by Notification in the Official Gazette.

### **BASIC WAGES**

Section 2(b) defines the term 'basic wages' as all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case, in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include-

1. The cash value of any consideration;
2. Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) house rent allowance, over time allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
3. Any presents made by the employer.

### **CONTRIBUTION**

Section 2(c) defines the term 'contribution' as a contribution payable in respect of a member under a scheme or the contribution payable in respect of an employee to whom the Insurance scheme applies.

### **FUND**

Provident Fund established under the Scheme. [Section 2(h)]

### **EMPLOYER**

Section 2(e) defines the term 'employer' as-

1. In relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory, the person so named; and
2. In relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

## EMPLOYEE

Section 2(f) defines the term 'employee' as any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets, his wages directly or indirectly from the employer, and includes any person-

1. Employed by or through a contractor in or in connection with the work of the establishment;
2. Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 or under the Standing orders of the establishment.
3. **CASE LAW: 'PRAKASH D. SHAH V. UNION OF INDIA'- 2004 LLR 218 (BOM)** the High Court held that a partner of a firm having a status of beneficiary will not be employee either to be covered or counted under the Act.

## FACTORY

Section 2(g) defines the term 'factory' as any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid or power.

## OCCUPIER OF A FACTORY

Section 2(k) defines the term 'occupier of a factory' as

1. The person who has ultimate control over the affairs of a factory, and,
2. where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory.

### CASE LAW:

**'SRIKANTA DUTTA NARASIMHARAVA WODIYAR V. ENFORCEMENT OFFICER, MYSORE'- 1993 LLR 497** it was held that the person who is in charge or responsible for the management or ultimate control over the affairs of the factory or establishment, in the event of entrustment to a managing agent, such managing agent shall also be deemed to be the occupier of the factory.

**'B.K. BASU V. REGIONAL PROVIDENT FUND COMMISSIONER' – 2002 LLJ 512 (CAL)** the High Court held that the clear meaning of the 'occupier' indicates a person, who is in actual possession and control. It may be an individual or a firm. Unless a notice is given, notifying the individual of a firm, all the members of the firm are to be liable.

## Q NO 4. STATE THE SCHEMES PROVIDED IN THIS ACT FOR THE BENEFIT OF EMPLOYEES.

### ANSWER

The Act provides three types of schemes for the benefit of the employees as detailed below-

1. Section 5 – Employees' Provident Fund Schemes;
2. Section 6A – Employees' Pension Scheme;
3. Section 6C – Employees' Deposit Linked Insurance Scheme.

The details of the schemes will be seen. Section 7 gives powers to the Central Government to amend or vary, either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance scheme, as the case may be.

**Q NO 5. WRITE A SHORT NOTE ON EMPLOYEES' PROVIDENT FUND SCHEMES**

**ANSWER**

**EMPLOYEES' PROVIDENT FUND SCHEME (SECTION 5).**

1. The Central Government framed 'The Employees' Provident Fund Scheme, 1952 which came into effect from 2nd September, 1952.
2. The fund shall vest in and be administered by the Central Board constituted under Section 5A of the Act.
3. The scheme framed may provide for all or any of the matters specified in Schedule II.
4. The scheme may provide that any of the provisions shall take effect either prospectively or retrospectively on such date as may be specified in the scheme.

**Q NO 6. WHAT ARE THE SAILENT FEATURES OF THE EMPLOYEE PROVIDENT FUND SCHEMES**

**ANSWER:**

**APPLICABILITY OF THE SCHEME**

1. This scheme shall apply to all factories and other establishments to which the Act applies.
2. This scheme shall not applicable to the tea factories in the State of Assam

**CONTRIBUTIONS (SECTION 6)**

1. The contribution which shall be paid by the employer to the Fund shall be 10%, of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and
2. The employee's contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act.
3. The Government has raised the rate of Provident Fund Contribution from the current 8.33% to 10% in general and in cases of establishments specially notified by the Government, from 10% to 12% with effect from September 22, 1997.
4. Each contribution shall be calculated to the nearest rupee, 50 paise or more to be counted as the next higher rupee and fraction of a rupee less than 50 paise to be ignored.
5. Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working.



6. The Provident Fund Scheme has made the payment of contribution mandatory and the Act provides for no exception under which a specified employer can avoid his mandatory liability.

#### **WAGE LIMIT**

1. Contribution is paid up to a maximum of Rs.15,000 by employer and employee with effect from 01.09.2014.
2. To pay a contribution on higher wages, a joint request from employee and employer is required. In such case the employer has to pay administrative charges on the higher wages.
3. For the international worker wage ceiling of Rs.15,000 is not applicable.

#### **WITHDRAWAL FROM THE FUND**

Withdrawal from the fund is allowed for the following purposes-

1. For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose;
2. For repayment of loans in special cases;
3. Withdrawal within one year before the retirement;
4. Withdrawal upto 75% of the balance, if not employed from one month or more, subject to approval of P.F.Commissioner or any officer authorized by him.

Such withdrawals are not required to be repaid.

#### **ADVANCES FROM THE FUND**

Advances from the fund are paid for the following purposes-

1. For illness in certain cases;
2. For marriages or post matriculation education of children;
3. In abnormal conditions such as calamity of exceptional nature such as flood, earthquakes or riots – (non- refundable)
4. Granted to members affected by cut in the supply of electricity; (non-refundable)
5. Grant of advance to members who are physically handicapped; (non-refundable)

#### **Q NO 7. EXPLAIN THE PROVISIONS OF EPF ACT RELATING TO 'EMPLOYEES' PENSION SCHEME' AND ITS SALIENT FEATURES**

##### **ANSWER**

##### **EMPLOYEES PENSION SCHEME (SECTION 6A)**

The Central Government framed 'Employees' Pension Scheme, 1995' for the purpose of providing for-

1. Superannuation pension;
2. Retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and

3. Widow or widower's pension;
4. Children pension or orphan pension payable to the beneficiaries of such employees.

The Pension Scheme may provide for all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that scheme.

#### **SAILENT FEATURES OF THE EMPLOYEES PENSION SCHEME:**

##### **CONTRIBUTION**

1. There is no contribution from the employee.
2. The employer is to contribute 8.33% of the basic wages, dearness allowance and retaining allowance, if any of the concerned employees as may be specified in the pension scheme.
3. Contribution is not payable when the employee crosses 58 years of age since the scheme ceases on completion of 58 years

##### **PENSION FUND**

A pension fund has been created for the purpose of this scheme. The Pension Fund shall vest in and administered by the Central Board. The pension scheme may provide for all or any of the matters in Schedule II, as detailed below-

1. The employees or class of employees to whom the Pension scheme shall apply;
2. The portion of employers' contribution to the Provident Fund which shall be entitled to the Pension Fund and the manner in which it is credited;
3. The minimum qualifying service for being eligible for pension and the manner in which the employees may be granted the benefits of their past service;
4. The regulation of the manner in which and the period of service, for which no contribution is received;
5. The manner in which the employees' interest will be protected against default in payment of contribution by the employer;
6. The manner in which the accounts of the Pension fund shall be kept and investment of moneys belonging to Pension Fund to be made subject to such pattern of investment as may be determined by Central Government;
7. The form in which an employee shall furnish particulars about himself and the members of his family whenever required;
8. The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme;
9. The scale of pension and pensionary benefits and the conditions relating to the grant of such benefits to the employees;
10. The manner in which the exempted establishments have to pay contribution towards the pension scheme and the submission of returns relating thereto;
11. The mode of disbursement of pension and arrangements to be entered into with such disbursing agencies as may be specified for the purpose;
12. The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund;

13. Any other matter which is to be provided for in the Pension Scheme or which may be necessary for the purpose of implementation of the Pension Scheme.

**Q NO 8. WRITE ABOUT EMPLOYEES' DEPOSIT LINKED INSURANCE SCHEME- SECTION 6C**

**ANSWER**

**EMPLOYEES DEPOSIT LINKED INSURANCE SCHEME (SECTION 6C)**

1. The Central Government made the Employees' Deposit Linked Insurance Scheme, 1976 which came into effect from 01.09.1976.
2. It applies to all factories and other establishments to which the Act applies except tea factories in State of Assam.
3. The wage ceiling limit under Employees Deposit linked Insurance Scheme has been increased from Rs.6,500 to Rs.15,000.
4. The insurance benefit under the scheme shall be an amount between 2.5 lakhs and 6 lakhs.

**CONTRIBUTION**

1. The Deposit Linked Insurance Fund has been created for this purpose.
2. In this Fund the employer shall pay such amount not being more than 1% of the aggregate of basic wages, dearness allowance and retaining allowance of every such employee in relation to whom he is the employer.
3. The employer shall pay into the Insurance Fund such further amount of money not exceeding one fourth of the contribution which is required to make as the Central Government may from time to time determine to meet all the expenses in connection with the administration of the scheme other than the expenses towards the cost of any benefits provided by or under that scheme.
4. Where the monthly pay of an employee exceeds Rs.15,000 the contribution payable is restricted to the amounts payable on a monthly pay of Rs.15,000, dearness allowance, retaining allowance and cash value of food concession.

**Q NO 9. STATE THE COMPOSITION OF CENTRAL BOARD AS PROVIDED UNDER THE PROVISIONS OF EPF ACT**

**ANSWER**

**CENTRAL BOARD (SECTION 5A)**

1. The establishment of Central Board by the Central Government. The Board consists of a chairman and a Vice Chairman to be appointed by the Central Government.
2. The Central Provident Fund Commissioner is ex officio.
3. Members to this Board are being appointed by the Central Government as per the provisions contained in Section 5A.

## SECTION 5AA

The appointment of the Executive by the Central Government to assist the Central Board in the **Performance of its functions. The members of the Executive Committee are appointed by The Central Government**

## STATE BOARD (SECTION 5B)

It gives powers to the Central Government, in consultation with the Government of any State, constitutes for that State, a Board of Trustees to exercise such powers and perform such duties as the Central Government may assign to it from time to time.

## Q NO 10. DETERMINATION OF MONEYS DUE FROM EMPLOYERS

### ANSWER

## DETERMINATION OF MONEYS DUE FROM EMPLOYEES (SECTION 7A)

1. In case where a dispute arises regarding the applicability of this Act to an establishment, the Authority concerned may conduct such enquiry as he may deem necessary decide such dispute and determine the amount due from any employer under the provision of this Act, the scheme or the Pension Scheme or the Insurance Scheme as the case may be.
2. Before passing such order, the employer concerned shall be given a reasonable opportunity of representing his case.
3. For the purpose of conducting inquiry the Authority shall have the same powers as are vested in a court under CPC for trying a suit in respect of the following matters-
  - i) enforcing the attendance of any person or examining him on oath;
  - ii) requiring the discovery and production of documents;
  - iii) receiving evidence on affidavit;
  - iv) Issuing commissions for the examination of witnesses.
4. Where the employer, employee or any other person required to attend the inquiry, fails to attend such inquiry, the Authority shall decide the case ex-parte and pass orders based on the available documents put forth before him.
5. The employer, within 3 months from the date of communication of such order, may apply to the Authority to set aside the ex-parte order showing that there are sufficient causes for not enabling him to attend the hearing on the prescribed date. If the Authority is satisfied, he may set aside the ex-parte order and shall appoint a date for proceeding with the inquiry.
6. **CASE LAW: 'S.K. NASIRUDDIN BEEDI MERCHANT LIMITED V. CENTRAL PROVIDENT FUND COMMISSIONER' – AIR 2001 SC 850** it was held that the applicability of the Act to any class of employees is not determined and decided by any proceeding under Section 7A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under Section 7A of the Act is only determination of quantification of the same.

#### Q NO 11. REVIEW OF ORDER UNDER SECTION 7A OF EPF ACT

##### ANSWER

1. Any person aggrieved by an order under Section 7A may apply for a review of that order to the Officer who passed the order, if he-
  - i) Discovered new and important matter of evidence which after the exercise of due diligence was not within his knowledge; or
  - ii) Could not be produced by him at the time when the order was made; or
  - iii) On account of some mistake; or
  - iv) Error apparent on the face of the record; or
  - v) For any other sufficient reason.
2. Officer may also on his own motion review his order if he is satisfied that it is necessary so to do any such ground.
3. Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application. Where the officer is of opinion that the application for review should be granted, he shall grant the same.
4. **CASE LAW: 'BALU FIRE CLAY MINES V. UNION OF INDIA' – 2003 LLR 578** it was held that review is a statutory remedy. A review petitioner should also be disposed of by a speaking order.

#### Q NO 12. DETERMINATION OF ESCAPED AMOUNT UNDER EPF & MP ACT 1952

##### ANSWER

1. Section 7C provides that the officer can re-open the case within 5 years from the date of order passed under Section 7A or Section 7B if he has reason to believe that by reason of omission or failure on the part of the employer to make any document or report available, or to disclose fully and truly all material facts any amount so due from such employer for any period has escaped his notice.
2. The Officer may pass appropriate orders re- determining the amount due from the employer in accordance with the provisions of this Act.

#### Q NO 13. EPF APPELLATE TRIBUNAL

##### ANSWER

##### **EPF APPELLATE TRIBUNAL (SECTION 7D)**

1. The appointment of EPF Appellate Tribunal to hear the appeal against the order passed by the Central Government or any authority under Section 7A or 7B or 7C.
2. The Appellate Tribunal may, after giving reasonable opportunities to the parties decided the appeal either confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the Tribunal may think fit.

3. The Tribunal may rectify any mistake apparent from the record within 5 years from the date of its appeal order.
4. No appeal by the employer shall be entertained unless he has deposited with it 75% of the amount due from him. The Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

#### **Q NO 14. PROTECTION AGAINST ATTACHMENT UNDER EPF & MP ACT, 1952**

##### **ANSWER**

##### **PROTECTION AGAINST ATTACHMENT SECTION 10**

1. The amount standing to the credit of any member of the Fund shall not be:
  - i) Assigned or
  - ii) Charged and
  - iii) Liable to attachment under any decree or any court in respect of any debt or liability incurred by the member and
  - iv) Claimed by the Official assignee or any receiver

#### **Q NO 15. EMPLOYER NOT TO REDUCE WAGES**

##### **ANSWER**

##### **EMPLOYER NOT TO REDUCE WAGES (SECTION 12)**

No employer in relation to an establishment to which any scheme or the insurance scheme applies shall, by reason only of his liability for the payment of any contribution to the fund or any charges or the scheme or the insurance scheme, reduce, whether directly or indirectly, the wages of any employee to whom they apply.

#### **Q NO 16. TRANSFER OF ACCOUNTS FROM EMPLOYER TO ANOTHER EMPLOYER UNDER EPF & MP ACT 1952**

##### **ANSWER**

##### **TRANSFER OF ACCOUNTS (SECTION 17A)**

where an employee employed in an establishment to which the Act applies, leaves his employment and obtains re-employment in other establishment to which this Act does not apply, the amount of accumulations to the credit of such employee shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules, in relation, to that provident fund permit such transfer.

#### Q NO 17. STATE THE PENAL PROVISIONS UNDER EPF & MP ACT 1952

##### ANSWER

1. Section 14(1) provides that for the purpose of avoiding any payment whoever knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to 1 year, or with fine of Rs.5,000 or with both.
2. Section 14(1A) provides that an employer, who contravenes or makes default in complying with the provisions of Section 6 as it relates to the payment of inspection charges, administrative charges shall be punishable with imprisonment for a term which may extend to 3 years but-
  - i) Which shall not be less than 1 year and fine of Rs.10,000 in case of default of payment of the employees' contribution;
  - ii) Which shall not be less than 6 months and a fine of Rs.5,000 in any other case.
3. Section 14(1B) provides that an employer who contravenes or makes default in complying with the provisions of Section 6C in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to 1 year but which shall not be less than 6 months and shall also be liable to fine which may extend to Rs.5,000.
4. Section 14(2) provides that subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance scheme may provide that any person who contravenes or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to Rs.4,000 or with both.
5. Section 14(3) provides that whoever, contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted shall, if no other penalty is elsewhere provided by or under this Act for such contravention or noncompliance, be punishable with imprisonment which may extend to 6 months but which shall not be less than 1 month and shall be liable to fine which may extend to Rs.5,000.

#### Q NO 18. OFFENCES BY COMPANIES

##### ANSWER

1. Section 14A (1) provides that if the person committing an offence under this Act, the Scheme etc., is a company, every person who at the time of the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
2. Nothing contained in this section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.
3. Section 14A(2) provides that where an offence under the Act, the scheme or the pension scheme or the Insurance scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect

on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## EXERCISE

### ⊙ Multiple Choice Question:

1. Which one of the following will not include in the definition of basic wages?
  - a) Dearness allowance;
  - b) Overtime;
  - c) Cash value for consideration;
  - d) All the above.
2. The contribution of employer to insurance fund is-
  - a) 1%
  - b) 10%
  - c) 12%
  - d) None of the above.
3. Contribution of 10% to PF is applicable to-
  - a) Any establishment in which less
  - b) Any establishment declared as sick than 20 employees are employed; industrial company;
  - c) Jute company;
  - d) All of the above.
4. The minimum administrative charge payable by the employer to the fund is-
  - a) Rs.75
  - b) Rs.500
  - c) Rs.1,000
  - d) None of the above
5. The maximum penalty recoverable from the employer who makes the default in payment of any contribution to the fund is-
  - a) 5%
  - b) 10%
  - c) 15%
  - d) 25%
6. Withdrawal from PF may be allowed for-
  - a) Marriage of the employer;
  - b) Post matriculation education of children;
  - c) For the purchase of a dwelling place;
  - d) For illness in certain cases.
7. The Employees Pension Scheme provides for-
  - a) Superannuation pension;
  - b) Orphanage pension;
  - c) Both (a) and (b);
  - d) None of (a) or (b).
8. Contribution of the employer to employees' pension scheme is-
  - a) 8.33%
  - b) 10%
  - c) 12%
  - d) None of the above.
9. The following cannot be nominated for the purposes of EPF Act-
  - a) Wife;
  - b) Sons of a deceased sons who have attained majority;
  - c) Father in law;
  - d) Unmarried daughter.
10. While filing appeal to EPF Appellate Tribunal the employer has to deposit of the amount due from him.
  - a) 25%
  - b) 50%
  - c) 75%
  - d) None of the above.



⊙ **State TRUE or FALSE**

1. Once the EPF Act is covered to any establishment it shall continue to apply notwithstanding the number of persons employed shall at any time false below 20.
2. The wage limit Rs.15,000 is applicable for the contribution to the Fund in respect of international workers.
3. The employer cannot reduce wages of the employee to avoid his liability under the Act.
4. If an employee is transferred from one employment to another, the balance at his credit in his PF Account cannot be transferred to the new establishment.
5. The Central Government may add to amend or vary either prospectively or retrospectively, the scheme, Pension Scheme or the Insurance Scheme.
6. Where the pay of an employee exceeds Rs.15,000 the contribution to insurance scheme is restricted to Rs.15,000.
7. Contribution to pension scheme is recoverable when the employee crosses 58 years of age.
8. The employer shall in the first instance pay the contribution payable by himself and also on behalf of the member employed by him through a contractor.
9. The PF scheme is applicable to the tea factories in the State of Assam.
10. The EPF Act is applicable to any establishment registered under the Co-Operative Societies Act, 1912.

⊙ **Fill in the blanks**

1. EPF Act is applicable to every establishment employing or more persons.
2. The contribution or employer to the Fund is of basic wages, dearness allowance and retaining allowance, if any.
3. The Pension fund is administered by the .
4. The Employee's Deposit Linked Insurance Scheme, 1976 came into effect from \_\_\_\_\_.
5. The contribution to insurance fund is to be remitted by the employer within \_\_\_\_\_ days of the close of the month.
6. The wage limit contribution under the scheme has been fixed at `15,000 with effect from \_\_\_\_\_.
7. The Central Government may give exemption to any establishment considering its \_\_\_\_\_.
8. Contribution to EPF is payable by and \_\_\_\_\_.
9. \_\_\_\_\_ is not covered under the EPF Act.
10. Section 5AA provides for the appointment of \_\_\_\_\_ by the Central Government to assistant the Central Board in the performance of its functions.

⊙ **Short Essay Type Questions**

1. What are the schemes available in the EPF Act?
2. Narrate the features of Employees' Pension Scheme.
3. Short notes on -
  - (a) Appropriate Government
  - (b) Employee
  - (c) EPF Appellate Tribunal

### ● Essay Type Questions

1. What are the consequences if an employer makes default in the payment of any contribution to the Fund?
2. Under what circumstances advances can be received by employer from the PF Fund?
3. Discuss the matters provided for the insurance fund under the Schedule.
4. How the money due from employers is determined in respect of PF, pension scheme or the insurance scheme?
5. Explain the provisions relating to EPF Appellate Tribunal.
6. Discuss the procedure involved in review of order of the officer passed under Section 7A of the Act.
7. Describe the procedure for the payment of assured benefits in case of no nomination is filed by the employee.

**Answer:**

### **Multiple Choice Question:**

1. d; 2. a; 3. d; 4. b; 5. d; 6. c; 7. c; 8. a; 9. b; 10. c.

### **State TRUE or FALSE**

1. True; 2. False; 3. True; 4. False; 5. True; 6. True; 7. False; 8. True; 9. False; 10. False.

### **Fill in the blanks**

1. 20; 2. 10%; 3. Central Board; 4. 01.09.1976; 5. 15; 6. 01.09.2014; 7. Financial position; 8. Employer, employee; 9. Apprentice; 10. Executive Committee.

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

## **Q NO 1. STATE THE COMMENCEMENT AND OBJECT OF THE ACT**

### **ANSWER**

1. The Employees' State Insurance Act, 1948 is the first major legislation on social security for the employees in India.
2. It is devised to provide social protection to employees in contingencies such as illness, long term sickness or any other health risks due to exposure to employment injury or occupational hazards.
3. The medical facilities are also made available to legal dependents of the employees who are insured person. This facility is also extended to retired persons also.

#### **4. OBJECT OF THE ACT**

The object of the Act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

## **Q NO 2. STATE THE APPLICABILITY OF THE ACT**

### **ANSWER**

This Act extends to whole of India. This Act applies to-

1. In the first instance applicable to all factories, including factories belonging to the Government, other than season factories;
2. The appropriate Government may, in consultation with the corporation and where the appropriate Government is a State Government, with the approval of Central Government, after giving 1 month's notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or classes of establishments, industrial, commercial, agricultural or otherwise;
3. A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.
4. The Central Government has since prescribed the wage limit for coverage of an employee under Section 2(9) of the Act, as Rs.21,000 per month.
5. Further it is provided that an employee whose wages (excluding remuneration for overtime work) exceeds Rs.21,000 a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of the said period.

#### **6. CASE LAW:**

**'EMPLOYEES' STATE INSURANCE CORPORATION V. PREMLAL' – 2009 LLR 282 (KER HC)** it was held that ESI scheme will be applicable to establishment preparing sweets with the aid of LPG.

**‘EMPLOYEES STATE INSURANCE CORPORATION, ORISSA REGION V. GUJARAT CO-OPERATIVE MILK MARKETING FEDERATION LIMITED’ – 2009 LLR 615 (ORI.HC)** it was held that in the absence of required number of employees in Milk Federation, ESI Act could not be extended upon it.

**‘KURIACOSE V. EMPLOYEES’ STATE INSURANCE CORPORATION’ – (1988) 2 CLR 301 (KER)** it was held that once the Act has become applicable to a factory or an establishment, its application will be continuous.

### **Q NO 3. IMPORTANT DEFINITIONS UNDER EMPLOYEES STATE INSURANCE ACT, 1948**

#### **ANSWER**

#### **APPROPRIATE GOVERNMENT**

Section 2(1) defines the term ‘appropriate Government’, in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.

#### **CONFINEMENT**

Section 2(3) defines the term ‘confinement’ as labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of a child, whether alive or dead.

#### **DEPENDANT**

Section 2(6A) defines the term ‘dependant’ as any of the following of a deceased insured person:

1. A widow, a legitimate or adopted son who has not attained the age of 25 years, an unmarried legitimate or adopted daughter;
2. A widowed mother;
3. If wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;
4. If wholly or in part dependant on the earnings of the insured person at the time of his death-
  - i) a parent other a widowed mother;
  - ii) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor;
5. A minor brother or an unmarried sister or a widowed sister if a minor;
6. A widowed daughter-in-law;
7. A minor child of a pre-deceased son;
8. A minor child of a pre-deceased daughter where no parent of the child is alive; or
9. A paternal grand-parent if no parent of the insured person is alive.

#### **EMPLOYMENT INJURY**

Section 2(8) defines the term ‘employment injury’ as a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of employment, being an insurable employment, whether the accident occurs or the occupation disease is contracted within or outside the territorial limits of India.

## EMPLOYEE

Section 2(9) defines the term 'employee' as any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and-

1. Who is directly employed by the principal employer, on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
2. Who is employed by or through an immediate employer, on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
3. whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;
4. Includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the productions of, the factory or establishment or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 and includes such person engaged as apprentice whose training period is extended to any length of time but does not include-
  - i) any member of the Indian naval, military or air forces; or
  - ii) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government provided that an employee whose wages as may be prescribed by the Central Government at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

### 5. CASE LAW:

**'DIRECTOR, HASSAN CO-OPERATIVE MILK PRODUCER'S SOCIETY UNION LIMITED V. ASSISTANT REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION' AIR 2010 SC 2109** it was held that merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be an 'employee'; he must not only be employed in connection with the work of the establishment but also be shown to be employed in or other of the three categories mentioned in Section 2(9) of the Act.

**'EMPLOYEES' STATE INSURANCE CORPORATION V. TATA ENGINEERING & LOCOMOTIVE CO., LIMITED' – AIR 1976 SC 66** it was held that an apprentice who is mere trainee for a distinct purpose is not an employee.

**'REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION V. RAMANUJA MATCH INDUSTRIES' – AIR 1985 SC 278** it was held that a partner is not an employee.

### THE FOLLOWING CATEGORIES ARE COMING UNDER THE PURVIEW OF THE TERM 'EMPLOYEE'-

1. Canteen workers – **EMPLOYEES STATE INSURANCE CORPORATION V. SHRI RAM CHEMICAL INDUSTRIES' – (1978) 2 LLN 227 (RAJ);**
2. Employees who are working in a show room or sales office – **'BHOPAL MOTORS PRIVATE LIMITED V. EMPLOYEES' STATE INSURANCE CORPORATION' – (1982) 2 LLN 827 (MP);**

3. Workers rendering services outside the place of establishment or shop – ‘**HINDU JEA BAND V. REGIONAL DIRECTOR, EMPLOYEES’ STATE INSURANCE CORPORATION**’ – 1986 LLR 95;
4. Part time employees employed on daily rate basis – ‘**HINDU JEA BAND**’ (SUPRA);
5. Casual workers – ‘**REGIONAL DIRECTOR, EMPLOYEES’ STATE INSURANCE CORPORATION V. SOUTH INDIA FLOUR MILL (PVT) LIMITED**’ – AIR 1986 SC 1686;

## **FAMILY**

Section 2(11) defines the term ‘family’ as all or any of the following relatives of an insured person-

1. A spouse;
2. A minor legitimate or adopted child dependent upon the insured person;
3. A child who is wholly dependent on the earnings of the insured person and who is-
  - i) receiving education, till he or she attains the age of 21 years;
  - ii) an unmarried daughter;
4. A child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;
5. Dependent parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government;
6. In case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependent upon the earnings of the insured person.

## **FACTORY**

Section 2(12) defines the term ‘factory’ as any premises including the precincts thereof whereon 10 or more persons are employed or were employed on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

## **IMMEDIATE EMPLOYER**

Section 2(13) defines the terms ‘immediate employer’ in relation to employees employed by or through him, as a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent on hire to the principal employer and includes a contractor.

**CASE LAW: ‘EMPLOYEES’ STATE INSURANCE CORPORATION V. T. SHANKAR SINGH T. BYALI’ – (1988) 92 FJR 645 (KAR)** it was held that a person will be the immediate employer and not the principal employer even if the employees have been employed by him, if he supplied services to a factory or establishment.

## INSURED PERSON

Section 2(14) defines the term 'insured person' as a person who is or was an employee in respect of whom contributions are or were payable under the Act and who is by reason thereof, entitled to any of the benefits provided by this Act.

## PERMANENT PARTIAL DISABLEMENT

1. Section 2(15A) defines the expression 'permanent partial disablement' as such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement.
2. Every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement.

## PERMANENT TOTAL DISABLEMENT

1. Section 2(15B) defines the expression 'permanent total disablement' as such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident in such disablement.
2. The permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100% or more.

## PRINCIPAL EMPLOYER

Section 2(17) defines the term 'principal employer' as-

1. In a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;
2. In any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department;
3. In any other establishment, any person responsible for the supervision and control of the establishment.

## SEASONAL FACTORY

Section 2(19A) defines the term 'Seasonal factory' as a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortications of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding 7 months in a year-

1. In any process of blending, packing or repacking of tea or coffee; or
2. In such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify.

### TEMPORARY DISABLEMENT

Section 2(21) defines the term 'temporary disablement' as a condition resulting from an employment which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury.

### WAGES

Section 2(22) defines the term 'wages' as all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but not include-

1. Any contribution paid by the employer to any pension fund or provident fund, or under this Act;
2. Any travelling allowance or the value of any travelling concession;
3. Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
4. Any gratuity payable on discharge.

**CASE LAW: 'REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION' – 1994 LLR 1 (SC)** it was held that bonus or ex-gratia amount is not 'wages'. The following are treated as wages-

1. LIC Premium subsidy;
2. House rent allowance, heat, gas and dust allowance and incentive allowance;
3. Incentive bonus
4. Over time allowance;

**Q NO 4. WHAT IS EMPLOYEES' STATE INSURANCE FUND? WHAT ARE THE PURPOSES FOR WHICH FUND MAY BE EXPENDED**

### ANSWER

1. Section 26 of the Act provides for the creation of Employees' State Insurance Fund held and administered by the Corporation.
2. All contributions paid under this Act and all other moneys received on behalf of the corporation shall be paid into this fund.
3. The grants, donations and gifts received from the Central Government or any State Government, local authority or any individual or body whether incorporated or not, are also paid into this Fund.



## PURPOSES FOR WHICH THE FUND MAY BE EXPENDED

Section 28 of the Act provides the Central Government may utilize the State Insurance Fund only for the following purposes:

1. Payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;
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, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;
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, where the medical benefit is extended to their families;
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, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
6. Defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
7. Defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;
8. Payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;
9. Payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;
10. Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
11. Defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
12. Such other purposes as may be authorized by the Corporation with the previous approval of the Central Government.

## Q NO 5. WHAT ARE THE PROVISIONS RELATED TO THE CONTRIBUTIONS MADE UNDER THIS ACT

### ANSWER

1. The contribution payable under this Act is of two types –
  - i) one is the contribution of the employer and
  - ii) the other is the contribution of the employee which is recovered from his wages and remitted to the Fund.
  - iii) The present rate contribution is 3.25% and 0.75% of workers' wages by employers and employees respectively.
2. Contribution against employee must be deposited within due date. One shall not be able to deposit contribution online after 42 days from the end date of the contribution period.
3. Employee whose salary per day is Rs.176 or less need not to pay Employee's contribution and the same will be paid by the Govt. However, employer will have to pay their share of contribution.
4. The employer is required to file monthly contributions online through ESIC portal on a monthly basis in respect of all its employees after duly registering them.
5. Through this, the employer has to file employee wise number of days for which wages paid and the amount of the wages paid respectively to ascertain the amount of contributions payable.
6. The total amount of contribution, both by the employer and the employee, for each month is to be deposited in any branch of SBI in cash or by cheque or demand draft on generation of such a challan through ESIC portal using credentials. The contributions can also be paid through SBI internet banking.

### **PRINCIPAL EMPLOYER TO PAY CONTRIBUTION IN THE FIRST INSTANCE**

1. Section 40(1) provides that the principal employer shall pay in respect of all employer, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.
2. Section 40(4) provides that any sum deducted by the principal employer from wages shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted. The principal employer shall bear the expenses of remitting the contributions to the corporation.

### **RECOVERY OF CONTRIBUTION FROM IMMEDIATE EMPLOYER**

1. Section 41 provides that a principal employer, who has paid contribution in respect of an employee employed through an immediate employer, shall be entitled to recover the amount of the contribution so paid from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract or as a debt payable by the immediate employer.
2. The immediate employer shall maintain a register of employees employed by or through him and submit the same to the principal employer before the settlement of any amount payable by him.

## METHOD OF PAYMENT OF CONTRIBUTION

Section 43 provides that the Corporation may make regulations for payment and collection of contributions payable. Such regulations may provide for-

1. The manner and time of payment of contributions;
2. The payment of contributions by means of adhesive or other stamps affixed to or impressed upon books, card or otherwise and regulating the manner, times and conditions, in, at and under which, such stamps are to be affixed or impressed;
3. The date of which evidence of contributions have been paid is to be received by the Corporation;
4. The entry in or upon books or cards of particulars of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards relate; and
5. The issue, sale, custody, production, inspection and delivery of books or card and the replacement of books or cards which have been lost, destroyed or defaced.

## Q NO 6. STATE THE METHOD OF RECOVERY OF CONTRIBUTION FROM THE EMPLOYER

### ANSWER

**Section 45B** provides that any contribution payable under this Act may be recovered as an arrear of land revenue.

**Section 45C** provides that the authorized officer may issue certificate to Recovery Officer, who in turn proceed to recover the amount by one or more of the modes mentioned below-

1. Attachment and sale of moveable or immovable property of the factory or establishment or, as the case may be, the principal, or immediate employer;
2. Arrest of the employer and his detention in prison;
3. Approving a receiver for the management of the movable or immovable properties of the factory or establishment or, as the case may be, the employer.

The attachment shall first be effected against the properties of the factory or the establishment and such attachment and sale is insufficient for recovering the whole of the amount of arrears, the Recovery Officer may take such proceedings against the property of the employer.

## Q NO 7. WHAT ARE THE BENEFITS AVAILABLE UNDER THIS ACT

### ANSWER

#### **BENEFITS (SECTION 46)**

1. Periodical payments to any insured person in case of his sickness;
2. Periodical payments to an insured woman in case of confinement or mis-carriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage;
3. Periodical payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee;
4. Periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee;

5. Medical treatment for and attendance on insured persons;
6. Payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.

The amount of such payment shall not exceed such amount as may be prescribed by the Central Government. The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.

### **BAR AGAINST RECEIVING COMPENSATION UNDER ANY OTHER LAW**

Section 53 provides that an insured person or his dependants shall not be entitled to receive or recover, whether from the employer or from any other person, any compensation or damages under the Workmen Compensation Act, 1923 or any other law for the time being in force or otherwise in respect of an employment injury sustained by the insured person as an employee.

### **MEDICAL BENEFIT (SECTION 56)**

1. An insured person or a member of his family whose condition requires medical treatment and attendance shall be entitled to receive medical benefits.
2. Such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.
3. A person shall be entitled to medical benefit during any period for which contributions are payable in respect of him or which he is qualified to claim sickness benefit or maternity benefit or is in receipt of such disablement benefit as does not disentitle him to medical benefit under the regulations.

### **ESTABLISHMENT OF HOSPITAL BY CORPORATION**

Section 59 provides that the Corporation may, with the approval of the State Government, establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of insured persons and their families.

### **BENEFITS NOT ASSIGNABLE**

Section 60 provides that the right to receive any payment or any benefit under this Act shall not be transferable or assignable.

### **BENEFITS NOT TO BE COMBINED**

Section 65 provides that an insured person shall not be entitled to receive for the same period-

1. Both sickness benefit and maternity benefit; or

2. Both sickness benefit and disablement benefit for temporary disablement; or
3. Both maternity benefit and disablement benefit for temporary disablement.

Where a person is entitled to more than one of the benefits, he shall be entitled to choose which benefit he shall receive.

#### **REPAYMENT OF BENEFIT IMPROPERLY RECEIVED**

Section 70 provides that where any person has received any benefit or payment under this Act when he is now lawfully entitled to receive the same, he shall be liable to the Corporation the value of the benefit or the amount of such payment, or in the case of his death his representative shall be liable to repay the same from the assets of the deceased, if any, in his hands. The amount recoverable may be recovered as if it were an arrear of land revenue or by the Recovery Officer.

#### **EMPLOYER NOT TO REDUCE WAGES ETC.**

Section 72 provides that no employer by reason only of his liability for any contributions payable under this Act shall, directly or indirectly reduce the wages of any employee, or except as provided by the regulations discontinue or reduce benefits payable to him under the conditions of his service, which are similar to the benefits conferred by this Act.

#### **EMPLOYER NOT TO DISMISS OR PUNISH THE EMPLOYEE DURING SICKNESS ETC.**

Section 73 provides that no employer shall dismiss, discharge or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit or maternity benefit, nor shall be, except as provided under the regulations, dismiss, discharge or reduce or otherwise punish an employee during the period which he is in receipt of disablement benefit for temporary disablement or is under medical treatment for sickness or is absent from work as a result of illness duly certified in accordance with the regulations to arise out of the pregnancy or confinement rendering the employee unfit for work.

#### **ADMINISTRATION OF ESI SCHEME**



**Q NO 8. STATE THE PROVISIONS RELATED TO EMPLOYEES STATE INSURANCE CORPORATION.**

#### **ANSWER**

##### **1. EMPLOYEES' STATE INSURANCE CORPORATION (SECTION 3)**

- i) This corporation is formed with effect from 01.10.1948.

- ii) The employee state insurance scheme is managed by employee's state insurance corporation.
- iii) The Corporation is a body corporate having perpetual succession and a common seal and shall by the said name sue and be sued.

## **2. CONSTITUTION OF CORPORATION (SECTION 4)**

The Corporation shall consist of a Chairman, a Vice Chairman and other members representing the interests of employers, employees, state governments, union territories and medical professions. Three members of the Parliament and the Director General of the Corporation are its ex-officio members.

## **3. TERM OF OFFICE OF MEMBERS OF CORPORATION (SECTION 5).**

## **4. ELIGIBILITY FOR RE-NOMINATION OR RE-ELECTION (SECTION 6)**

All orders and decisions of the Corporation shall be authenticated by the signature of the Director General.4e0078ds4

## **REGIONAL BOARDS**

Section 25 provides that 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 such powers and functions, as may be provided by the regulations.

Other bodies of Corporation Standing Committee

## **Q NO 9. STATE THE PROVISIONS AND CONSTITUTION OF THE STANDING COMMITTEE**

### **ANSWER**

Section 8 of the Act provides for the constitution of Standing Committee which shall be constituted from among its members consisting of-

1. A chairman;
2. 3 members of the Corporation;
3. 3 members of the Corporation representing such three State Governments;
4. 8 members elected by Corporation –
  - i) 3 members from among the members of the Corporation representing employers;
  - ii) 3 members from among the members of the Corporation representing employees;
  - iii) 1 member from among the members of the Corporation representing medical profession;  
and
  - iv) 1 member from among the members of the Corporation elected by Parliament.
  - v) the Director General of the Corporation, ex-officio.

## **TERM OF OFFICE (SECTION 9)**

The term of office of a member of the Standing Committee shall be 2 years from the date on which his election is notified. A member of the Standing Committee shall cease to hold office when he ceases to be a member of the Corporation.

## POWERS OF THE STANDING COMMITTEE (SECTION 18)

1. Subject to the general superintendence and control of the Corporation, the Standing Committee shall administer the affairs of the Corporation and may exercise any of the powers and perform any of the functions of the Corporation.
2. 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.
3. The Standing Committee may, in its discretion, submit any other case or matter for the decision of the Corporation.

## MEETINGS OF STANDING COMMITTEE, CORPORATION AND MEDICAL BENEFIT COUNCIL

Section 20 of the Act provides that the Standing Committee shall meet at such times and places and shall observe such rules or procedure in regard to transaction of business at their meetings as may be specified in the regulations made in this behalf.

## SUPERSESION OF THE CORPORATION AND STANDING COMMITTEE (SECTION 21)

1. If in the opinion of the Central Government, the Corporation or the Standing Committee persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, that Government may, by notification in the Official Gazette, supersede the Standing Committee in consultation with the Standing Committee.
2. Before issuing a notification, the Standing Committee shall be given a reasonable opportunity to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Standing Committee.
3. On such superseding all the members shall be deemed to vacate their office. A new Standing Committee shall be immediately constituted.

## Q NO 10. WRITE A SHORT NOTE ON MEDICAL BENEFIT COUNCIL

### ANSWER

#### MEDICAL BENEFIT COUNCIL (SECTION 10)

Section 10 provides for the constitution of Medical Benefit Council consisting of-

1. The Director General of ESI, ex-officio – Chairman;
2. The Director General, Health Services, ex-officio – Co-Chairman;
3. The Medical Commissioner of the Corporation – ex-officio;
4. One member each representing each state other than Union territories;
5. Three members representing employers;
6. Three members representing employees;
7. Three members representing the medical profession; among them one shall be a woman.

## TERM OF OFFICE

The term of the office of the members of Medical Benefit Council (last three categories) shall be 4 years from the date on which the appointment is notified.

## DUTIES OF MEDICAL BENEFIT COUNCIL (SECTION 22)

1. Advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;
2. Have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with the medical treatment and attendance; and
3. Perform such other duties in connection with the medical treatment and attendance as may be specified in the regulations.

## Q NO 11. STATE WHEN A MEMBER SHALL BE DISQUALIFIED, RESIGNED OR CEASE FROM THE ESI CORPORATION, STANDING COMMITTEE, OR THE MEDICAL BENEFIT COUNCIL

### DISQUALIFICATION (SECTION 13)

1. If he is declared to be of unsound mind by a competent court; or
2. If he is an undischarged insolvent; or
3. If he has directly or indirectly by himself or by his partner any interest in a subsisting contract with, or any work being done for, the Corporation except as a medical practitioner or as a shareholder of a company; or
4. If before or after commencement of this Act, he has been convicted of an offence involving moral turpitude.

### RESIGNATION (SECTION 11)

The member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to the Central Government and his seat fall vacant on the acceptance of the resignation by Government.

### CESSATION (SECTION 12)

The member of the Corporation, the Standing Committee or the Medical Benefit Council shall cease to be a member if he fails to attend 3 consecutive meeting. The Corporation, the Standing Committee or the Medical Benefit Council may restore the membership subject to the rules made by the Government.



## Q NO 12. WHAT IS THE PROCEDURE FOR REGISTERING UNDER THE ESI SCHEME

### ANSWER

#### REGISTRATION OF EMPLOYEES

1. Every employee is to register himself under the provisions of the Act. Registration is the process of obtaining and recording information about his employment which is insurable employment.
2. This process also identifies to provide the benefits available under the Act that are related to the contributions paid by the employer on behalf of insured employees.
3. The employee is required to give his details and his family details to his employer. A family photo is also to be provided so that the employer can register the employee.
4. Registration is the process of obtaining and recording information about the entry of an employee into 'insurable employment', for the purpose of his identification under the Act.
5. Registration of employee is the process of identification to provide the benefits under the Act which are related to the contributions paid by the employer on behalf of each of the insured persons.
6. At the time of joining the insurable employment, an employee is required to provide his and his family details to the employer along with a family photo so that the employer can register the employee online.
7. This exercise of registering an employee has to be a onetime exercise in life time of an employee.
8. The insurance number generated on the first occasion of registration is to be used throughout his life time irrespective of change of employment including change of place

## Q NO 13. WHAT ARE THE DISPUTES THAT ARE SETTLED IN ESI COURT

### ANSWER

#### ADJUDICATION OF DISPUTES AND CLAIMS

Section 74 provides that the State Government shall constitute an ESI Court for such local area as may be specified in the notification. Section 75 provides that ESI Court may decide any question or dispute arises as to-

1. Whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution; or
2. The rate of wages or average daily wages of an employee for the purposes of this Act; or
3. The rate of contribution payable by a principal employer in respect of any employee;
4. The person who is or was the principal employer in respect of any employee; or
5. The right of any person to any benefit and as to the amount and duration thereof; or
6. Any direction issued by the Corporation on a review of any payment of dependents' benefit; or
7. Any other matter which is in dispute between-
  - i) a principal employer and the Corporation; or
  - ii) a principal employer and an immediate employer; or

- iii) a person and the Corporation; or
- iv) an employee and a principal or immediate employer,

#### THE FOLLOWING CLAIMS SHALL BE DECIDED BY ESI COURT-

1. Claim for the recovery of contributions from the principal employer;
2. Claim by a principal employer to recover contributions from any immediate employer;
3. Claim against a principal employer;
4. Claim for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and
5. Any claim for the recovery of any benefit admissible under the Act.

An appeal shall lie to the High Court from an order of ESI Court if it involves a substantial question of law. The appeal shall be filed within 60 days from the date of the order of ESI Court.

#### JURISDICTION OF CIVIL COURT

Section 75(3) provides that no Civil Court have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which is to be decided by a medical board or a medical appeal tribunal or ESI Court.

In 'ESI Corporation V. Jalandhar Gymkhana Club'- 1972 LLR 733 (P&H) it was held that a civil court cannot determine whether this Act is applicable to an establishment or not.

#### Q NO 14. STATE THE PENAL PROVISIONS UNDER SECTIONS 84 TO 86 OF ESI ACT, 1948

##### ANSWER

Sections 84 to 86 of the Act provide for penalties for certain offences. These penalties were substantially increased by the Employee's State Insurance (Amendment) Act, 1975. The amended Act introduced three new sections namely, Section 85-A, 85-B and 85-C.

#### THE FOLLOWING ARE THE PENALTIES AS PER THE ACT:

**SECTION 84:** This section deals with penalties for making wrong / false statements made by the Insured Persons with a view to take any benefit which is not admissible to him under the Act. Such Act is an offence punishable under Act with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs 2000 or with both.

It is also provided under this section that if an insured person is convicted by the Court for an offence committed by him under this section, he shall not be entitled to any cash benefits available under the Act for such a period as may be prescribed by the Central Government.

**SECTION 85:** This section deals with penalties for non-compliance with the various provisions of the ESI Act and Regulations made there under. Such non-compliance with any of the provisions of the Act constitutes an offence committed by the employer of a covered Factory / Establishment which is punishable under Section 85(a) to 85(g) of the Act.

**SECTION 85(A):** Envisages that if an employer fails to pay any contribution payable under the Act within the prescribed time-limit, he thus commits an offence u/s 85(a) of the Act, which is punishable with imprisonment for a term which may extend to 3 years u/s 85(i) of the Act, provided it shall not be less than 1 year and fine of Rs.10,000 u/s 85(i) (a) of the Act where employees' share of contribution is deducted by the employer from their wages but not paid. In other case where term of imprisonment shall not be less than 6 months and fine of Rs.5,000 u/s 85(i) (b).

**SECTION 85(b) TO 85(g):** Says that if an employer commits an offence under this section for noncompliance with any other provisions of the Act, which is punishable with imprisonment for a term which may extends to 1 year or with fine up to Rs.4,000 or with both.

**SECTION 85-A:** This section deals with enhanced punishment in certain cases after previous conviction. If any employer convicted by a Court for an offence punishable under the Act, committing the same offence, shall, for every such subsequent offence, be punished with imprisonment for a term which may extend to 2 years and with fine of Rs.5,000.

It is provided that if such subsequent offence is for failure to pay contribution payable under the Act, the employer shall, for every such subsequent offence, be punished with imprisonment for a term which may extend to 5 years but which shall not be less than 2 years and shall be liable to pay fine of Rs.25,000.

**SECTION 85-B:** Provides that the corporation may recover damages from the employer by way of penalty under this section if any employer fails to pay contribution payable under the Act within the specified time-limit or pays contribution belatedly provided that before recovering such damages, the employer shall be given a reasonable opportunity of being heard.

The amount of damages may not exceed the amount of contribution paid / payable.

There is also a provision to reduce or waive damages recoverable under this section in respect of a Factory/ Establishment which is a Sick Industrial Unit and in respect of which Rehabilitation Scheme has been sanctioned by BIFR, under Regulation 31-C, of ESI (General) Regulations, 1950.

1. In case of change of Management including transfer of undertaking to worker's Co-operative or in case of merger or amalgamation of Sick Industrial Unit with a healthy company, damages levied/ leviable can be waived completely.
2. In other cases, depending on merits, damages levied/leviable can be waived upto 50%.
3. In exceptional hard cases, the damages levied/leviable can be waived either partially/totally.

**SECTION 85-C:** Provides that where an employer is convicted for an offence of non-payment of contribution under this Act, the Court in addition to giving any punishment by order, direct him to pay the amount of contribution for which he was convicted within a time period. The Court can also extend the time given periodically.

If the employer still fails to pay the contribution and submit returns within the time given by the court or within the extended time period given, the employer is deemed to have committed a further offence and shall be punishable with imprisonment under Section 85 and is also liable to pay a fine which may extend to one thousand rupees for every day of default.

**SECTION 86:** Provides that no prosecution under this Act shall be instituted without previous sanction of the Insurance Commissioner or of such other officer of the corporation as may be authorized in this behalf by the Director General of the Corporation.

It is also provided that No Court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under this Act.

And No Court shall take cognizance of any offence under this Act except on a complaint made in writing in respect thereof.

#### **SECTION 75: DEALS WITH PROVISIONS FOR ADJUDICATION OF DISPUTES & CLAIMS:**

If any employer or employee under the Act has any disputes/questions that may be settled by E.I. Court after adjudicating the matter if made before it, subject to the condition that 50 % security deposit is required to be made u/s.75 (2B) (unless it is waived/reduced for the reasons recorded by the Ld. Court).

#### **PENAL ACTION U/S 138 OF N.I. ACT:**

If employer submits a cheque to the corporation towards payment of contribution, interest, damages or any other amount due, which is bounced subsequently by the Bank for the reasons of Insufficient Fund he thereby commits an offence under this section and shall be punished with imprisonment for a term upto One year or with fine which may extend to twice the amount of cheque or with both.

#### **PENAL ACTION U/S 405/406/409 OF I.P.C:**

If an employer deducts employees' share of contribution from their wages but does not pay the said contribution, he thereby commits an offence of criminal Breach of Trust which is punishable under this section with imprisonment which may extend to 3 years or with fine or with both.

#### **EXERCISE**

##### **⊙ Multiple Choice Questions:**

1. The contribution shall be paid in a bank within\_\_days of the last day of the calendar month in which the contribution fall due for any wage period.  
a) 7                                      b) 14                                      c) 21                                      d) 30
2. An appeal shall lie to High Court from the orders of ESI within\_\_days from the date of order of the ESI Court.  
a) 30                                      b) 60                                      c) 90                                      d) None of the above.
3. A member of the Corporation shall cease to be a member if he fails to attend\_consecutive meeting.  
a) 3                                      b) 5                                      c) 7                                      d) None of the above.
4. ESI Fund consists of-  
a) Contribution;                                      b) Grants from governments;  
c) Donations;                                      d) All the above.
5. The Corporation may with the approval of\_\_establish and maintain in a State, hospitals, dispensaries etc.,  
a) Central Government;                                      b) State Government;  
c) Local Authority;                                      d) None of the above.

6. Who will not the following be considered as an employee?
  - a) Canteen workers;
  - b) Casual workers;
  - c) Partners;
  - d) Part time employee.
7. Who, among the following, is not the Principal Employer?
  - a) Occupier of the factory;
  - b) Owner of the factory;
  - c) Legal representative of the owner;
  - d) Legal representative of the contractor.
8. Seasonal factory is the one which is engaged for a period not exceeding\_\_in a year.
  - a) 7 months;
  - b) 6 months;
  - c) 3 months;
  - d) None of the above.
9. Which, among the following, will not be included in the definition of 'wages'?
  - a) Payment made on authorized leave;
  - b) Travelling allowance;
  - c) Payment made on lock out;
  - d) Payment made for lay off.
10. ESI Corporation is a-
  - a) Partnership firm;
  - b) Limited Liability Partnership;
  - c) Body Corporate;
  - d) Hindu Undivided Family.

⊙ **State TRUE or FALSE**

1. The members of Indian Naval, military or air force is coming under the definition of 'employee' under ESI Act.
2. Wage does not include any gratuity payable on discharge.
3. Every employee is to register himself under the provisions of ESI Act.
4. An employee insured under the ESI Act can also claim compensation under the Workmen Compensation Act.
5. The benefits of medical benefits under this Act are assignable.
6. Civil Court has no jurisdiction to decide or deal with any dispute or to dispute on any liability to be decided by a medical board or tribunal or ESI Court.
7. Attachment of bank account of the defaulter can be undertaken for recovery of dues.
8. The Central Government cannot supersede the ESI Corporation.
9. Employees represent the Station Commission of ESI Corporation.
10. There shall be one woman among the members representing the medical profession in the Medical Benefit Council.

⊙ **Fill in the blanks**

1. The two types of permanent establishment is\_\_and\_\_.
2. The term of the members of Medical Benefit Council shall be\_\_.
3. The rate of contribution is\_\_ respectively.and \_\_\_\_\_of worker's wages by employees and employers
4. The amount recoverable under this Act may be recovered as if it\_\_.
5. Standing Committee shall consist of\_members of the Corporation;
6. \_\_\_\_ is the ex-officio member of Medical Benefit Council;
7. A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to\_\_.
8. The payment towards the expenditure on the funeral of the deceased insured person is payable

to the \_\_\_\_\_.

9. Confinement is the labor resulting in the issue of living child or labor after of pregnancy resulting in the issue of child, whether alive or dead.
10. Factory is defined as any premises including the precincts thereof whereon\_\_or more persons are employed on any day of the preceding\_\_.

#### ⊙ Short Essay Type Questions

1. Define the terms 'immediate employer' and 'employee' under ESI Act.
2. List the benefits that are entitled to the insured persons under this Act.
3. State the obligations of Principal Employer.
4. Write a short notes on -
  - (a) Seasonal factory
  - (b) Medical Benefit Council

#### ⊙ Essay Type Questions

1. Distinguish between the 'permanent partial disablement' and 'permanent total disablement'.
2. What are the various bodies constituted by the ESI Corporation and describe the functions of such bodies.
3. What is 'Employees' State Insurance Fund' and for what purposes the fund may be expended?
4. Discuss the method of recovery of contribution from the employer.
5. Whether an employee can be dismissed or punished during sickness? Substantiate your answer.
6. What are the disputes that can be settled by ESI Court?
7. What are the punishments described under Section 85 of the Act for failure to pay contribution etc.,

**Answer:**

#### **Multiple Choice Questions:**

1. c; 2. b; 3. a; 4. d; 5. b; 6. c; 7. d; 8. a; 9. b; 10. c.

#### **State TRUE or FALSE**

1. False; 2. True; 3. True; 4. False; 5. False; 6. True; 7. True; 8. False; 9. True; 10. True.

#### **Fill in the blanks**

1. Permanent partial disablement, permanent total disablement;
2. 4 years;
3. 3.25%, 0.75%;
4. Were an arrear of land revenue;
5. Three;
6. Medical Commissioner of the Corporation;
7. Central Government;
8. Eldest surviving member of the family;
9. 26 weeks;
10. 10 months, 12 months.

# 11. THE CODE ON WAGES, 2019

## INTRODUCTION

1. The Code on Wages, 2019 was enacted in 2020 which enlists the provisions relating to payment of wages, overtime, bonus, minimum wages and other provisions incidental to existing labour laws.
2. This Code has subsumed four Central labour legislations namely
  - i) The Payment of Wages Act, 1936,
  - ii) The Minimum Wages Act, 1948,
  - iii) The Payment of Bonus Act, 1965 and
  - iv) The Equal Remuneration Act, 1976.
3. The Code not only regulates the wages of workmen but also the wages of employees performing managerial, supervisory functions. This Code therefore, brings uniformity in the definition of various terms overlapping in various pieces of legislation and eases the burden of documentation.
4. The Central Government under Section 68 of the Code lays down that in case of any difficulty, the Central Government shall notify provisions not inconsistent with the provisions of this Code, as may appear to be necessary for removing the difficulty within a period of 3 years from the commencement of this Code.
5. The Code on Social Security, 2020, the Industrial Relations Code, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020, have also been enacted by the Government simultaneously.
6. These codes also comprehensively lay down most provisions that used to exist in many scattered pieces of legislation.
7. This code is a welcome change to the existing labour law regime as it seeks to regulate wage and bonus payments in all sectors such as industry, trade, business, or manufacture, wherever employees are appointed.
8. **POWER OF CENTRAL GOVERNMENT:** To regulate wages for sectors like railways, mines and oil fields among other sectors,
9. **POWER OF STATE GOVERNMENT:** The power to make decisions for all other employments.

## Q NO 1. STATE THE COVERAGE AND APPLICABILITY OF THE CODE

### ANSWER

1. The Code extends to the whole of India.
2. The Code universalizes right to minimum wages and timely payment of wages to all the employees regardless of wage ceiling, employment sector.
3. At present, the provisions of the Payment of Wages Act, 1936 is applicable to workers and employees below a particular wage ceiling (earning up to Rs. 24,000 per month) and
4. The Minimum Wages Act, 1948 extended only to certain type of employment included in the Schedule of the said Act.

5. The Code prohibits gender discrimination on wage and employment conditions related matters by same employer.
6. The Code does not have any specific section to explain the application of the Code. It applies to all establishments, employees, and employers unless exempted specifically in the provisions of the Code.
7. The Code extends:
  - I. To all establishments where any trade, industry or manufacturing process is carried on.
  - II. To all type of employees (irrespective of their wage limit), skilled, semi-skilled, unskilled, supervisory, managerial across all sectors.
  - III. To all type of employers who engage employees for their trade, industry or manufacturing activities.

**Q NO 2. DEFINE WAGES AS PER THE CODE OF WAGES, 2019**

**ANSWER**

According to Section 2 (y) of the Code, “wages” means:

All remuneration whether by way of salaries, 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:

1. Basic pay;
2. Dearness allowance; and
3. Retaining allowance, if any,

**BUT DOES NOT INCLUDE—**

1. Any bonus payable under any law for the time being in force, which does not form part of the remuneration payable under the terms of employment;
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 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 conveyance 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;
6. House rent allowance;
7. Remuneration payable under any award or settlement between the parties or order of a court or Tribunal;
8. Any overtime allowance;
9. Any commission payable to the employee;
10. Any gratuity payable on the termination of employment;
11. Any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment:



Provided that, for calculating the wages under this clause, if payments made by the employer to the employee under clauses (a) to (i) exceeds one-half, or such other per cent. as may be notified by the Central Government, of the all remuneration calculated under this clause, the amount which exceeds such one-half, or the per cent. so notified, shall be deemed as remuneration and shall be accordingly added in wages under this clause:

Provided further that for the purpose of equal wages to all genders and for the purpose of payment of wages, the emoluments specified in clauses (d), (f), (g) and (h) shall be taken for computation of wage.

**Explanation:** Where an employee is given in lieu of the whole or part of the wages payable to him, any remuneration in kind by his employer, the value of such remuneration in kind which does not exceed fifteen per cent. of the total wages payable to him, shall be deemed to form part of the wages of such employee; Wages include salary, allowance, or any other component expressed in monetary terms. This does not include bonus payable to employees or any travelling allowance, among others.

**Example:** In a factory, Sita is a female labourer who operates a plant. Whereas Mahesh is a male worker who does the same work in the same factory. However, since Sita is married to Ramesh, who also works at the same plant, the employer pays Sita half of what he pays to Mahesh as Sita's husband also works for gains at the same plant. According to this Code, this practice of the employer shall be illegal and prohibited, as the law seeks to put an end to all gender-based discriminations in the case of minimum wages.

### **Q NO 3. STATE THE DEFINITION OF WAGE UNDER EMPLOYEE'S PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1942**

#### **ANSWER**

The definition of basic wage under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 is defined under Section 2 (b) as all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him,

#### **BUT DOES NOT INCLUDE:**

1. The cash value of any food concession;
2. Any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
3. Any presents made by the employer;

The definition of basic wage was for a long time used by unscrupulous employers to minimise their contributions payable towards the EPF, which in turn defeated the purpose of the Act. This issue was dealt by the Supreme Court in the case of The Regional Provident Fund Commissioner (II) West

Bengal Versus Vivekananda Vidyamandir and Others where the Supreme Court held that all allowances which are universally, uniformly, necessarily and ordinarily paid to all employees would form a part of the basic wage, which shall be used for fund contribution to the provident fund. The exclusion of allowance from the basic wage can be permitted when the same is shown to be either a variable, or were linked to any incentive for production resulting in a greater output, or the allowance in question is not paid across the board, or paid especially to those who avail the opportunity.

#### **THE NEW DEFINITION OF WAGE UNDER THE CODE SPECIFICALLY EXCLUDES –**

1. any bonus payable under any law for the time being in force;
2. the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity;
3. contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
4. any conveyance 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;
6. house rent allowance;
7. remuneration payable under any award or settlement between the parties or order of a court or Tribunal; (h) any overtime allowance;
8. any commission payable to the employee;
9. any gratuity payable on the termination of employment;
10. any retrenchment compensation or other retirement benefit payable to the employee or any ex gratia payment made to him on the termination of employment.

This change will impact the basis to calculate wage for the purpose of contribution towards certain benefits like EPF and Gratuity as now the same will have to be calculated on 50% of the total remuneration of an employee.

#### **Q NO 4. DEFINE EMPLOYEE, WORKER AND SALES PROMOTION EMPLOYEE UNDER THE CODE**

##### **ANSWER**

1. **EMPLOYEE (SECTION 2k):** Employee, refers to any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi- skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.
2. **WORKMAN (SECTION 2z):** Which refers to any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes:
  - i) working journalists as defined in clause (f) of section 2 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955; and

3. Sales promotion employees as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976, and for the purposes of any proceeding under this Code in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched or otherwise terminated in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957; or
- ii) who is employed in the police service or as an officer or other employee of a prison; or
- iii) who is employed mainly in a managerial or administrative capacity; or
- iv) who is employed in a supervisory capacity drawing wage of exceeding 15000 rupees per month or an amount as may be notified by the Central Government from time to time.

**Q NO 5. THE SOCIAL PURPOSE OF THE CODE THAT IT SEEKS TO ACHIEVE IS TO AVOID ALL KINDS OF GENDER BASED DISCRIMINATION. ILLUSTRATE.**

### **ANSWER**

#### **PROHIBITION OF DISCRIMINATION ON THE GROUNDS OF GENDER (SECTION 3)**

1. There shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee.
2. No employer shall -
  - i) Reduce the rate of wages of any employee; and
  - ii) Make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

### **MINIMUM WAGES**

**Q NO 6. THE CODE ALSO LAYS DOWN THE VARIOUS COMPONENTS OF MINIMUM WAGE THAT THE APPROPRIATE GOVERNMENT SHALL FIX. ILLUSTRATE.**

### **ANSWER**

#### **COMPONENTS OF MINIMUM WAGES (SECTION 7)**

1. Any minimum rate of wages fixed or revised by the appropriate Government may consist of:
  - i) A basic rate of wages and an allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost-of-living index number applicable to such workers (hereinafter referred to as "cost of living allowance"); or

- ii) A basic rate of wages with or without the cost-of-living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or
  - iii) an all-inclusive rate allowing for the basic rate, the cost-of-living allowance and the cash value of the concessions, if any.
2. The cost-of-living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by such authority, as the appropriate Government may by notification, appoint, at such intervals and in accordance with such directions as may be specified or given by the appropriate Government from time to time.

## Q NO 7. WHAT IS THE PROCEDURE FOR FIXING WAGES

### ANSWER

#### PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES (SECTION 8)

The code has prescribed two methods for fixing or revising minimum wages:

1. Committee Method
2. Notification Method

**COMMITTEE METHOD:** The appropriate Government may appoint as many committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision of minimum wages.

These committees shall comprise of:

- 
- Representatives of Employer.
- 1. Representatives of Employee which shall be equal in number of the members as of employer.
- 2. Independent persons, not exceeding 1/3rd of the total members of the Committee.

After considering the recommendation of the committee, the appropriate Government shall by notification fix, or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue

**NOTIFICATION METHOD:** In this method, appropriate Government shall publish its proposal for the information of the persons likely to be affected. The proposal shall have a date not less than two months from the date of the notification on which the proposals shall be taken into consideration.

After considering, all representations received by it before the date specified in the notification, the appropriate Government shall by notification fix, or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue.

Provided that where the appropriate Government proposes to revise the minimum rates of wages as per notification method, it shall also consult concerned Advisory Board constituted under section 42 of the Code.

### **TIMELINE FOR REVIEW OR REVISION IN MINIMUM WAGES**

The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding 5 years

### **Q NO 8. STATE THE POWERS TO FIX THE MINIMUM WAGES**

#### **ANSWER**

#### **FIXATION OF MINIMUM WAGES (SECTION 6)**

1. The appropriate Government shall fix a minimum rate of wages – (a) for time work; or (b) for piece work.
2. Where the employees are employed on piece work basis, the appropriate Government, shall fix a minimum rate of wages for securing such employees a minimum rate of wages on a time work basis.
3. In case of time work the rates may be fixed in accordance with the any one or more of the following wage periods:
  - i) By the hour or
  - ii) By the day or
  - iii) By the month
4. For the purpose of fixation of minimum rate of wages under this section, the appropriate Government,
  - i) shall primarily take into account the skill of workers required for working under the categories of unskilled, skilled, semi-skilled and highly-skilled or geographical area or both; and
  - ii) may, in addition to such minimum rate of wages for certain category of workers, take into account their arduousness of work like temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work as may be prescribed by that Government; and
  - iii) the norms of such fixation of minimum rate of wages shall be such as may be prescribed.The minimum wages will vary from place to place depending upon skill required, arduousness of the work assigned and the geographical location.

### **Q NO 9. POWER OF CENTRAL GOVERNMENT TO FIX FLOOR WAGE (SECTION 9)**

#### **ANSWER**

1. The Central Government shall fix floor wage taking into account minimum living standards of a worker in such manner as may be prescribed:  
Provided that different floor wage may be fixed for different geographical areas.
2. The minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the floor wage and if the minimum rates of wages fixed by the appropriate

Government earlier is more than the floor wage, then, the appropriate Government shall not reduce such minimum rates of wages fixed by it earlier.

3. The Central Government may, before fixing the floor wage under sub-section (1), obtain the advice of the Central Advisory Board constituted under sub-section (1) of section 42 and consult State Governments in such manner as may be prescribed.

#### **Q NO 10. WAGES OF EMPLOYEE WHO WORKS FOR LESS THAN NORMAL WORKING DAY**

##### **ANSWER**

Section 10 of the Code talks about wages of employee who works for less than normal working day. The section contemplates that:

If an employee whose minimum rate of wages has been fixed under this Code by the day works on any day on which he was employed for a period of less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done on that day, as if he had worked for a full normal working day:

Provided that he shall not be entitled to receive wages for a full normal working day:

1. in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work; and
2. in such other cases and circumstances, as may be prescribed.

#### **WAGES FOR TWO OR MORE CLASSES OF WORK (SECTION 11)**

It says where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

#### **MINIMUM TIME RATE WAGES FOR PIECE WORK (SECTION 12)**

It says where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code, the employer shall pay to such person wages at not less than the minimum time rate.

#### **Q NO 11. FIXING HOURS OF WORK FOR NORMAL WORKING DAY (SECTION 13)**

##### **ANSWER**

1. Where the minimum rates of wages have been fixed under this Code, the appropriate Government may:
  - i) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals;

- ii) provide for a day of rest in every period of 7 days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest;
  - iii) provide for payment for work on a day of rest at a rate not less than the overtime rate.
2. The provisions of sub-section (1) shall, in relation to the following classes of employees apply, only to such extent and subject to such conditions as may be prescribed, namely:
- i) employees engaged in any emergency which could not have been foreseen or prevented;
  - ii) employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
  - iii) employees whose employment is essentially intermittent;
  - iv) employees engaged in any work which for technical reasons has to be completed before the duty is over; and
  - v) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

#### **Q NO 12. WAGES FOR OVERTIME WORK (SECTION 14)**

Where an employee whose minimum rate of wages has been fixed under this Code by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess, at the overtime rate which shall not be less than twice the normal rate of wages.

### **PAYMENT OF WAGES**

#### **Q NO 13. STATE THE PROVISIONS RELATED TO THE PAYMENT OF THE WAGES UNDER THE CODE.**

#### **ANSWER**

#### **MODE OF PAYMENT OF WAGES (SECTION 15)**

All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or by the electronic mode

Provided that the appropriate Government may, by notification, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account.

#### **FIXATION OF WAGE PERIOD (SECTION 16)**

The employer shall fix the wage period for employees either as daily or weekly or fortnightly or monthly subject to the condition that no wage period in respect of any employee shall be more than a month:

Provided that different wage periods may be fixed for different establishments.

### TIME LIMIT FOR PAYMENT OF WAGES (SECTION 17)

1. The employer shall pay or cause to be paid wages to the employees, engaged on:

S.NO	WAGE PERIOD	TIME LINES
1.	Daily basis	<u>at the end of the shift</u>
2.	Weekly basis	on the <u>last working day of the week</u> , that is to say, before the weekly holiday
3.	Fortnightly basis	before the <u>expiry of the second day</u> of the succeeding month.
4.	Monthly basis	before the <u>expiry of the seventh day</u> of the succeeding month.

2. Where an employee has been:

- i) removed or dismissed from service; or
- ii) retrenched or has resigned from service, or became unemployed due to closure of the establishment, the wages payable to him shall be paid within 2 working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.

3. Notwithstanding anything contained in sub-section (1) or sub-section (2), the appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.

4. Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force.

### DEDUCTIONS WHICH MAY BE MADE FROM WAGES (SECTION 18)

1. Notwithstanding anything contained in any other law for the time being in force, there shall be no deductions from the wages of the employee, except those as are authorised under this Code.

**Explanation: For the purposes of this sub-section,**

- i) any payment made by an employee to the employer or his agent shall be deemed to be a deduction from his wages;
- ii) any loss of wages to an employee, for a good and sufficient cause, resulting from:
  - i. the withholding of increment or promotion, including the stoppage of an increment; or
  - ii. the reduction to a lower post or time-scale; or
  - iii. the suspension, shall not be deemed to be a deduction from wages in a case where the provisions made by the employer for such purposes are satisfying the requirements specified in the notification issued by the appropriate Government in this behalf.

2. Deductions from the wages of an employee shall be made in accordance with the provisions of this Code, and may be made only for the following purposes, namely: —

- i) fines imposed on him;
- ii) deductions for his absence from duty;
- iii) deductions for damage to or loss of goods expressly entrusted to the employee for custody; or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;



- iv) deductions for house-accommodation supplied by the employer or by appropriate Government or any housing board set up under any law for the time being in force, whether the Government or such board is the employer or not, or any other authority engaged in the business of subsidising house- accommodation which may be specified in this behalf by the appropriate Government by notification;
- v) deductions for such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise and such deduction shall not exceed an amount equivalent to the value of such amenities and services. Explanation. —For the purposes of this clause, the expression “services” does not include the supply of tools and raw materials required for the purposes of employment;
- vi) deductions for recovery of:
  - i. advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of overpayment of wages;
  - ii. loans made from any fund constituted for the welfare of labour, as may be prescribed by the appropriate Government, and the interest due in respect thereof;
- vii) deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;
- viii) deductions of income-tax or any other statutory levy levied by the Central Government or State Government and payable by the employee or deductions required to be made by order of a court or other authority competent to make such order;
- ix) deductions for subscription to, and for repayment of advances from any social security fund or scheme constituted by law including provident fund or pension fund or health insurance scheme or fund known by any other name;
- x) deductions for payment of co-operative society subject to such conditions as the appropriate Government may impose;
- xi) deductions made, with the written authorisation of the employee, for payment of the fees and contribution payable by him for the membership of any Trade Union registered under the Trade Unions Act, 1926;
- xii) deductions for recovery of losses sustained by the railway administration on account of acceptance by the employee of counterfeit or base coins or mutilated or forged currency notes;
- xiii) deductions for recovery of losses sustained by the railway administration on account of the failure of the employee to invoice, to bill, to collect or to account for the appropriate charges due to the railway administration whether in respect of fares, freight, demurrage, wharfage and crantage or in respect of sale of food in catering establishments or in respect of commodities in grain shops or otherwise;
- xiv) deductions for recovery of losses sustained by the railway administration on account of any rebates or refunds incorrectly granted by the employee where such loss is directly attributable to his neglect or default;
- xv) deductions, made with the written authorisation of the employee, for contribution to the Prime Minister’s National Relief Fund or to such other fund as the Central Government may, by notification, specify.

**xvi)** Notwithstanding anything contained in this Code and subject to the provisions of any other law for the time being in force, the total amount of deductions which may be made under sub-section (2) in any wage period from the wages of an employee shall not exceed fifty per cent. of such wages.

3. Where the total deductions authorised under sub-section (2) exceed 50 per cent. of the wages, the excess may be recovered in such manner, as may be prescribed.
4. Where any deduction is made by the employer from the wages of an employee under this section but not deposited in the account of the trust or Government fund or any other account, as required under the provisions of the law for the time being in force, such employee shall not be held responsible for such default of the employer.

#### **Q NO 12. STATE THE PROVISIONS RELATED TO FINES UNDER THE CODE**

##### **ANSWER**

##### **FINES (SECTION 19)**

1. No fine shall be imposed on any employee save in respect of those acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice under sub-section (2).
2. A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.
3. No fine shall be imposed on any employee until such employee has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
4. The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to 3 per cent. of the wages payable to him in respect of that wage-period.
5. No fine shall be imposed on any employee who is under the age of 15 years.
6. No fine imposed on any employee shall be recovered from him by instalments or after the expiry of 90 days from the day on which it was imposed.
7. Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
8. All fines and all realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority.

#### **Q NO 13. DEDUCTIONS FOR ABSENCE FROM DUTY**

##### **ANSWER**

##### **DEDUCTIONS FROM ABSENCE OF DUTY (SECTION 20)**

1. Deductions may be made only on account of the absence of an employee from the place or places where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

2. The amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period for which the deduction is made in a larger proportion than the period for which he was absent bears to the total period within such wage-period during which by the terms of his employment he was required to work:

Provided that, subject to any rules made in this behalf by the appropriate Government, if 10 or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for 8 days as may by any such terms be due to the employer in lieu of due notice.

Explanation: For the purposes of this section, an employee shall be deemed to be absent from the place where he is required to work if, although present in such place, he refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

## **PAYMENT OF BONUS**

### **Q NO 14. WHO ARE ENTITLED TO THE PAYMENT OF BONUS**

#### **ANSWER**

All employees whose wages do not exceed a specific monthly amount, notified by the central or state government, will be entitled to an annual bonus.

The bonus will be at least:

- (i) 8.33% of his wages, or
- (ii) Rs 100, whichever is higher.

In addition, the employer will distribute a part of the gross profits amongst the employees. This will be distributed in proportion to the annual wages of an employee. An employee can receive a maximum bonus of 20% of his annual wages.

### **Q NO 15. STATE THE PROVISIONS RELATED TO ELIGIBILITY FOR PAYMENT OF BONUS**

#### **ANSWER**

#### **ELIGIBILITY FOR BONUS (SECTION 26)**

1. There shall be paid to every employee, drawing wages not exceeding such amount per mensem, as determined by notification, by the appropriate Government, by his employer, who has put in at least 30 days work in an accounting year, to become eligible for bonus.
2. **RATE OF BONUS:** An annual minimum bonus calculated at the rate of 8.33% of the wages earned by the employee or 100 rupees, whichever is higher whether or not the employer has any allocable surplus during the previous accounting year.
3. For the purpose of calculation of the bonus where the wages of the employee exceed such amount per mensem, as determined by notification by the appropriate Government, the bonus payable to such employee under sub-sections (1) and (3) shall be calculated as if his wage were such amount, so determined by the appropriate Government or the minimum wage fixed by the appropriate Government, whichever is higher.

4. Where in respect of any accounting year referred to in sub-section (1), the allocable surplus exceeds the amount of minimum bonus payable to the employees under that sub-section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year, bonus which shall be an amount in proportion to the wages earned by the employee during the accounting year, subject to a maximum of 20 per cent. of such wages.
5. **SET ON AND SET OFF:** In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 36 shall be taken into account in accordance with the provisions of that section.
6. **PRODUCTION OR PRODUCTIVITY BONUS:** Any demand for bonus in excess of the bonus referred to in sub-section (1), either on the basis of production or productivity in an accounting year for which the bonus is payable shall be determined by an agreement or settlement between the employer and the employees, subject to the condition that the total bonus including the annual minimum bonus referred to in sub-section (1) shall not exceed 20 per cent. of the wages earned by the employee in the accounting year.
7. **COOLING OFF PERIOD FOR PAYMENT OF BONUS:** In the first 5 accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Code in relation to that year, but without applying the provisions of section 36.
8. For the 6<sup>th</sup> and 7<sup>th</sup> accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply subject to the following modifications, namely:
  - i) for the 6<sup>th</sup> accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the 5<sup>th</sup> and 6<sup>th</sup> accounting years;
  - ii) for the 7<sup>th</sup> accounting year set on or set off, as the case may be, shall be made, in the manner as may be prescribed by the Central Government, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> accounting years.
9. From the 8<sup>th</sup> accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of section 36 shall apply in relation to such establishment as they apply in relation to any other establishment.

Explanation 1: For the purpose of sub-section (6), an employer shall not be deemed to have derived profit in any accounting year, unless:

- i) he has made provision for depreciation of that year to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income tax law; and
- ii) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation 2: For the purposes of sub-sections (6), (7) and (8), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil- field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the appropriate Government may, after giving the parties a reasonable opportunity of representing the case, decide upon the issue.

10. The provisions of sub-sections (6), (7) and (8) shall, so far as may be, apply to new departments or undertakings or branches set up by existing establishments.
11. **PROPORTIONATE REDUCTION IN BONUS IN CERTAIN CASES (SECTION 27):** It lays down that where an employee has not worked for all the working days in an accounting year, the minimum bonus under sub-section (1) of section 26, if such bonus is higher than 8.33% of the salary or wage of the days such employee has worked in that accounting year, shall be proportionately reduced.

**Q NO 16. STATE THE METHOD OF COMPUTATION OF NUMBER OF WORKING DAYS UNDER THE CODE**

**ANSWER**

**COMPUTATION OF NUMBER OF WORKING DAYS (SECTION 28)**

While calculating proportionate bonus, an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which,

1. he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
2. he has been on leave with salary or wages;
3. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
4. the employee has been on maternity leave with salary or wages, during the accounting year.

**Q NO 17. WHO ARE DISQUALIFIED FROM RECEIVING BONUS UNDER THE CODE**

**ANSWER**

**DISQUALIFICATION FOR BONUS (SECTION 29)**

Notwithstanding anything contained in this Code, an employee shall be disqualified from receiving bonus under this Code, if he is dismissed from service for:

1. fraud; or
2. riotous or violent behavior while on the premises of the establishment; or
3. theft, misappropriation or sabotage of any property of the establishment; or
4. conviction for sexual harassment.

**Q NO 18. STATE THE PROVISIONS RELATED TO ESTABLISHMENTS THAT MUST INCLUDE DEPARTMENRS, UNDERTAKINGS AND BRANCHES**

**ANSWER**

**PROVISIONS RELATING TO ESTABLISHMENTS THAT MUST INCLUDE DEPARTMENTS, UNDERTAKINGS AND BRANCHES (SECTION 30)**

1. It says where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Code:
2. Provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus, under this Code for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

**Q NO 19. PAYMENT OF BONUS OUT OF ALLOCABLE SURPLUS CAN ALSO BE DONE ACCORDING TO SECTION 31 OF THE CODE. EXPLAIN.**

**ANSWER**

**THE SECTION SAYS THAT:**

1. The bonus shall be paid out of the allocable surplus which shall be an amount equal to 60% in case of a banking company and 67% in case of other establishment, of the available surplus and the available surplus shall be the amount calculated in accordance with section 33.
2. Audited accounts of companies shall not normally be questioned.
3. Where there is any dispute regarding the quantum of bonus, the authority notified by the appropriate Government having jurisdiction may call upon the employer to produce the balance sheet before it, but the authority shall not disclose any information contained in the balance sheet unless agreed to by the employer.

**Q NO 20. COMPUTATION OF GROSS PROFITS (SECTION 32)**

**ANSWER**

The gross profits derived by an employer from an establishment in respect of the accounting year shall:

1. in the case of a banking company, be calculated in the manner as may be prescribed by the Central Government;
2. in any other case, be calculated in the manner as may be prescribed by the Central Government.

#### **Q NO 21. COMPUTATION OF AVAILABLE SURPLUS (SECTION 33)**

##### **ANSWER**

The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 34:

Provided that the available surplus in respect of the accounting year commencing on any day in a year after the commencement of this Code and in respect of every subsequent accounting year shall be the aggregate of:

1. the gross profits for that accounting year after deducting therefrom the sums referred to in section 34; and
2. an amount equal to the difference between:
  - i) the direct tax, calculated in accordance with the provisions of section 35, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and
  - ii) the direct tax, calculated in accordance with provisions of section 35, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Code for that year.

#### **Q NO 22. WHAT ARE THE SUMS THAT SHALL BE DEDUCTED FROM GROSS PROFITS**

##### **ANSWER**

##### **THE FOLLOWING SUMS SHALL BE DEDUCTED FROM THE GROSS PROFITS (SECTION 34)**

1. any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act or in accordance with the provisions of the agricultural income-tax law, for the time being in force, as the case may be;
2. subject to the provisions of section 35, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
3. such further sums in respect of the employer as may be prescribed by the Central Government.

#### **Q NO 23. CALCULATION OF DIRECT TAX PAYABLE BY THE EMPLOYER**

##### **ANSWER**

##### **CALCULATION OF DIRECT TAX (SECTION 35)**

For the purposes of this Code, any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:

1. in calculating such tax no account shall be taken of:

- i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
  - ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any succeeding accounting year or years under sub-section (2) of section 32 of the Income-tax Act;
2. where the employer is a religious or a charitable institution to which the provisions of section 41 do not apply and the whole or any part of its income is exempt from the tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
  3. where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;
  4. where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;
  5. no account shall be taken of any rebate other than development rebate or investment allowance or development allowance or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

**Q NO 24. STATE THE PROVISIONS RELATING TO SET ON AND SET OFF OF ALLOCABLE SURPLUS.**

**ANSWER**

**SET ON AND SET OFF OF ALLOCABLE SURPLUS (SECTION 36)**

1. Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under section 26, then, the excess shall, subject to a limit of 20% of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilised for the purpose of payment of bonus in such manner as may be prescribed by the Central Government.
2. Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under section 26, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilised for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in such manner as may be prescribed by the Central Government.
3. The principle of set on and set off as may be provided in rules by the Central Government under this Code shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Code.



4. Where in any accounting year any amount has been carried forward and set on or set off under this section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

**Q NO 25. STATE THE PROVISIONS RELATING TO THE PAYMENT OF BONUS UNDER THE CODE**

**ANSWER**

**REQUIREMENTS OF ADJUSTMENT OF CUSTOMARY OR INTERIM BONUS AGAINST BONUS PAYABLE UNDER THIS CODE (SECTION 37)**

Where in any accounting year,

1. an employer has paid any puja bonus or other customary bonus to employee; or
2. an employer has paid a part of the bonus payable under this Code to an employee before the date on which such bonus becomes payable, then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Code in respect of that accounting year and the employee shall be entitled to receive only the balance.

**DEDUCTIONS OF CERTAIN AMOUNTS FROM BONUS PAYABLE (SECTION 38):** In case where employee found guilty in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then, it shall be lawful for the employer to deduct the amount of loss from the amount of bonus payable by him to the employee under this Code in respect of that accounting year only and the employee shall be entitled to receive the balance, if any.

**TIME LIMIT FOR PAYMENT OF BONUS (SECTION 39):**

1. All amounts payable to an employee by way of bonus under this Code shall be paid by crediting it in the bank account of the employee by his employer within a period of 8 months from the close of the accounting year. Provided that the appropriate Government or such authority as the appropriate Government may specify in this behalf may, upon an application made to it by the employer and for sufficient reasons, by order, extend the said period of 8 months to such further period or periods as it thinks fit; so, however, that the total period so extended shall not in any case exceed 2 years.
2. Notwithstanding anything contained in sub-section (1), where there is a dispute regarding payment of bonus pending before any authority, such bonus shall be paid, within a period of one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute:

Provided that if, there is a dispute for payment at the higher rate, the employer shall pay eight and one-third per cent. of the wages earned by the employee as per the provisions of this Code within a period of 8 months from the close of the accounting year.

## **APPLICATION OF THIS CHAPTER TO ESTABLISHMENTS IN PUBLIC SECTOR IN CERTAIN CASES (SECTION 40):**

1. If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services, in competition with an establishment in private sector, and the income from such sale or services or both, is not less than 20% of the gross income of the establishment in public sector for that year, then, the provisions of this Chapter shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.
2. Save as otherwise provided in sub-section (1), nothing in this Chapter shall apply to the employees employed by any establishment in public sector.

## **NON-APPLICABILITY OF BONUS PROVISIONS (SECTION 41):**

1. Nothing in this Chapter shall apply to:
  - i) employees employed by the Life Insurance Corporation of India;
  - ii) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958;
  - iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;
  - iv) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;
  - v) employees employed by:
    - i. the Indian Red Cross Society or any other institution of a like nature including its branches;
    - ii. universities and other educational institutions;
    - iii. institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;
  - vi) employees employed by the Reserve Bank of India;
  - vii) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify, having regard to:
    - i. its capital structure;
    - ii. its objectives and the nature of its activities;
    - iii. the nature and extent of financial assistance or any concession given to it by the Government; and
    - iv. any other relevant factor;
  - viii) employees employed by inland water transport establishments operating on routes passing through any other country; and
  - ix) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.

Subject to the provisions of sub-section (1) and notwithstanding anything contained in any other provisions of this Chapter, the provisions of this Chapter shall apply to such establishment in which 20 or more persons are employed or were employed on any day during an accounting year.

## **CENTRAL ADVISORY BOARD AND STATE ADVISORY BOARD**

### **Q NO 26. CENTRAL ADVISORY BOARDS AND STATE ADVISORY BOARDS**

#### **ANSWER**

The central and state governments will constitute advisory boards. The Central Advisory Board will consist of:

1. employers,
2. employees (in equal number as employers),
3. independent persons, and
4. 5 representatives of state governments. State Advisory Boards will consist of employers, employees, and independent persons. Further, one-third of the total members on both the central and state Boards will be women.

#### **THE BOARDS WILL ADVISE THE RESPECTIVE GOVERNMENTS ON VARIOUS ISSUES INCLUDING:**

1. fixation of minimum wages, and
2. increasing employment opportunities for women.

Chapter V of the Code talks about the advisory board.

#### **SECTION 42 OF THE CODE DEALS WITH THE PROVISIONS RELATING TO FUNCTIONS OF CENTRAL AND STATE ADVISORY BOARDS.**

##### **CENTRAL ADVISORY BOARD**

1. The Central Government shall constitute the Central Advisory Board which shall consist of persons to be nominated by the Central Government:
  - i) representing employers;
  - ii) representing employees which shall be equal in number of the members specified in clause (a);
  - iii) independent persons, not exceeding one-third of the total members of the Board; and
  - iv) 5 representatives of such State Governments as may be nominated by the Central Government.
2. One-third of the members referred to in sub-section (1) shall be women and a member specified in clause (c) of the said sub-section shall be appointed by the Central Government as the Chairperson of the Board.
3. The Central Advisory Board constituted under sub-section (1) shall from time to time advise the Central Government on reference of issues relating to:
  - i) fixation or revision of minimum wages and other connected matters;
  - ii) providing increasing employment opportunities for women;
  - iii) the extent to which women may be employed in such establishments or employments as the

- Central Government may, by notification, specify in this behalf; and
- iv) any other matter relating to this Code, and on such advice, the Central Government may issue directions to the State Government as it deems fit in respect of matters relating to issues referred to the Board.

## STATE ADVISORY BOARD

1. Every State Government shall constitute a State Advisory Board for advising the State Government:
  - i) in fixation or revision of minimum wages and other connected matters;
  - ii) for the purpose of providing increasing employment opportunities for women;
  - iii) with regard to the extent to which women may be employed in such establishments or employments as the State Government may, by notification, specify in this behalf; and
  - iv) in any other matter relating to this Code, which the State Government may refer from time to time to the Board.
2. The State Advisory Board may constitute one or more committees or sub-committees to look into issues pertaining to matters specified in clauses (a) to (d) of sub-section (4).
3. The State Advisory Board and each of the committees and sub- committees thereof shall consist of persons:
  - i) representing employers;
  - ii) representing employees which shall be equal in number of the members specified in clause (a); and
  - iii) independent persons, not exceeding one-third of the total members of the Board or committee or sub- committee, as the case may be.
4. One-third of the members referred to in sub-section (6) shall be women and one among the members specified in clause (c) of the said sub-section shall be:
  - i) appointed by the State Government as the Chairperson of the Board;
  - ii) appointed by the State Advisory Board as the Chairperson of the committee or sub-committee, as the case may be.
5. In tendering its advice in the matters specified in clause (b) or clause (c) of sub-section (4), the State Advisory Board shall have regard to the number of women employed in the concerned establishment, or employment, the nature of work, hours of work, suitability of women for employment, as the case may be, the need for providing increasing employment opportunities for women, including part time employment, and such other relevant factors as the Board may think fit.
6. The State Government may, after considering the advice tendered to it by the State Advisory Board and after inviting and considering the representations from establishment or employees or any other person which that Government thinks fit, issue such direction as may be deemed necessary.
7. The Central Advisory Board referred to in sub-section (1) and the State Advisory Board referred to in sub-section (4) shall respectively regulate their own procedure including that of the committees and sub- committees constituted by the State Advisory Board, in such manner as may be prescribed.

8. The terms of office of the Central Advisory Board referred to in sub-section (1) and the State Advisory Board referred to in sub-section (4) including that of the committees and sub-committees constituted by the State Advisory Board, shall be such as may be prescribed.

## **PAYMENT OF DUES, CLAIMS AND AUDIT**

**Q NO 27. STATE THE PROVISIONS RELATED TO PAYMENT OF DUES, CLAIMS AND AUDIT UNDER THE CODE**

### **ANSWER**

Chapter VI of the Code discusses about the payment of dues, claims and audit.

#### **RESPONSIBILITY OF PAYMENT OF VARIOUS DUES (SECTION 43):**

Every employer shall pay all amounts required to be paid under this Code to every employee employed by him: Provided that where such employer fails to make such payment in accordance with this Code, then, the company or firm or association or any other person who is the proprietor of the establishment, in which the employee is employed, shall be responsible for such payment.

Explanation: For the purposes of this section the expression “firm” shall have the same meaning as assigned to it in the Indian Partnership Act, 1932.

#### **PAYMENT OF VARIOUS UNDISBURSED DUES IN CASE OF DEATH OF EMPLOYEE (SECTION 44)**

1. All amounts payable to an employee under this Code shall, if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known:
  - i) be paid to the person nominated by him in this behalf in accordance with the rules made under this Code; or
  - ii) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the such authority, as may be prescribed, who shall deal with the amounts so deposited in the manner as may be prescribed.
2. Where in accordance with the provisions of sub-section (1), all amounts payable to an employee under this Code:
  - i) are paid by the employer to the person nominated by the employee; or
  - ii) are deposited by the employer with the authority referred to in clause (b) of sub-section (1), then, the employer shall be discharged of his liability to pay those amounts.

#### **CLAIMS UNDER CODE AND PROCEDURE THEREOF (SECTION 45)**

1. The appropriate Government may, by notification, appoint one or more authorities, not below the rank of a Gazetted Officer, to hear and determine the claims which arises under the provisions of this Code.

2. The authority appointed under sub-section (1), while deciding the claim under that sub-section, may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined, which may extend to ten times of the claim determined and endeavour shall be made by the authority to decide the claim within a period of 3 months.
3. If an employer fails to pay the claim determined and compensation ordered to be paid under sub-section (2), the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.
4. Any application before the authority for claim referred to in sub-section (1) may be filed by:
  - i) the employee concerned; or
  - ii) any Trade Union registered under the Trade Unions Act, 1926 of which the employee is a member; or
  - iii) the Inspector-cum-Facilitator.
5. Subject to such rules as may be made, a single application may be filed under this section on behalf or in respect of any number of employees employed in an establishment.
6. The application under sub-section (4) may be filed within a period of 3 years from the date on which claims referred to in sub-section (1) arises: Provided that the authority referred to in sub-section (1) may, entertain the application after three years on sufficient cause being shown by the applicant for such delay.
7. The authority appointed under sub-section (1) and the appellate authority appointed under sub-section (1) of section 49, 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 or appellate authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

#### **REFERENCE OF DISPUTES UNDER THIS CODE (SECTION 46)**

It lays down that notwithstanding anything contained in this Code, where any dispute arises between an employer and his employees with respect to:

1. fixation of bonus or eligibility for payment of bonus under the provisions of this Code; or
2. the application of this Code, in respect of bonus, to an establishment in public sector,

then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947.

#### **PRESUMPTION ABOUT ACCURACY OF BALANCE SHEET AND PROFIT AND LOSS ACCOUNT OF CORPORATIONS AND COMPANIES. (SECTION 47)**

1. Where, during the course of proceedings before:
  - i) the authority under section 45; or
  - ii) the appellate authority under section 49; or
  - iii) a Tribunal; or

iv) an arbitrator referred to in clause (aa) of section 2 of the Industrial Disputes Act, 1947, In respect of any dispute of the nature specified in sections 45 and 46 or in respect of an appeal under section 49, the balance sheet and the profit and loss account of an employer, being a corporation or a company (other than a banking company), duly audited by the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of companies under section 141 of the Companies Act, 2013, are produced before it, then, the said authority, appellate authority, Tribunal or arbitrator, as the case may be, may presume the statements and particulars contained in such balance sheet and profit and loss account to be accurate and it shall not be necessary for the corporation or the company to prove the accuracy of such statements and particulars by the filing of an affidavit or by any other mode:

Provided that where the said authority, appellate authority, Tribunal or arbitrator, as the case may be, is satisfied that the statements and particulars contained in the balance sheet or the profit and loss account of the corporation or the company are not accurate, it may take such steps as it thinks necessary to find out the accuracy of such statements and particulars.

2. When an application is made to the authority, appellate authority, Tribunal or arbitrator, as the case may be, referred to in sub-section (1), by any Trade Union being a party to the dispute or as the case may be, an appeal, and where there is no Trade Union, by the employees being a party to the dispute, or as the case may be, an appeal, requiring any clarification relating to any item in the balance sheet or the profit and loss account, then such authority, appellate authority, Tribunal or arbitrator, may, after satisfying itself that such clarification is necessary, by order, direct the corporation or, as the case may be, the company, to furnish to the Trade Union or the employees such clarification within such time as may be specified in the direction and the corporation or, as the case may be, the company, shall comply with such direction.

#### **AUDIT OF ACCOUNT OF EMPLOYERS NOT BEING CORPORATIONS OR COMPANIES (SECTION 48)**

1. Where any claim, dispute or appeal with respect to bonus payable under this Code between an employer, not being a corporation or a company, and his employees is pending before any authority, appellate authority, Tribunal or arbitrator, as the case may be, as referred to in sub-section (1) of section 47 and the accounts of such employer audited by any auditor duly qualified to act as auditor of companies under the provisions of section 141 of the Companies Act, 2013, are produced before such authority, appellate authority, Tribunal or arbitrator, then the provisions of section 47 shall, so far as may be, apply to the accounts so audited.
2. When the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (1), as the case may be, finds that the accounts of such employer have not been audited by any such auditor and it is of opinion that an audit of the accounts of such employer is necessary for deciding the question referred to it, then, such authority, appellate authority, Tribunal or arbitrator, may, by order, direct the employer to get his accounts audited within such time as may be specified in the direction or within such further time as it may allow by such auditor or auditors as it thinks fit and thereupon the employer shall comply with such direction.
3. Where an employer fails to get the accounts audited under sub-section (2), the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (1), as the case may be, may, without prejudice to the provisions of section 54, get the accounts audited by such auditor or auditors as it thinks fit.

4. When the accounts are audited under sub-section (2) or sub-section (3), the provisions of section 47 shall, so far as may be, apply to the accounts so audited.
5. The expenses of, and incidental to, any audit under sub-section (3) including the remuneration of the auditor or auditors shall be determined by the authority, appellate authority, Tribunal or arbitrator, referred to in sub-section (1), as the case may be, and paid by the employer and in default of such payment shall be recoverable by the authority referred to in sub-section (3) of section 45 from the employer in the manner provided in that sub-section.

#### **APPEAL PROCEDURES (SECTION 49)**

1. Any person aggrieved by an order passed by the authority under sub-section (2) of section 45 may prefer an appeal, to the appellate authority having jurisdiction appointed by the appropriate Government, by notification, for such purpose, within ninety days from the date of such order, in such form and manner as may be prescribed: Provided that the appellate authority may entertain the appeal after 90 days if it satisfied that the delay in filing the appeal has occurred due to sufficient cause.
2. The appellate authority shall be appointed from the officers of the appropriate Government holding the post at least one rank higher than the authority referred under sub-section (1) of section 45.
3. The appellate authority shall, after hearing the parties in the appeal, dispose of the appeal and endeavour shall be made to dispose of the appeal within a period of 3 months.
4. The outstanding dues under the orders of the appellate authority shall be recovered by the authority referred to in section 45, by issuing the certificate of recovery in the manner specified in sub-section (3) of that section.

#### **RECORDS, RETURNS AND NOTICES (SECTION 50)**

The provisions mandates that:

1. Every employer of an establishment to which this Code applies shall maintain a register containing the details with regard to persons employed, muster roll, wages and such other details in such manner as may be prescribed.
2. Every employer shall display a notice on the notice board at a prominent place of the establishment containing
  - i) the abstract of this Code,
  - ii) category-wise wage rates of employees,
  - iii) wage period,
  - iv) day or date and time of payment of wages, and
  - v) the name and address of the Inspector-cum-Facilitator having jurisdiction.
3. Every employer shall issue wage slips to the employees in such form and manner as may be prescribed.
4. The provisions of sub-sections (1) to (3) shall not apply in respect of the employer to the extent he employs not more than five persons for agriculture or domestic purpose: Provided that such employer, when demanded, shall produce before the Inspector-cum-Facilitator, the reasonable proof of the payment of wages to the persons so employed.



Explanation. —For the purposes of this sub-section, the expression “domestic purpose” means the purpose exclusively relating to the home or family affairs of the employer and does not include any affair relating to any establishment, industry, trade, business, manufacture or occupation

#### **Q NO 28. APPOINTMENT OF INSPECTOR-CUM-FACILITATORS AND STATE THEIR POWERS**

#### **ANSWER**

#### **APPOINTMENT OF INSPECTOR-CUM-FACILITATORS AND THEIR POWERS (SECTION 51)**

**It lays down that:**

1. The appropriate Government may, by notification, appoint Inspector-cum-Facilitators for the purposes of this Code who shall exercise the powers conferred on them under sub-section (4) throughout the State or such geographical limits assigned in relation to one or more establishments situated in such State or geographical limits or in one or more establishments, irrespective of geographical limits, assigned to him by the appropriate Government, as the case may be.
2. The appropriate Government may, by notification, lay down an inspection scheme which may also provide for generation of a web-based inspection and calling of information relating to the inspection under this Code electronically.
3. Without prejudice to the provisions of sub-section (2), the appropriate Government may, by notification, confer such jurisdiction of randomized selection of inspection for the purposes of this Code to the Inspector-cum-Facilitator as may be specified in such notification.
4. Every Inspector-cum-Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code.
5. The Inspector-cum-Facilitator may:
  - i) advice to employers and workers relating to compliance with the provisions of this Code;
  - ii) inspect the establishments as assigned to him by the appropriate Government, subject to the instructions or guidelines issued by the appropriate Government from time to time.
6. Subject to the provisions of sub-section (4), the Inspector-cum-Facilitator may:
  - i) examine any person who is found in any premises of the establishment, whom the Inspector-cum-Facilitator has reasonable cause to believe, is a worker of the establishment;
  - ii) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;
  - iii) search, seize or take copies of such register, record of wages or notices or portions thereof as the Inspector-cum-Facilitator may consider relevant in respect of an offence under this Code and which the Inspector-cum-Facilitator has reason to believe has been committed by the employer;
  - iv) bring to the notice of the appropriate Government defects or abuses not covered by any law for the time being in force; and
  - v) exercise such other powers as may be prescribed.
7. Any person required to produce any document or to give any information required by an Inspector-cum- Facilitator under sub-section (5) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code.

8. The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure under sub-section (5) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

The present code talks about provisions relating to offences and their corresponding penalties.

The Code specifies penalties for offences committed by an employer, such as:

- i) paying less than the due wages, or
- ii) for contravening any provision of the Code.

Penalties vary depending on the nature of offence, with the maximum penalty being imprisonment for 3 months along with a fine of up to one lakh rupees.

#### **Q NO 29. COGNIZANCE OF OFFENCES**

##### **ANSWER**

**SECTION 52 TALKS ABOUT COGNIZANCE OF OFFENCES. THE PROVISIONS LAYS DOWN THAT:**

- 1. No court shall take cognizance of any offence punishable under this Code, save on a complaint made by or under the authority of the appropriate Government or an officer authorised in this behalf, or by an employee or a registered Trade Union registered under the Trade Unions Act, 1926 or an Inspector-cum-Facilitator.
- 2. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try the offences under this Code.

#### **Q NO 30. STATE THE POWER OF OFFICERS OF APPROPRIATE GOVERNMENT TO IMPOSE PENALTY IN CERTAIN CASES.**

##### **ANSWER**

**POWER OF OFFICERS OF APPROPRIATE GOVERNMENT TO IMPOSE PENALTY IN CERTAIN CASES. IT LAYS DOWN THAT (SECTION 53)**

- 1. Notwithstanding anything contained in section 52, for the purpose of imposing penalty under clauses (a) and (c) of sub-section (1) and sub-section (2) of section 54 and sub-section (7) of section 56, the appropriate Government may appoint any officer not below the rank of Under Secretary to the Government of India or an officer of equivalent rank in the State Government, as the case may be, for holding enquiry in such manner, as may be prescribed by the Central Government.
- 2. While holding the enquiry, the officer referred to in sub-section (1) shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of such officer, may be useful for or relevant to the subject matter of the enquiry and if, on such enquiry, he is satisfied that the person has committed any offence under the provisions referred to in sub-section (1), he may impose such penalty as he thinks fit in accordance with such provisions.

## Q NO 31. STATE THE PENAL PROVISIONS UNDER THE CODE

### ANSWER

#### **PENALTIES FOR OFFENCES (SECTION 54)**

1. Any employer who:
  - i) pays to any employee less than the amount due to such employee under the provisions of this Code shall be punishable with fine which may extend to Rs 50,000;
  - ii) having been convicted of an offence under clause (a) is again found guilty of similar offence under this clause, within 5 years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence, be punishable with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs 1,00,000, or with both;
  - iii) contravenes any other provision of this Code or any rule made or order made or issued thereunder shall be punishable with fine which may extend to Rs 20,000;
  - iv) having been convicted of an offence under clause (c) is again found guilty of similar offence under this clause, within 5 years from the date of the commission of the first or subsequent offence, he shall, on the second and the subsequent commission of the offence under this clause, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs 40,000, or with both.
2. Notwithstanding anything contained in sub-section (1), for the offences of non-maintenance or improper maintenance of records in the establishment, the employer shall be punishable with fine which may extend to Rs 10,000.
3. Notwithstanding anything contained in clause (c) of sub-section (1) or sub-section (2), the Inspector-cum- Facilitator shall, before initiation of prosecution proceeding for the offences under the said clause or sub- section, give an opportunity to the employer to comply with the provisions of this Code by way of a written direction, which shall lay down a time period for such compliance, and, if the employer complies with the direction within such period, the Inspector-cum-Facilitator shall not initiate such prosecution proceeding and, no such opportunity shall be accorded to an employer, if the violation of the same nature of the provisions under this Code is repeated within a period of 5 years from the date on which such first violation was committed and in such case the prosecution shall be initiated in accordance with the provisions of this Code.

#### **OFFENCES BY COMPANIES (SECTION 55)**

1. If the person committing an offence under this Code is a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

2. Notwithstanding anything contained in sub-section (1), where an offence under this Code has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation:** For the purposes of this section,

1. “company” means anybody corporate and includes:
  - i) a firm; or
  - ii) a limited liability partnership registered under the Limited Liability Partnership Act, 2008; or
  - iii) other association of individuals; and
2. “director” in relation to a firm means a partner in the firm.

### COMPOSITION OF OFFENCES (SECTION 56)

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Code, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of fifty per cent. of the maximum fine provided for such offence, in the manner as may be prescribed.
2. Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of 5 years from the date:
  - i) of commission of a similar offence which was earlier compounded;
  - ii) of commission of similar offence for which such person was earlier convicted.
3. Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the appropriate Government.
4. Every application for the compounding of an offence shall be made in such manner as may be prescribed.
5. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.
6. Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the notice of the court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.
7. Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be punishable with a sum equivalent to 20% of the maximum fine provided for the offence, in addition to such fine.
8. No offence punishable under the provisions of this Code shall be compounded except under and in accordance with the provisions of this section.

## **Q NO 32. MISLENEOUS PROVISIONS**

### **ANSWER**

#### **BAR OF SUITS (SECTION 57)**

No court shall entertain any suit for the recovery of minimum wages, any deduction from wages, discrimination in wages and payment of bonus, in so far as the sum so claimed:

1. forms the subject of claims under section 45;
2. has formed the subject of a direction under this Code;
3. has been adjudged in any proceeding under this Code;
4. could have been recovered under this Code.

#### **PROTECTION OF ACTION TAKEN ON GOOD FAITH (SECTION 58)**

No suit, prosecution or any other legal proceeding shall lie against the appropriate Government or any officer of that Government for anything which is in good faith done or intended to be done under this Code.

#### **BURDEN OF PROOF (SECTION 59)**

Where a claim has been filed on account of non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deductions not authorised by this Code from the wages of an employee, the burden to prove that the said dues have been paid shall be on the employer.

#### **CONTRACTING OUT (SECTION 60)**

Any contract or agreement whereby an employee relinquishes the right to any amount or the right to bonus due to him under this Code shall be null and void in so far as it purports to remove or reduce the liability of any person to pay such amount under this Code.

#### **EFFECT OF LAWS, AGREEMENTS ETC., INCONSISTENT WITH THIS CODE (SECTION 61)**

The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement or contract of service.

#### **DELEGATION OF POWERS (SECTION 62)**

The appropriate Government may, by notification, direct that any power exercisable by it under this Code shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be also exercisable:

1. where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification;
2. where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

### **EXEMPTION OF EMPLOYER FROM LIABILITY IN CERTAIN CASES (SECTION 63)**

Where an employer is charged with an offence under this Code, he shall be entitled upon complaint duly made by him, to have any other person whom he charges as the actual offender, brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court:

1. that he has used due diligence to enforce the execution of this Code; and
2. that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Code in respect of such offence: Provided that in seeking to prove, as aforesaid, the employer may be examined on oath, and the evidence of the employer or his witness, if any, shall be subject to cross-examination by or on behalf of the person whom the employer charges as the actual offender and by the prosecution.

### **PROTECTION AGAINST ATTACHMENTS OF ASSETS OF EMPLOYER WITH GOVERNMENT (SECTION 64)**

Any amount deposited with the appropriate Government by an employer to secure the due performance of a contract with that Government and any other amount due to such employer from that Government in respect of such contract shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the employer other than any debt or liability incurred by the employer towards any employee employed in connection with the contract aforesaid.

### **EXERCISE**

#### **⊙ Multiple Choice Question:**

1. The minimum rate of wages on time work basis may be fixed in accordance with
  - a) by the hour; or
  - b) by the day; or
  - c) by the month
  - d) all of the above
2. Section deal with Eligibility for Bonus.
  - a) 6
  - b) 8
  - c) 18
  - d) 26

3. Every Inspector-cum-Facilitator appointed under sub-section (1) shall be deemed to be public servant within the meaning of section\_\_\_of the Indian Penal Code.

- a) 15
- b) 18
- c) 21
- d) 26

4. Section 56 talks about the \_\_\_\_

- a) composition of offences
- b) offences by companies.
- c) penalties for offences,
- d) power of officers

⦿ **State TRUE or FALSE**

- 1. Section 35 lays down provisions relating to calculation of direct tax payable by employer.
- 2. The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding 6 years.
- 3. Section 9 lays down provisions relating to power of Central Government to fix floor wage.
- 4. Section 45 deals with claims under Code and procedure thereof.
- 5. The Code of Wages, 2019 was enacted in 2020.

⦿ **Fill in the blanks**

- 1. As per the bill, a committee of trade unions, employers and the state government will fix a\_\_\_\_\_for workers throughout the country.
- 2. Any minimum rate of wages fixed or revised by the appropriate Government under section 8 may consist of a\_\_\_\_\_and an allowance at a rate to be adjusted.
- 3. Every committee appointed by the appropriate Government under clause (a) of sub-section (1) shall consist of persons— (a) representing employers; (b) representing\_\_\_\_\_which shall be equal in number of the members specified in clause (a); and (c) independent persons, not exceeding one-third of the total members of the committee.
- 4. Where a person is employed on piece work for which minimum time rate and not a minimum piece rate has been fixed under this Code, the employer shall pay to such person wages at not less than the \_\_\_\_\_

⦿ **Short Essay Type Questions**

- 1. What is the time limit for payment of wages under the Code?
- 2. How is the work wage and hours of work fixed under the Code?
- 3. How are deductions to the wages calculated under the Code?

⦿ **Essay Type Questions**

- 1. How are Central Advisory Board and State Advisory Boards constituted?
- 2. Do employers have a responsibility for payment of various dues under the Code?
- 3. Does the Code provide for appointment of Inspector-cum-Facilitators and what are their powers?

4. What are the powers of officers of appropriate Government to impose penalty in certain cases under the Code?

**Answer:**

**Multiple Choice Question:**

1. d, 2. d, 3. c, 4. a.

**State TRUE or FALSE**

1. True, 2. False, 3. True, 4. True, 5. True.

**Fill in the blanks**

1. floor wage, 2. basic rate of wages, 3. employees, 4. minimum time rate.

SHRESHTA