

S. No

Labour FAQ

- 1. In cases where an organisation engages workers as “retainers,” what is their legal status? Can such retainers be regarded as employees under applicable labour laws?**

Generally, the status of retainers depends on the nature of their engagement and the degree of control exercised by the management. If retainers perform work similar to that of regular employees, receive remuneration & benefits comparable to employees and operate under the direct supervision and control of the management, they are to be treated as employees under applicable labour laws.

Conversely, if retainers function independently, are engaged for specific assignments, are not subject to direct supervision or control of the management and their terms of engagement are distinct from those of regular employees, they are not to be regarded as employees.

Ref: India Ltd Vs Electronics corporation of India Service Eng Unions 2006 LLR 1045.

- 2. Under the provisions of the Payment of Gratuity Act, 1972, in case of death of an employee, is gratuity payable to the nominees or to the legal heirs? Further, in situations where the employee has not furnished nomination details or where documents regarding legal heirship is not available, what is the responsibility of the management/employer to disburse the payment of gratuity?**

The payment of gratuity cannot be withheld beyond 30 days from the date it becomes payable and any delay beyond this period attracts statutory interest. However, the law does not explicitly prescribe the course of action where the delay is attributable to the failure of the deceased employee's nominees or legal heirs to furnish the required details or documents.

In such circumstances, where the employer is unable to determine the rightful claimant, whether nominees or legal heirs, it is advisable for the employer to deposit the gratuity amount with the Controlling Authority under the Act on or before the expiry of the 30-day period. The Controlling Authority will thereafter adjudicate the claim and disburse the gratuity amount to the eligible persons in accordance with law.

- 3. Is a notice of change in service conditions required to be issued in all circumstances, including cases where the change is not prejudicial to the employees?**

As per Section 40 of the Industrial Relations Code, 2020 (corresponding to Section 9A of the Industrial Disputes Act, 1947), a notice of change is required only when there is a proposed alteration in service conditions that is prejudicial to the workers, that adversely affect workmen.

Accordingly, where the change is beneficial in nature, issuance of a notice of change is not warranted. For instance, creating avenues for promotion would not require such notice of change.

Ref: Bijoy Boari vs Coal India Ltd 2013 FLR 20 Calcutta HC/ Siemens Ltd Vs Siemens Employees Union, 2002 LLR 17 SC.

- 4. The definition of 'worker' under the Labour Codes excludes apprentices engaged under the Apprentices Act, 1961. In cases where an employer has entered into an apprenticeship agreement, but has not registered it as required under the Act, would such an apprentice be eligible to claim regularization as a worker?**

As per Section 4 of the Apprentices Act, 1961, every contract of apprenticeship is required to be sent by the employer to the Apprenticeship Adviser for registration. However, mere non-registration of the contract does not confer the status of a regular worker on the apprentice.

Once a person is engaged as an apprentice, even if the agreement is not registered, they shall continue to be treated as an apprentice unless and until a formal Order of regular appointment is issued by the employer.

Ref: UP State Electricity Board Vs Shiv Mohan Singh and another 2005 I LLJ 117 SC.

- 5. Under the OSH code, can the occupier of the factory claim exemption from criminal liability?**

Yes. The occupier is entitled to file a complaint against any person whom he alleges to be the actual offender. However, a prior notice of three days must be given to the prosecutor before initiating such proceedings. The occupier is required to establish that he exercised due diligence and that the offence was committed by the other person without his knowledge or consent.

- 6. Under Occupational Safety, Health and Working Conditions Code leave, holidays and overtime related provisions are applicable only to "workers" and not "employees". If so, what criteria or parameters should be used by an establishment to identify and distinguish 'workers' from other categories of employees?**

As per the provisions of the Occupational Safety, Health and Working Conditions Code, employees engaged predominantly in supervisory functions and drawing wages above ₹21,000 per

month, as well as those performing managerial or administrative roles, fall outside the scope of the definition of 'worker'. The Supreme Court and the Bombay High Court have laid down certain tests to be applied for determining the distinction between a 'worker' and other categories of employees. Some of the tests are as follows:

- What is the predominant nature of the duties performed by the individual, whether they are supervisory in character or involve routine/operational work.
- It is not the designation or the position held but only the nature of duties.
- Whether the employee has the authority to take decisions that bind the company and to direct, supervise, or instruct others in the performance of work.
- Does the employee have the power either to recommend or sanction leave of the workmen working under him.
- Does he have the power to take disciplinary action.
- Does the employee have the authority to indent material and to distribute the same to workmen.

Ref: SLP Civil 3682 of 2025 dated 17.12.2025, Union Carbide India Ltd Vs D Samuel and others 1998 80 FLR Bom HC.

- 7. *Section 54 of the Occupational Safety, Health and Working Conditions Code, 2020, prohibits engagement of a contractor without a valid licence. In case, the management engages non-licensed contractor, can the contractor's workers claim automatic absorption, as employees of the principal employer?***

No. Section 54 of the Occupational Safety, Health and Working Conditions Code, 2020 prohibits engagement of contract labour through an unlicensed contractor. Where a contractor fails to obtain the required licence, it constitutes a statutory violation, attracting penal consequences under Section 94 of the Code.

However, such non-compliance does not result in automatic absorption of the contractor's workers by the principal employer. The workers do not acquire a right to be treated as direct employees solely on account of the contractor being unlicensed.

Ref: Director, Steel Authority of India Ltd. vs Ispat Khadan Janta Mazdoor Union, 2019 LLR 892 SC.

- 8. *How are the workers of the Grievance Redressal Committee to be selected when the establishment does not have its own Trade Union?***

As per the Industrial Relations Code, 2020 read with the Industrial Relations (Central) Rules, 2020, the constitution of the Grievance Redressal Committee (GRC) on the workers' side is ordinarily determined by the **Negotiating Union** or **Negotiating Council**.

In the absence of any Trade Union, the management shall facilitate the **election of worker representatives** from among the employees for nomination to the GRC. Such selection must be carried out through a fair and transparent process, ensuring adequate representation of all categories of workers, including women.

- 9. The Occupational Safety, Health and Working Conditions Code mandates medical health check-ups for employees above 40 years of age. Is it the statutory responsibility of the employer to conduct such check-ups? Further, in the case of contractual workers, can this responsibility be imposed on the principal employer?**

The Labour Codes place primary responsibility on the employer to comply with statutory provisions for direct employees. However, in the case of contract labour, if the contractor fails to fulfil any statutory obligation, the responsibility shifts to the principal employer. Accordingly, the principal employer is liable for ensuring compliance with requirements, including medical health check-ups, even for contract workers

- 10. If a probationer is not confirmed in writing after the completion of the 6-month probationary period under the Standing Orders, will the employee be deemed to be confirmed?**

No. The Supreme Court has held that where the **relevant rules or the appointment letter prescribe specific conditions precedent for confirmation**, there is **no automatic or deemed confirmation** merely because the probationer continues in service beyond the stipulated probation period.

In such cases, **confirmation must be expressly granted in accordance with the prescribed conditions** and continuation after the probation period, by itself, does not confer confirmed status on the employee.

Ref: Durgabai Deshmukh Memorial Sr. Sec School & anr Vs JAJ Vasu Sena & Anr C.A.No.5926/2029 dated 21.08.2019 (SC)

- 11. In matters relating to POSH compliance, on whom does the burden of proof lie?**

In POSH inquiries, the burden of proof does not lie entirely on either party in the strict criminal law sense. The process is investigative rather than argumentative.

- The **complainant** is required to present the allegations with reasonable detail, but is **not required to prove the case beyond reasonable doubt** or produce exhaustive evidence.
- The **respondent** is expected to explain their conduct; however, they are **not required to prove their innocence**, though a mere denial may carry limited evidentiary value.

The **Internal Committee (IC)** bears the primary responsibility to:

- **Examine all evidence,**
- **Assess the credibility of both parties,**
- **Apply the standard of preponderance of probabilities,** and
- **Record a reasoned finding.**

Thus, the responsibility of establishing the facts ultimately rests with the **Internal Committee**, without rigidly shifting the burden of proof onto either party.

12. In cases, where an employee is terminated for an offence involving moral turpitude, is the management required to issue a separate notice and should this process be initiated during the course of the enquiry itself?

The Supreme Court has held that, for the purpose of forfeiture of gratuity on grounds of an offence involving moral turpitude, a **criminal conviction is not mandatory**. What is required is that the **disciplinary authority must determine** whether the proven misconduct constitutes an offence involving moral turpitude, warranting forfeiture of gratuity either wholly or partially.

However, before such forfeiture is effected, **the principles of natural justice must be followed**. Accordingly, the management should:

- **Issue a separate notice** to the concerned employee, and
- **Provide an opportunity to represent**, both on:
 - Whether the misconduct amounts to an offence involving moral turpitude, and
 - The **extent of gratuity forfeiture** proposed

Thus, even if the misconduct is established in the enquiry, a **specific notice and opportunity of hearing on gratuity forfeiture** is necessary before taking a final decision.

Ref: Western Coal Fields Ltd Vs Manohar Govinda Fulzele, CA No.2608/2025 dated 17.02.2025 (SC)

13. Can a mass casual leave taken by workers in an establishment be considered a strike?

As per the definition under the **Industrial Relations Code, 2020**, a “strike” includes a situation where **50% or more workers in an establishment take concerted casual leave on a given day**, which is deemed to be a strike.

However, it is important to note that the Code **does not define the term “casual leave.”** Therefore, reference must be made to the relevant **State Shops and Establishments Act** or the **Model Standing Orders** applicable to the establishment.

Generally, casual leave is understood to:

- Be granted for **short durations**, typically **not exceeding 3 days at a time**
- Be availed under **unforeseen or urgent circumstances**
- **Does not require prior approval** in the same manner as other types of leave

Accordingly, when a large number of workers (50% or more) avail casual leave simultaneously in a coordinated manner, it may lose its individual character as leave and be **treated as a strike under the law.**

14. If an employee is transferred by the employer from one State to another, would such employee be treated as an Inter-State Migrant Worker under the law?

The definition of “Inter-State Migrant Worker” under the Occupational Safety, Health and Working Conditions Code, 2020 covers only the following situations:

- a) A person who has been recruited in one State for employment in another State; or
- b) A person who has come on his own from one State and obtained employment in another State.

Therefore, a person who is transferred by his employer from one State to another in the course of existing employment does not fall within the scope of the definition and cannot be treated as an Inter-State Migrant Worker under the Code.

15. If a dispute arises as to whether a particular activity constitutes a “core activity” under the Occupational Safety, Health and Working Conditions Code, 2020, who is the competent authority to decide such issue?

Draft Central Rules provide that an aggrieved party may submit an application, along with supporting documents, to the Joint Secretary, Ministry of Labour and Employment, Government of India.

The Joint Secretary shall, after providing an opportunity of hearing to the concerned parties, pass a reasoned order in the matter regarding classification of the activity under the Occupational Safety, Health and Working Conditions Code, 2020

16. Is there any prescribed time limit for payment of leave encashment under the new Labour Codes?

Yes.

As per the new Labour Codes, when a worker is discharged, dismissed, or resigns from employment, wages in lieu of unavailed leave shall be paid within two working days from the date of cessation of employment.

However, in the case of death or superannuation of the worker, the leave wages are required to be paid before the expiry of two months from the date of such superannuation or death, as the case may be, in accordance with the provisions of the Occupational Safety, Health and Working Conditions Code, 2020.

17. After the introduction of the new Labour Codes, if a worker raises a dispute against the management, under which statute will such an industrial dispute be filed and adjudicated? It is understood that the Two-Member Industrial Tribunals contemplated under the Industrial Relations Code have not yet been constituted. In such circumstances, before which authority/forum will the dispute be instituted and who will preside over the matter?

As per the notification issued by the Ministry of Labour and Employment dated 08.12.2025, the existing Labour Courts, Industrial Tribunals and National Tribunals constituted under the Industrial Disputes Act, 1947 shall continue to adjudicate both pending and newly instituted cases.

This arrangement has been made to ensure continuity of adjudication and to avoid any legal vacuum until the new Industrial Tribunals are constituted under the Industrial Relations Code, 2020.

Ref: United Labour Federation Vs Union of Indian and Anr 2026 LLR 135 (Mad HC)

18. If a factory already holds a valid licence under the Factories Act, is it required to obtain a fresh or separate licence under the Occupational Safety, Health and Working Conditions Code (OSH Code)?

No. The Occupational Safety, Health and Working Conditions Code, 2020 clearly provides that a factory which was already registered and holding a valid licence under the Factories Act, 1948 is not required to obtain fresh registration under the Occupational Safety, Health and Working Conditions Code, 2020.

However, the occupier/employer is required to furnish the details of the existing licence to the prescribed authority, and the licence must thereafter be renewed in accordance with the procedures prescribed under the OSH Code from its commencement date, i.e., 21.11.2025.

19. Whether an employer can mandate that employees open a bank account in the same bank as the employer for remittance of wages and other monetary benefits? If an employee refuses to do so, can the employer deny payment of wages on that ground?

No, The Court held that no statute mandates an employee to open a bank account with the same bank in which the employer maintains its account. Therefore, the employer cannot compel an employee to open a bank account with the employer's banker as a condition for disbursement of wages or other monetary benefits.

Ref: Malabar Cancer Society vs DM Dinesh kumar 2018 LLR 625 Kera HCA

20. Under the POSH Act, when is the Annual Report required to be submitted, to whom should it be submitted, and what are the mandatory contents of such report?

The Internal Committee should send the Annual Report for the calendar year (Jan-Dec) to the concerned District Officer on or before 31st January.

The District Officer shall be the District Collector or the District Social Welfare Officer. Additionally, the report shall be sent to DISH Authorities (for factories) and the Commissioner of Labour (for establishments). The content of the Annual Report shall briefly contain the following:

- Number of complaints of sexual harassment received in the year
- Number of complaints disposed off during the year
- Number of cases pending for more than 90 days
- Action taken report on the complaints received
- Details of Internal Committee
- Number of workshops/training sessions conducted and feedback

Number of IC meetings conducted, suggestions, employer compliance, etc.

21. Under the Factories Act, every factory employing 500 or more workers are required to maintain an ambulance room. Has this requirement undergone any change under the new Labour Codes?

No. An ambulance room is required to be constituted in every factory employing 500 or more workers and no change in the prescribed threshold has been carried out under the new Code.

22. Are overtime wages at twice the ordinary rate of wages, as provided under the Code, payable to all employees?

- Under the Occupational Safety, Health and Working Conditions Code, overtime wages are applicable only to “workers” and not to employees. Accordingly, the provisions relating to overtime do not apply to supervisory personnel drawing wages above Rs.18,000 per month or to managerial personnel.
- However, under Section 14 of the Code on Wages, payment of overtime wages is mandatory for all employees in respect of whom minimum wages have been fixed under the Code.
- In view of the differing scopes and coverage under the two Codes, the applicability of overtime provisions will need to be tested and clarified over time, particularly with respect to which category the employee falls under each Code and how overtime obligations are to be implemented in practice.

23. Section 124 of the Code on Social Security prohibits any reduction in wages on account of provident fund contributions. Where provident fund contributions are being made on the basic salary and such basic salary exceeds Rs.15,000 per month, can the management lawfully restrict its provident fund liability to the statutory wage ceiling?

Yes, the employer is under no statutory obligation to make provident fund contributions on wages exceeding the statutory ceiling of Rs.15,000 per month. Any contribution made on wages above the prescribed ceiling is purely voluntary. Accordingly, the employer is entitled to restrict or reduce its provident fund contribution to the statutory wage ceiling of Rs.15,000 at any time and no consent of the employee is required for such restriction.

Ref: Marathwada Gramin Bank Karamchari Sanghatana and Another vs Management of Marathwada Gramin Bank and others, 2011 LLR 1130 (SC)

24. Do the principles laid down by the Hon’ble Supreme Court in the Bridge & Roof and Vivekananda Vidyamandir judgments for

determining allowances on which provident fund contributions are payable continue to remain applicable?

No, in the said Supreme Court judgments, the allowance was taken into consideration for provident fund contribution on the ground that it was universally, necessarily and ordinarily paid to all workers across the board. However, the definition of “wages” under the new Labour Codes is not equivalent to this interpretation and is substantially different, thereby altering the basis on which such allowances may be included for PF contribution.

Ref: Bridge and Roof Co. Ltd vs Union of India (1963) 3 SCR 978 (SC) RPFCL, WB vs Vivekananda Vidyamandir and others, 2019 LLR 339 (SC)

- 25. Under the Factories Act, a worker who has worked for 240 days in a calendar year is entitled to annual leave with wages. If a worker joins mid-year, entitlement arises only if he has worked for two-thirds of the remaining portion of the calendar year. Does this provision continue under the new labour code, or has it been changed?**

Under the Occupational Safety, Health and Working Conditions (OSH) Code, a worker who has worked for at least 180 days in a calendar year is entitled to annual leave with wages for that year. In the case of a worker joining in the middle of the calendar year, eligibility arises upon completion of at least one-fourth (1/4th) of the remaining portion of the year. Accordingly, the earlier requirement of two-thirds (2/3rd) of the remaining year under the Factories Act has been reduced to one-fourth (1/4th) under the new labour code.

- 26. Earlier, the Factories Act prescribed a daily working hours limit of nine hours. Is this limit retained under the new Labour Codes?**

The daily working hours limit has been reduced from nine hours to eight hours under the new Labour Codes. However, the weekly working hours limit continues to remain unchanged at forty-eight hours.

- 27. The new Labour Codes mandate the applicability of Standing Orders for establishments employing 300 or more workers. Where an establishment already has certified Standing Orders in force, what actions, if any, are required to be taken by the management under the new Labour Codes?**

As per the new Labour Code, the existing certified Standing Orders can be continued and adopted by the management so long as they are not inconsistent with the provisions of the new Model Standing Orders. The new Model Standing Orders include age-proof documents, transfer policy, retirement age, etc. Management that does not have the necessary provisions on these subjects in their

existing Standing Orders may opt for the new certified Standing Orders.

28. Can the management engage Contract workers in Core activities?

As per the new labour code the Contract Labour cannot be engaged in the Core activities. However, in the following occasions they can be engaged

(a) the normal functioning of the establishment is such that the activity is ordinarily done through contractor; or

(b) the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be;

(c) any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.

29. Whether management is required to issue fresh appointment orders to existing workers under the new Labour Codes?

- As per Section 6(1)(f) of the Occupational Safety, Health and Working Conditions Code, 2020, an employer is required to issue an appointment order to every employee within three months from the date of implementation of the Code.
- The draft Central Rules prescribe the mandatory particulars to be included in such appointment orders.
- Accordingly, once the Rules are finalized and notified, employers will be required to issue a **supplementary appointment order** to existing employees, covering any additional particulars or subject matters mandated under the new Labour Code that were not included in the original appointment order.

30. In the case of a worker who superannuates or retires on or after 20 November 2025, how is gratuity to be calculated under the New Labour Codes?

- An employee who retires on or after the implementation of the New Labour Codes (21 November 2025) and has completed a minimum of five years of continuous service is eligible for gratuity.
- Since gratuity is calculated based on the last drawn wages, the wage definition prescribed under the New Labour Codes shall be applicable for determining the gratuity payable.

31. Whether gratuity should be payable to workers on completion of one year or five years as per the New Labour Code?

There is no change in the gratuity calculation and coverage; gratuity shall be payable to a regular worker on completion of 5 years of

service. Only for Fixed-term employees shall gratuity be payable on completion of one year.

32. Following the implementation of the New Labour Codes with effect from 21 November 2025, which statutory rules and regulations will govern employment matters during the transition period?

As per Section 6 of the General Clauses Act, 1897, the existing rules will continue to apply until the new rules under the Labour Codes are formally notified, provided they are consistent/in line with the provisions of the Codes.

33. When workers express apprehensions about an imminent danger in the factory, what responsibilities and actions are required to be taken by the employer to effectively mitigate the risk and ensure workplace safety?

- When workers raise apprehensions regarding an imminent danger in the factory, the employer is required to act promptly and responsibly to assess the situation.
- In terms of Section 41-H of the Factories Act, 1948, where workers express an apprehension of imminent danger and the occupier, agent, manager, or person in charge of the factory is not satisfied that such danger exists, he shall, notwithstanding his own assessment, forthwith refer the matter to the Inspector of Factories. The decision of the Inspector as to the existence of any imminent danger shall be final and binding on all concerned.

34. If an employee has already attained the age of superannuation but continues in service thereafter, is the employer legally liable to pay gratuity for the period of service rendered beyond the age of superannuation?

- If an employee continues to work beyond the age of superannuation without any break in service, he is entitled to gratuity for the entire period of continuous service, including the service rendered after superannuation, in accordance with Section 4 of the Payment of Gratuity Act, 1972.
- However, where an employee is superannuated and subsequently re-employed by the employer with a break in service, gratuity for the re-employment period will be payable only if the employee completes a minimum of five years of continuous service during such re-employment, as prescribed under the Payment of Gratuity Act.

Ref: i)Darshan Engineering Work Vs Authority 1984 LLR page 108 P & H HC

ii) **Jeevan Lal (1929) Ltd vs Controlling Authority 1982 I LLN 217
Mad HC**

- 35. If the appointment order issued by the management contains an arbitration clause stating that disputes *may* be referred to arbitration, is the management mandatorily bound to resolve such disputes through arbitration?**

No. Such a clause does not mandatorily bind either party to resolve disputes through arbitration. The use of the word “*may*” indicates that the clause is merely enabling in nature and does not constitute a binding or subsisting arbitration agreement. Arbitration can be resorted to only if both parties mutually agree to do so at the time the dispute arises. Consequently, the management is not obligated to compulsorily refer the dispute to arbitration under such a clause.

Ref: BGM and M-RPL- JMCT (Joint venture) Vs Eastern Cold feed Ltd, SLP (Shri) dairy 21451 / 2040 18.7.2025 Supreme Court.

- 36. Can an employer transfer an employee in the absence of a specific transfer clause in the appointment order or the service conditions?**

In the absence of an express provision in the appointment order or the service conditions authorising transfer, the employer does not have the unilateral right to transfer an employee. In such cases, the consent of the employee is essential. Any transfer effected without the employee’s consent would be illegal and is liable to be set aside.

Ref : Kundan sugar mills Vs Ziyazuddin 1960 I LLJ page 0256 SC

- 37. For remitting the wage and other cash benefits to the employees, can an employer make it mandatory for an employee to open the bank account in the same bank as that of the employer? Can the wages be denied in such situation?**

No, the Court held that no statute mandates an employee to open a bank account with the same bank where the employer maintains its account. Accordingly, the employer cannot insist that an employee open or maintain a bank account with the employer’s banker.

Ref: Malabar Cancer Society vs DM Dinesh kumar 2018 LLR 625 Kera HC

- 38. Whether an Enquiry Officer in a domestic enquiry can conduct the cross-examination of a workman’s witness? If so, does such cross-examination by the Enquiry Officer vitiate the domestic enquiry?**

The Supreme Court has held that an Enquiry Officer may put questions to witnesses for the purpose of clarification and to

discover the truth. However, such questioning must be fair & impartial and should not indicate any malice or bias.

Ref: (i)Mulchandani Electrical and Radio Insurance Ltd vs Workmen 1975 IV SCC page no,731.(ii)Praveen kumar vs Union of India, 2020 IX SCC page 471

39. In the event of failure to maintain the Adult Workers Register as required under the Factories Act, can the DISH authority initiate prosecution against the Occupier of the factory?

- The obligation to maintain the Register of Adult Workers under Section 62 of the Factories Act, 1948 is statutorily imposed on the Manager of the factory and not on the Occupier. Hence, the Occupier cannot ordinarily be held liable for non-maintenance of the said register.
- However, the Occupier has a statutory duty to intimate the DISH authorities regarding the appointment of the Factory Manager in Form III. If the Occupier fails to notify such appointment, the liability for non-maintenance of the Register of Adult Workers would, in that circumstance, devolve upon the Occupier.

Ref: State of Maharashtra Vs Sampath Lal Nensukh Bothra 1992 LLR 151, Bom HC.

40. Section 41(C) of the Factories Act mandates specific responsibilities concerning the maintenance of health records and the provision of medical facilities for workers engaged in processes involving hazardous substances. In the event of non-compliance with these obligations, can the Factory Manager be prosecuted for violation of this provision?

No. Under Section 41(C), the statutory responsibility is specifically imposed on the **Occupier** of the factory. Consequently, the **Manager** cannot be held liable or prosecuted for any violation of the obligations prescribed under this provision.

Ref:AK Mugherge vs State of Bihar, 2012 SEC 361.

41. Whether a factory licence is required only when there is a physical building, or also in other situations?

No. The term “*premises*” under the Factories Act cannot be narrowly interpreted to mean only a building. The Act applies to any place where a manufacturing process is carried on, even if such activity is undertaken on open land. The Factories Act does not mandate the existence of a building as a precondition for obtaining a factory licence.

Ref: Ardeshir H.Bhiwandi wala Vs State of Bombay1962 AIR 29

- 42. Where the employees raise a charter of demands and, through negotiation, arrive at an amicable settlement that is recorded as a settlement under the Industrial Disputes Act, is it mandatory for such a settlement to be registered with the Registrar under the Indian Registration Act, 1908?**

The Industrial Disputes Act, 1947 permits settlements between employers and employees under Sections 12(3) and 18(1). In a settlement arrived at under Section 12(3), the Conciliation Officer is a party to the settlement. A settlement under Section 18(1) must be executed in the prescribed Form H, and copies thereof are required to be forwarded to the appropriate Government and the Conciliation Officer. These are mandatory statutory requirements, and non-compliance would render the settlement unenforceable under the Act. There is no legal requirement to register such a settlement under the Indian Registration Act, 1908.

Ref: Keltron Controls Vs Workmen of Keltron Controls and others 2004 LLR 40 Kerala HC.

- 43. In case the Government amends any provision of the Model Standing Order, will such amendments automatically apply to the certified Standing Order?**

Once a Standing Order has been certified and becomes operational under Section 7 of the Industrial Employment (Standing Orders) Act, the Model Standing Orders cease to apply. Only in specific situations where the legislation expressly provides for the adoption of the Model Standing Orders will they prevail. Therefore, any amendment made to the Model Standing Orders does not automatically apply to an already certified Standing Order. To incorporate any new provisions introduced through amendments to the Model Standing Orders, the employer or workmen must follow the prescribed procedure to amend the existing certified Standing Order.

Ref: Hindustan Unilever Ltd Vs Presiding Officer, Industrial Tribunal, Kanpur and others 2016 LLR (SN) 90.

- 44. What is meant by Social Security Code, 2020 and what is its impact on the industry?**

Some of the key changes introduced under the Code are as follows:

- A **uniform definition of wages** has been introduced for consistency across all labour codes.

- **EPFO coverage** has been expanded to **all establishments employing 20 or more workers**, whereas earlier it applied only to establishments listed in the Schedule.
- The **informal workforce**, including *gig workers*, *platform workers* and *unorganised workers* along with their family members, has been brought within the scope of the Social Security Code.
- **Gratuity calculation** continues to remain unchanged for regular and seasonal employees.
- **Fixed-term employees** have been made eligible for **annuated gratuity**, proportionate to their period of service.

The Social Security Code, 2020 comprises of the following Acts:

1. The Employees' Compensation Act, 1923;
2. The Employees' State Insurance Act, 1948,
3. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
4. The Employees Exchange (Compulsory Notification of Vacancies) Act, 1959;
5. The Maternity Benefit Act, 1961;
6. The Payment of Gratuity Act, 1972;
7. The Cine Workers Welfare Fund Act, 1981;
8. The Building and Other Construction Workers Cess Act, 1996 and
9. The Unorganized Workers' Social Security Act, 2008.

45. What is meant by the Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code) and from when shall it be effective?

The Occupational Safety, Health and Working Conditions Code, 2020, is enacted to consolidate and simplify the existing complex web of labour laws. It replaces 13 Central Labour laws by a single comprehensive legislation and is effective Nov 21, 2025.

Some of the impact of OSH Code on the industry are as follows:

- **Employer – to provide free of cost annual health check-up for employees who have completed 45 years of age**
- **Leave with wages – eligibility limit reduced from the existing 240 days to 180 days. (Adult 1 day for every 20 days and Adolescent 1 day for every 15 days worked)**
- **Journey Allowance shall be paid to the Inter State Migrant Workman, if the migrant workers had worked for**

180 days in the preceding 12 months. i.e. To & Fro Journey allowance from the residence of the Inter-State migrant workman (II class sleeper in train or bus)

OSH Code comprises of the following Acts:

1. The Factories Act, 1948;
2. The Mines Act, 1952;
3. The Dock Workers (Safety, Health and Welfare) Act, 1986;
4. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
5. The Plantations Labour Act, 1951;
6. The Contract Labour (Regulation and Abolition) Act, 1970;
7. The Inter-State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979;
8. The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955;
9. The Working Journalist (Fixation of rates of wages) Act, 1958;
10. The Motor Transport Workers Act, 1961;
11. Sales Promotion Employees (Condition of Service) Act, 1976;
12. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and
13. The Cine Workers and Cinema Theatre Workers Act, 1981

46. What is the “Industrial Relations Code, 2020”? How many enactments have been consolidated under this Code, and what are its salient features?

The Trade Unions Act, 1926, The Industrial Employment (Standing Orders) Act, 1946 and The Industrial Disputes Act, 1947 have been consolidated in this code.

Some of the key highlights of IR Code 2020 are as follows:

- Introduction of fixed-term employment - Employers will be able to hire workers directly under a fixed-term contract based on the seasonality of industry.
- All statutory benefits available to permanent/regular worker shall also be made available to Fixed Term Employees, who are doing work of same or similar nature.
- Termination of service of a worker on completion of tenure in a fixed-term employment will not be considered as retrenchment.
- Principal Employer can engage contract labourers, directly
- In case of Retrenchment, the Organisation with 100 or more workers need to obtain approval from the Labour Commissioner

- Re-skilling fund” - for training of retrenched employees. The retrenched employee would be paid 15 days’ wages from the fund within 45 days of retrenchment
- Every industrial establishment employing twenty or more workers shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.
- The Committee shall consist of a maximum of 10 members with equal participation of the employer and the workers
- Standing Orders - shall apply to every industrial establishment wherein 300 or more are employed, or were employed on any day of the preceding twelve months

The existing Standing Orders on the date of commencement of this Code, shall, unless inconsistent with the code or rules, shall continue and be deemed to be the Standing Orders under the provisions of this Code

47. What is the “Industrial Relations Code, 2020”? How many enactments have been consolidated under this Code, and what are its salient features?

The Trade Unions Act, 1926, The Industrial Employment (Standing Orders) Act, 1946 and The Industrial Disputes Act, 1947 have been consolidated in this code.

Some of the key highlights of IR Code 2020 are as follows:

- Introduction of fixed-term employment - Employers will be able to hire workers directly under a fixed-term contract based on the seasonality of industry.
- All statutory benefits available to permanent/regular worker shall also be made available to Fixed Term Employees, who are doing work of same or similar nature.
- Termination of service of a worker on completion of tenure in a fixed-term employment will not be considered as retrenchment.
- Principal Employer can engage contract labourers, directly
- In case of Retrenchment, the Organisation with 100 or more workers need to obtain approval from the Labour Commissioner
- Re-skilling fund” - for training of retrenched employees. The retrenched employee would be paid 15 days’ wages from the fund within 45 days of retrenchment
- Every industrial establishment employing twenty or more workers shall have one or more Grievance Redressal

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48. How does the definition of “wages” differ under the Code on Wages, 2019 and what would be its impact?

- Under the Code on Wages, 2019, the definition of “wages” has been standardised across all wage-related laws, replacing multiple earlier definitions and ensuring uniformity. Traditionally, employers paid wages under various components such as Basic Wages, Dearness Allowance, House Rent Allowance, Conveyance Allowance, etc.
- Under the new definition, wages include basic pay, dearness allowance and retaining allowance, while placing a clear cap on the items that may be excluded. The Code mandates that at least 50% of the employee’s total remuneration must be counted as wages for calculating statutory benefits such as PF, Gratuity, Bonus, etc.
- All permissible exclusions such as HRA, overtime, bonus, commission, employer’s contributions and similar allowances cannot exceed 50% of the total remuneration. If the exclusions exceed this limit, the excess amount must be added back to wages.
- Therefore, even if management structures salary under different components or nomenclatures, a minimum of 50% of gross remuneration must be ensured for statutory benefit calculations.

49. What is the Code on Wages, 2019? How many existing enactments have been consolidated under this Code and from which date is it effective?

The Code on Wages, 2019, is a comprehensive legislation introduced by the Government of India to consolidate and simplify existing labour laws related to wages and bonus payments. It extends to all categories of employment, including the unorganized sector and covers any establishment engaged in industry, trade, business, or manufacturing activities.

The **Code on Wages** replaces and rationalizes **four** existing Central laws:

1. The Minimum Wages Act, 1948
2. The Payment of Wages Act, 1936
3. The Payment of Bonus Act, 1965
4. The Equal Remuneration Act, 1976

The Government of India has announced that the four Labour Codes - the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020 are being made effective from 21st November 2025

50. What are the key changes in The Occupational Safety, Health and Working Conditions Code, 2020?

Existing Provisions	OSH Code Provisions
Few key terminologies like "Employee", "Employer" and "Establishment" were defined differently in various Acts	<ul style="list-style-type: none"> • New definition of Employee introduced with a wide coverage. • Employer includes Occupier of a factory • "Establishment" now includes factory, newspaper establishment and plantation in which ten or more workers are employed.
“Factory” has been defined under Factories Act 1948 as the premises <u>whereon ten or more workers are employed</u> with the aid of power OR twenty or more workers are employed without the aid of power.	The definition of “factory” has been changed into the premises whereon <u>twenty or more workers are employed</u> with the aid of power OR the forty or more workers are employed without the aid of power.
The provisions of Contract Labour (Regulation and Abolition) Act 1970 apply to the contractor who employs	The OSH Code provisions are applicable to the contractor who employs 50 or more contract workmen

20 or more contract workmen	
The provision of Migrant labour applies to the contractor who employs 5 or more interstate migrant workmen in an establishment.	Migrant Labour Act applies if 10 or more interstate migrant workmen are employed in an establishment.
The threshold for the Canteen facility was 250 workers / employees	Now threshold for Canteen facility has been reduced up to 100 number of workers / employees
Threshold for appointment of Safety Officer was 1000 workers	Threshold for appointment of Safety Officer reduced to 500 workers in Factory and 250 in a hazardous process.

51. Who is an adolescent as per Factories Act, 1948 and how to obtain certificate of fitness?

As per the definition contained in the Act, “An adolescent means a person who has **completed their fifteenth year of age but has not completed their eighteenth year**”.

Certificate of Fitness:

1. **Application:** The manager shall apply for a certificate of fitness before the Certified Surgeon, DISH.
2. **Certificate:** The certifying surgeon shall grant a certificate of fitness to work in a factory as an adult.
3. **Conditions:** The certifying surgeon shall not grant or renew the certificate unless they have personal knowledge of the place where the young person works.
4. **Validity:** The certificate of fitness is valid for one year and can be revoked at any time.
5. **Fees:** The fees payable for the certificate shall be paid by the occupier.

52. What is the minimum age at which an adolescent can be certified to work as an adult in a factory? Is it mandatory to obtain a fitness certificate for such adolescent workers, and what are the consequences if an employer engages an adolescent without this required fitness certificate?

The minimum age for adolescents to be certified to work as adults in a factory is 15 years. It is mandatory for the factory to obtain a certificate of fitness for adolescent workers to work as adults in the factory. If the certificate of fitness is not obtained, the adolescent will be treated as a child labourer, and the occupier/manager will be liable for prosecution and penalties. Therefore, it is crucial to obtain the certificate of fitness before employing adolescents.

53. What can the internal committee (IC) do if the complainant is unable to submit a written complaint?

If the complainant is unable to submit the written complaint due to following reasons:

- Illiteracy
- Disability
- Trauma
- Due to fear

The Presiding Officer or any Internal Committee (IC) member shall assist the complainant by recording their oral complaint in their local language. The recorded statement shall be documented in writing and an acknowledgement shall be obtained from the complainant. The committee shall then proceed further with the complaint. In cases of incapacity, death or other valid reasons, the complaint may be filed through a representative.

Ref: Rule 6 of the POSH Rules.

54. Can an “incentive bonus” be considered a substitute for the statutory bonus payable under the Payment of Bonus Act, 1965?

No. An “incentive bonus” cannot be treated as a substitute for the statutory bonus under the Payment of Bonus Act, 1965. The two are fundamentally different in nature and purpose.

- **Statutory bonus** is a legal obligation payable to eligible employees under the Act, irrespective of productivity and even in years without profits (subject to minimum bonus provisions).
- **Incentive bonus** is linked to production, productivity, efficiency, or performance. It is an optional scheme introduced by employers to encourage higher output.

Therefore, incentive bonuses cannot replace or be adjusted against the statutory bonus mandated by law.

55. Can EPF be levied on the labour component / charges?

1. If the labourers are directly employed by the contractor - Yes

- The contractor is considered the **employer** under the EPF Act.
- In such cases, **EPF is applicable** on the wages paid to those workers (i.e., the *labour component*).
- The principal employer (the main company) must ensure that the contractor is depositing EPF contributions for those workers.

2. If the labour component is merely part of a composite service or supply contract - No

The EPF Authorities have no power to levy EPF contribution on the labour component/charges under section 7A of the EPF Act. The Authorities can assess and fix the EPF only by identifying the beneficiaries.

56. Often, occupiers and managers are prosecuted even when they have not committed any offence. Is there any legal remedy available to them?

Remedy for occupiers or managers prosecuted without fault:

Often, occupiers or managers are prosecuted even when they have not personally committed any offence. Under **Section 101 of the Factories Act**, an occupier or manager has the right to point out the actual offender. This provision, known as the “**third-party procedure**”, serves as a defence. It allows the occupier or manager to avoid punishment by demonstrating that the offence was committed by someone else and providing satisfactory evidence in accordance with **Section 101(a) and (b)**. In this way, the occupier or manager can establish their lack of personal fault while identifying the real offender.

Ref: Mrs Chaya kishore Musale vs Deputy Director, DISH, Pune and other Cr.WP.No.2565 of 2016 dated 5.12.2016 BOM HC.

57. What is the difference in the legal basis for prosecution under the Factories Act compared to prosecution under the IPC/BNS?

Under the **Factories Act**, mere omission to provide safety measures or unsafe conditions is sufficient to initiate prosecution. In contrast, prosecution under the **IPC/BSN** requires proof of **negligence** in addition to any act or omission that causes death or injury.

Ref: S Aswin Chand and others vs The State Represented by Inspector of Police and other, Cr. 20916/2019 dated 26.6.2022 Mad HC

58. Why is a complainant required to submit six copies of the complaint under the POSH Act?

Under the POSH Act, the complainant is required to submit six copies of the complaint. This is primarily for administrative and procedural purposes: four copies are for the members of the Internal Committee (IC) so that each can review the complaint independently (mandatorily minimum of four members in IC), one copy is provided to the respondent and the sixth copy is retained for record-keeping.

59. Can a Resolution Professional, appointed as the occupier of a factory during the insolvency process, be held responsible for violations under the Factories Act, 1948?

Under Section 17 of the Insolvency and Bankruptcy Code (IBC), 2016, from the date of appointment of the Interim Resolution Professional, the management of the affairs of the factory vests with the Interim Resolution Professional. He is deemed to be the occupier of the factory and cannot abdicate or avoid the statutory responsibilities attached to that position.

Ref: Subatara Monindaranath Meiti Vs The State, Cr. Op.2905 Mad HC.

60. For the coverage under the ESI Act, whether the employees engaged through contractor should also be taken into consideration?

Yes. The ESI Act defines an employee to include those engaged through a contractor. Hence, contract workers are to be treated as employees of the principal establishment for the purpose of determining coverage under the ESI Act.

Ref: M/s Sales Service Company Vs Deputy Director, ESIC, CMA No.833/2022 dated 12.5.2022 Mad HC.

61. Whether probationers are eligible for bonus?

There is no exclusion of probationers under the definition of 'employee'. Hence, a probationer who has worked for a minimum period of 30 days in an accounting year is also eligible for bonus.

62. What is the difference between disqualification from bonus and deduction from bonus?

Section 9 of the Payment of Bonus Act deals with disqualification and section 18 deals with deduction from Bonus.

As per Section 9 of the Payment of Bonus Act, an employee who is dismissed from service on account of fraud, riotous or violent

behaviour on the premises of the establishment or for misappropriation or sabotage of any part of the establishment, he is disqualified from receiving bonus.

However, as per Section 18, if an employee is found guilty of misconduct resulting in fraud or loss to the employer, the amount of loss caused may be deducted from the bonus payable to such employee.

63. When an employee admits his commitment of misconduct, is it necessary to conduct domestic enquiry?

Generally, if an employee unconditionally admits to the charge of misconduct, a full-fledged domestic enquiry is not required. However, this is subject to the condition that the admission is voluntary and there is no credible material or circumstantial evidence suggesting that it was obtained through duress, pressure, threats, or intimidation.

Ref: Shri. Vishwanath Bhivaji Kudale v. The Chairman, Maharashtra State Electricity Board and Others, 2025 LLR 258 (Bom. HC)

64. Whether an interim increase in wages would be considered as 'wages' for the purpose of ESI contribution?

When the interim increase on wages constitutes "Basic Wages", the said amount is to be taken into consideration for ESI Contribution. Since the increase granted is treated as part of wages, it is liable for ESI contribution.

Ref: Employees State Insurance Corporation vs Distilleries & Chemical Mazdoor Union - Appeal (civil) No.1727 of 2005.

65. Whether interim increase in wages, will it constitute as wages for the purpose of ESI Contribution?

It is relevant to note that when the interim increase on wages constitutes basic wages that amount is to be taken into consideration of ESI Contribution. What has been given as increase in wages is nothing but wages and to be considered for ESI Contribution.

Ref: Employees State Insurance Corporation vs Distilleries & Chemical Mazdoor Union & on 17 July, 2006. Bench: Ar. Lakshmanan, Lokeshwar Singh Panta CASE NO. Appeal (civil) 1727 of 2005.

66. If it is established that an employee has joined another organization without formally resigning from the existing one, is the management still required to conduct a domestic enquiry?

When a workman leaves and joins another organization without giving notice or obtaining a no-objection from the present employer,

the employer is not bound to compel such workman to rejoin duty or to conduct an enquiry in his absence. Such conduct is generally treated as abatement/abandonment of service. However, if the certified Standing Order classify abatement/abandonment as misconduct, a domestic enquiry would be required.

Ref: Diamond Toys Corporation Pvt Ltd vs Ram and another W.P.No.4501 of 2004 dated 7.2.2007. Del HC.

- 67. If an employee repeatedly sends letters stating that he is unwell, but does not formally apply for medical leave or submit a formal leave Application, is the management bound to accept the same and grant leave?**

No. Mere intimation through letters stating that the employee is unwell does not amount to a formal request for medical leave. In the absence of a proper leave Application and a medical certificate from the medical referee appointed by the management, the employer/management is not bound to grant medical leave.

- 68. Can a settlement entered into under the Industrial Disputes Act be accepted in part instead of as a whole?**

Generally, a settlement cannot be dissected into parts, accepting some provisions while rejecting others. Unless it can be shown that the objectionable portion substantially outweighs the advantages derived, the court will not regard the settlement as unfair or unjust. The deletion of a particular clause alone does not imply that the settlement, as a whole, was not accepted by the respondent.

Ref: Hindustan Unilever Ltd Vs Sanjay Dube Patil 2020 LLR page 417 Bom HC

- 69. Is there any limitation for claiming damages under sec 14B of the EPF Act?**

Section 14B of the EPF Act deals with damages for default in payment of contributions. The EPFO, through its Circular dated 20.08.1990, clarified that damages under Section 14B must be determined and finalized within three years and in the case of fresh defaults, the proceedings should be concluded within three financial years.

Since no limitation period has been prescribed under the EPF Act, the EPFO has issued this instruction to ensure that damages are finalized within the stipulated three-year period.

Ref: The Appellate Tribunal order dated 24.6.2025 in the case of M/s Pine Tree Hospitality vs APFC, Gurugram (West) Appeal no. D-2 (20) 2024.

70. Does a 'Professional Retainer' qualify as an employee under the EPF Act, and is he required to be covered under the provisions of the Act?

- A 'Professional Retainer' cannot be treated as an employee when remuneration is paid as professional fees and TDS is deducted and remitted to the Income Tax Department.
- Further, the authority to decide whether a person qualifies as an employee under the EPF Act rests solely with the Regional Provident Fund Commissioner and not with the Assistant Provident Fund Commissioner.
- It must also be examined whether the individual provides services exclusively to the organization or to multiple organizations.
- Thus, in general, a Professional Retainer does not fall within the definition of an employee under the EPF Act.

Ref : Dolphine International Ltd Vs APFC, Delhi East, Appeal No 194 (4) 2011 order dated 2.7.2025.

71. When the Enforcement Officer, during inspection under the EPF Act, finds that certain employees have not been covered under the Act, can he determine and issue an order directing the employer to comply?

The Enforcement Officer has no power to issue such an order. His role is limited to collecting all necessary information from the organization and forwarding it to the competent authority under the EPF Act. Only the competent authority is empowered to determine the dues and pass appropriate orders.

Sri Durga Parameswari Vs Enforcement officer EPFO, 2019 LLR Page 943 Karnataka HC.

72. When the EPF Enforcement Officer visits an organization and finds non-compliance with various statutory provisions, can he initiate action under Section 7A of the EPF Act?

Section 7A is intended for examining the applicability of the Act and determining the dues. Instances such as non-submission of returns, non-production of records, or non-cooperation during inspection do not fall within the scope of Section 7A. This position has been clarified by the EPFO through its circular dated 14.02.2020.

73. When an establishment is shifted from one place/location to another, is it mandatory for the employer to intimate the EPF Organization about the change?

Yes. The Madras High Court, in its Order, has made it mandatory for employers to intimate the EPF Organization regarding any shifting of the establishment.

M/s Valto informatics Pvt Ltd vs the Assistant Provident Fund Commissioner and others (2017 LLR page 712) Mad HC.

- 74. Does the POSH Act apply only to conventional workplace, or does it cover non-conventional work environment also?**

The POSH Act applies to both conventional and non-conventional work environments. Though originally designed for traditional office settings, the Supreme Court in its judgment dated 03.12.2024 clarified that its scope extends equally to informal and non-traditional workplaces.

- 75. What is SHe-Box and why is its implementation mandatory for all employers under the POSH Act?**

SHe-Box (Sexual Harassment Electronic Box) is an online complaint portal launched by the Government of India to assist women employees in reporting workplace sexual harassment. On 31.12.2024, the Supreme Court of India issued a directive mandating full integration of the SHe-Box portal and wide publicity of designated nodal officers by March 2025. Accordingly, **it is the responsibility of every employer to prominently display the details of the Internal Committee (IC) and the SHe-Box portal.**

- 76. In a domestic enquiry, can the management representative / presenting officer also act as an independent witness?**

In a domestic enquiry, the management has the right to present its case through the Presenting Officer/Management Representative. Ordinarily, the Presenting Officer does not act as a witness. However, in certain circumstances, he may also be a witness for the management. In such cases, the delinquent employee must be afforded a fair opportunity to cross-examine the Presenting Officer in his capacity as a witness.

Ref: SVS Marwaru Hospital & Anr vs the State of West Bengal and ors WP 20263 (W) of 2016 dated 14.12.2016

- 77. In one mill, a Blow Room Clerk was transferred to the Dispatch section as a Dispatch-cum-Filing Clerk. Can he object to such a transfer on the ground that the new transferred position is of a lower grade compared to that of a Blow Room Clerk, and would such an objection be justifiable?**

The Court held that, in the absence of any material evidence establishing that the transferred position was of a lower grade, the concerned employee cannot object to the transfer, since both positions are clerical in nature and do not require any special technical skill or training.

Ref: *Ahser Textiles Ltd vs Subba Raman, 1975 (I) LLJ 150 (IT Coimbatore) Mad HC.*

- 78. If notice of change of service is not filed as per the format given in the rules, can it have adverse ramifications on the management?**

Yes, the Industrial Disputes Act, 1947 being a piece of social welfare legislation, must be interpreted in a manner that safeguards the interests of workmen.

Under Section 9A, any change in service conditions requires prior notice in the prescribed format. Once such notice is served, if the workman is dissatisfied, he is entitled to raise an industrial dispute, which will then be adjudicated. It is therefore essential that the notice strictly conforms to the prescribed proforma, as any deviation may adversely affect the management's position.

Ref: *Food Corporation of India Shramik Unions vs Food Corporation of India. 2022 LLR 981 (Del HC.)*

- 79. Whether non-payment of subsistence allowance during the period of suspension pending enquiry will automatically vitiate the enquiry?**

Unless prejudice is specifically pleaded and established, mere non-payment of subsistence allowance cannot be a ground to vitiate the enquiry proceedings. The affected employee must demonstrate how the non-payment handicapped him in effectively participating in the enquiry. Therefore, non-payment of subsistence allowance by itself does not amount to denial of reasonable opportunity nor does it automatically invalidate the domestic enquiry.

Ref: *Indra Bhanu Gaur Vs Committee, Management of MM Degree college and other (2004) LLR 228. SC.*

- 80. When the industrial unit was not covered under the ESI Act, the management had been paying medical allowance to its employees. Now that the ESI Act has become applicable, can the management discontinue the medical allowance and bring the employees under ESI coverage?**

The management cannot be compelled to pay both ESI contribution and medical allowance. The Punjab and Haryana High Court has held that employees are not entitled to receive medical allowance, from the date/day the ESI Act becomes applicable.

Ref: *Employees State Insurance Corporation Ltd. Ranjit Kumar Goel, 2014 LLR 418 (P&H HC).*

- 81. When the management interviews the workers supplied by the contractor, can it be considered as an exercise of control and supervision by the principal employer?**

The management has the right to test, interview, assess or evaluate the quality of a worker in order to ascertain the level of skills, knowledge, compatibility and suitability for a specific job. Such an exercise, undertaken by the principal employer to identify the right contract worker, cannot be regarded as an act of control or supervision by the principal employer.

Ref: Haldia Refinery Canteen Employees Union and others Vs M/s Indian Oil Corporation Ltd and others 2005 LLR 529 (SC.)

82. If a retired employee has received full and final settlement, but is subsequently re-employed on a consolidated pay basis, will the provisions of the Payment of Gratuity Act, 1972 apply to such re-employment? If yes, from which date will the gratuity eligibility period be reckoned and how will the gratuity amount be determined?

- Yes, the provisions of the Payment of Gratuity Act, 1972 will apply even in the case of re-employment.
- The re-employed person would become eligible on rendering continuous service of **5 years**.
- The eligibility period for gratuity will be reckoned **only from the date of re-employment**.
- If only a consolidated salary is paid without break-up, gratuity is **based on the full consolidated pay**.
- Consolidated figure becomes the **“last drawn wages”** for Section 4(2) of the Act.

83. In cases where employees retire at the age of 58 years and are given the option for an extension of service by one or more years, can the management deny payment of gratuity for the extended period?

In cases where employees retire at the age of 58 years and are given the option to extend their service by one or more years, the Supreme Court has held that merely **exercising such an option cannot deprive them of their entitlement to gratuity for the extended period**, unless and until the establishment is exempted, after prior approval of the State Government under Section 5 of the Payment of Gratuity Act, 1972.

Ref: G.B.Pant University of Agriculture and Technology vs Sri Damodar Mathpal 32022 LLR I (SC.)

84. Is there any limitation for claiming demand by the Authorities under the ESI Act, 1948?

Under the Employees' State Insurance Act, 1948, there is **no specific period of limitation** prescribed for the Employees' State Insurance Corporation (ESIC) to raise a demand or assess contributions from employers.

- Section 45A empowers the Corporation to determine the amount of contribution payable by an employer, if no Returns or records are submitted. Before issuing such an order, a **show cause notice** must be served and a **reasonable opportunity for hearing** must be given.
- Once the contribution is determined, it can be recovered as arrears of land revenue under Section 45B.
- The **limitation period of five years** under Section 77(1A)(b) applies **only to applications filed before the ESI Court** by the Corporation, employer, or insured person. It **does not apply** to assessment or recovery proceedings initiated by the Corporation under Sections 45A and 45B.

85. When a worker has been reinstated by the Labour Court, with an Order to pay back wages, will it attract EPF?

Yes. Arrears of wages paid with retrospective effect pursuant to an award under the Industrial Disputes Act falls within the definition of "Basic Wages" under the EPF Act.

When reinstatement is ordered along with back wages, it is deemed that the employee remained in continuous employment during the intervening period. Accordingly, the back wages paid are considered as wages for the purpose of EPF contributions and will attract EPF liability.

Ref: Prantiya Vidhut Mandal Mazdoor Federation vs Rajasthan State Electricity Board and other 1992 LLR 411, AIR 1737, 1992 SCR (2) 757

86. Whether a clause in a settlement agreement restraining the union/workmen from raising any fresh demand during the tenure of the settlement is legally valid?

After negotiations with the union/workmen, if the management entered into a valid settlement under the Industrial Disputes Act, with one of the clauses in the settlement stipulating that during its tenure, the union or workmen shall not raise any fresh demand, the question arises whether such a clause is legally valid.

In law, such a condition is generally considered valid, provided that:

- The settlement is fair, just and entered into voluntarily by both parties.
- The clause does not seek to waive or limit any fundamental rights or statutory entitlements conferred on the workmen.
- Courts have upheld such clauses in settlements to ensure industrial peace and discipline during the agreed period.
- A settlement must be construed as a whole and assessed in its entirety.

- When the settlement contains a stipulation that the workmen or the union shall not raise any fresh demands during its tenure, particularly those that may impose an additional financial burden on the employer, such a clause cannot be considered illegal or invalid in law.

Ref: ITC Ltd worker welfare Association Vs ITC Ltd and other 2002 I LLJ page No.848 Supreme Court

- 87. When an employee is engaged and appointed as a trainee for a highly technical job involving about six months of training, can the management include a clause requiring the trainee to work for a period of three years after completion of training? If such a clause is included, does it make it mandatory for the management to provide employment to the trainee after the training period?**

There is no such obligation on the part of the management. The Karnataka High Court has held that even when a Trainee-Contract contains a stipulation, requiring the trainee to work for a period of three years after completion of the training, it does not impose any legal obligation on the management to offer employment after the training period.

- 88. Are Daily-Rated / Casual Employees entitled to statutory Bonus?**

- As per Section 2(13) of the *Payment of Bonus Act, 1965*, **there is no distinction between daily-rated, casual, temporary or permanent employees for the purpose of bonus eligibility.**
- The only condition stipulated is that the employee must have worked in the establishment for not less than **30 working days** in the accounting year.

Ref: The HP Petroleum Corporation vs Mohan Singh and other 2014 LLR 474 HP High Court.

- 89. Can the management appoint an Enquiry Officer even before issuing or framing the charges?**

- **Appointing an Enquiry Officer prior to issuing the charge sheet can prejudice the entire enquiry process.** Such premature action may create a sense of fear and apprehension among employees, undermining the principles of natural justice.
- A fair and proper disciplinary process begins only after a charge sheet is issued and the delinquent employee is given an opportunity to submit an explanation. If the explanation is found satisfactory, the disciplinary authority may decide to drop further proceedings altogether.
- Therefore, the appointment of an Enquiry Officer should only take place when the explanation offered by the employee is deemed

unsatisfactory and a formal domestic enquiry is warranted to ascertain the facts and circumstances of the case.

90. If a workman has raised a dispute regarding termination through a trade union, can the management enter into a settlement directly with the workman without involving the trade union as a party to the settlement?

- When an industrial dispute relating to non-employment is raised by an individual workman under Section 2A of the Industrial Disputes Act, 1947, the workman can independently enter into a settlement with the management by way of an agreement.
- However, if the dispute is raised through a trade union under Section 2(k), the union becomes the party to the dispute, and in such cases, the individual workman cannot independently enter into a settlement with the management without the union being a party to it.

Ref: The Management of Tamil Nadu Cooperative Milk Producer Federation Ltd, Chennai vs G Ulagaraj and other 2025 LLR (WEB) 457 Mas HC

91. Whether "incentive wages" should be included in the calculation of gratuity under the Payment of Gratuity Act, 1972?

- Under the Payment of Gratuity Act, 1972, the definition of "wages" excludes bonus, commission, house rent allowance, overtime wages, and other allowances. However, it does **not specifically exclude "incentive wages."**
- Hence, "incentive wages" is to be treated as wage and taken into consideration for calculation of gratuity under the payment of Gratuity Act.
- However, if the incentive wage is termed and paid as "incentive allowance", it will be excluded for the purpose of calculation of gratuity.

Ref : Anglo French Textile Ltd Vs Presiding Officer, Labour Court 1981 I LLN 522 Mad HC

92. A factory has its own certified Standing Orders. The management now intends to introduce additional acts of misconduct and implement new service rules. Is this permissible under the law?

Once the Standing Orders are certified and brought into operation, the management cannot introduce new rules, such as additional acts of misconduct independently. Any such changes can be made only by amending the existing Certified Standing Orders in accordance with the procedure prescribed under the Industrial Employment (Standing Orders) Act, 1946.

Ref: UP Electricity Board vs Harishankar Jain 1978 IV SC 16

93. In the event of a worker's death resulting from a fight between two employees within a factory premises, is the deceased worker/family entitled to claim compensation under applicable labour laws?

- No, as it is not an accident/death arising out of employment, he cannot make a claim and there is no nexus between the employment and cause of death.
- Compensation is payable **only if the injury or death arises "out of and in the course of employment."**
- If a worker dies due to a personal fight, **the employer is not liable** for compensation.

Ref: Malligarjuna G Hemanth Vs Branch Manager, Oriental Insurance Company Ltd 2009 LLR Page No 350 SC

94. When the employees adopted go slow strategy and reduced the output, can the management deduct their wages unilaterally?

- No, workmen must be given **opportunity** by the employer before deducting the wages in respect of go slow resulting in reduced output. Go slow is intentional refusal to work by the workmen and the management would be justified in reducing or paying on pro-rata basis, but only after granting opportunity of being heard.
- Further, the management can also take disciplinary action, since it constitutes misconduct as the workers remain present in the workplace without doing any work.

Ref: Bata India Ltd Vs Workmen of Bata India Ltd and another 2022 LLR 473 (SC).

95. Can we transfer employees from one branch to another, even in the specified absence of said power, but the transfer clause is widely worded?

Yes, it is possible to transfer employees, even if the transfer clause is not explicitly stated in the contract, but the wording is broad. Appointment letter issued to the employees permitting transfer anywhere in India including transfer from one shift to another and from one department to another, would be deemed to include the transfer from one branch to another of the same company.

Ref : Chowgule Industries Pvt Ltd Vs Gomantak Mazdoor Sangh 2023 LLR 963 (Bom.HC)

96. If an employee left service to join with another employer, is it still mandatory to conduct enquiry for abandonment of service?

- The Industrial Disputes Act does not put any obligation on the employer to call back the said workmen with request to join duty. If

the management does not consider such abandonment as a misconduct and considers that the employee left the service, then the status can be left as such.

- However, if the list of misconduct in the Standing Order includes abandonment, then the management can initiate disciplinary actions. Enquiry is required to be held only when an employer intends to impose punishment on the employee for alleged misconduct.

Ref: Diamond Toys Co (P) Ltd Vs Toofani Ram and another WP (C) No. 4501/2004 dated 07.02.2007 (Del HC)

- 97. For change in the condition of service as per Section 9A of the Industrial Disputes Act, 21 days' notice must be given to the employee, is it mandatory to serve this notice individually on all workmen?**

The rule provides that notice must be served on the workmen and it does not prescribe the serving individually. Majority of the State Rules mandates individual notice through registered post to be specifically served on the Secretary of the Trade Union and not Workmen.

Ref: Management of Bharat Earth Movers Ltd Vs The General Secretary, Bharat Earth Movers Employees Association and others, 2025 LLR (Web) 409 Karn HC.

- 98. Is there any time limit for the submission of explanation to the show cause notice issued by the management to the delinquent workmen?**

It is a well-established rule that the employee should be offered sufficient and reasonable time to submit explanation. In one case the employee was given 48 hours' time to submit the explanation. However, the delinquent employee prayed for 7 days' time. But the management gave 1 extra day so as to submit within 72 hours. It was held that 72 hours was reasonable. However, where the Standing Order provides the time or period for explanation then it has to be followed.

Ref: City Transport Ltd, Coimbatore Vs Workmen 1952 LLJ 457

- 99. Can medical reimbursements be denied to the employee in case the name of the hospital is not approved by the insurer?**

No, the real test is the fact of the receipt of treatment before any medical claim is honoured. The Authority must ensure whether the claimant actually received the treatment. The fact of treatment must be supported by a duly certified record from the doctors/hospital concerned. Hence, **the claim cannot be denied on technical grounds.**

***Mrs Suma sunil Vs the State Medical Officer, ESI WP (C)
No.21799/2024 19.12.2024 Kerala HC***

- 100. When criminal prosecution is initiated by the DISH authorities for violation of some provision of the Factories Act, can the court issue summons first without having heard the management?**

When the reference is related to the merits of the case, then it is not mandatory for the court to first hear the management on merits. However, if the defence raises the involvement of the management in the alleged incident, then that can be adjudicated during the trial.

Ref: Ramesh R Pai and others Vs State of Odisha and another 2025 LLR WEB 412 Orissa HC.

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- 102. Is there any cap on the number of deliveries for claiming maternity benefit either from the Employer or ESIC?**

- There is no limit for the entitlement of maternity benefits. However, this entitlement is restricted, after two deliveries. Prior to the 2017 amendment, there was no such regulation regarding restrictions on the number of deliveries.
- Through the amended provision, the maximum period for availing the maternity benefit is 26 weeks, of which not more than 8 weeks can precede the date of the expected delivery. For subsequent deliveries, the maximum period is restricted to 12 weeks, of which not more than 6 weeks can precede the date of expected delivery.

Ref: K. Umadevi Vs The State of Tamil Nadu & Others (SC)

- 103. Can an employee seek gratuity beyond the maximum limit?**

No, an employee, under the provisions of the Payment of Gratuity Act, 1972, can make a claim up to the maximum limit prescribed under the Act, which is currently **₹20 lakhs**. However, the employer can pay gratuity over and above this maximum limit, if the terms and conditions of employment or the company policy provide for it or if there is a mutual agreement to this effect.

104. In case the EPF Authority imposes damages for the delayed payment, is it possible to pay the same in monthly installments?

Yes. A written request must be submitted to the EPF Authorities, outlining the financial difficulties in making the full/timely payment and expressing a commitment to settle the amount through monthly instalments. Alternatively, an Application can be filed before the High Court, which has the power to grant permission to pay the amount in instalments

105. Under POSH Act can the Internal Committee close the complaint and proceed with ex-parte decision?

- Ex-parte decision should be the last resort for the Internal Committee. An opportunity must be given to the complainant and respondent to attend the enquiry. **IC should maintain detailed record for its effort in engaging the parties.**
- If the complainant withdraws, turns hostile, or does not pursue the complaint further, the IC may close the case, but not automatically. The committee must assess if there is prima facie evidence to continue the inquiry suo motu.

Ref: Section 11 of POSH Act and Rule 7(5) of the POSH Rules, 2013

106. Is it mandatory to constitute the “works committee”?

- The constitution of a works committee is **mandatory**, subject to certain conditions prescribed under the Industrial Disputes Act, 1947, which are as follows:
 - 100 or more workers are employed in the establishment
- When it has been specifically asked by the appropriate Government either by general or specific order

107. When the management announces a second Voluntary Retirement Scheme (VRS) offering enhanced benefits when compared to the earlier one, can employees who had opted for the first VRS, claim entitlement to the enhanced benefits under the second scheme?

No, once the employees receive the VRS payment (i.e) full and final settlement, the employer and employee relation ceases and the employee cannot claim enhanced compensation under the 2nd VRS.

108. Under the Industrial Disputes Act, the retrenchment provisions mandate the payment of one month's notice or wages in lieu thereof. However, if the appointment letter stipulates a longer notice period, such as two or three months, is the employer required to follow the one-month period under the Act, or must they comply with the extended notice period specified in the appointment order?

Section 25J of the Industrial Disputes Act provides that **if any benefits under an award, agreement, or contract between the employer and the employee are more favourable than those provided under the Act, the employee shall continue to be entitled to such more favourable terms.** Accordingly, if the appointment order stipulates a notice period of two or three months, the employer is obligated to honour that period, as it constitutes a more beneficial condition of service for the employee.

109. When one industry takes over another industrial unit, who is responsible for the pending ESI and PF dues? Can the transferee claim that they are liable only from the date of transfer and not for dues accrued prior to that?

In the event of a transfer of an industrial unit, both the transferor and the transferee become jointly and severally liable for any pending ESI and PF contributions. The transferee cannot claim exemption from liability for dues incurred by the previous employer prior to the date of transfer.

Ref: *Premchand Jute & Industries Pvt Ltd & another V The Employees State Insurance Corporation & others.*, AIR Online 2020 Cal 716.

110. Is it necessary to mention the time of the misconduct while issuing the charge sheet? How is it relevant and important?

While issuing a charge sheet and detailing the offence or incident, it is essential to mention the time of occurrence. In certain cases, it is advisable to prefix the word 'about', for example, instead of stating '3:30 PM', it is better to mention 'about 3:30 PM'. This approach is recommended because specifying an exact time may render the charge sheet technically inaccurate, if the exact time is mentioned. However, if no prejudice is caused to the delinquent due to such inaccuracy, it is unlikely to vitiate or invalidate the enquiry.

Ref: *Imperial Bank of India Ltd Vs GC Ghosh, 1954 (II) LLJ 378*

111. Is it necessary for a settlement to be executed on non-judicial stamp paper and registered?

Section 2(p) of the Industrial Disputes Act defines a "settlement" as a written agreement between the workmen and the management. Once the terms of the agreement are reduced to writing, it is recognized as a "settlement" under the Act. It is important to note that such a settlement is distinct from a contract as defined under the Indian Contract Act. While both involve mutual agreements, a settlement under the ID Act specifically pertains to industrial disputes and carries legal implications unique to labor law.

As per the Industrial Disputes Act, a settlement can be typed on plain paper; however, it must conform to the prescribed format (Form H). Additionally, a copy of the settlement must be sent to the appropriate government authority and the Conciliation Officer. Failure to comply with this procedural requirement may render the settlement invalid and, consequently, unenforceable in law.

Ref: Keltron Controls Vs Workmen of Keltron Controls and others 2004 LLR 40 Kerala HC.

112. If the chairperson of Internal Committee is subject to harassment and files a complaint, how should the same be dealt with?

If the Chairperson of the POSH Committee is subject to harassment and files a sexual harassment complaint, the following steps shall be taken to inquire into the complaint:

- To avoid bias, the complaint should be handled by someone who is outside the regular POSH Committee.
- This could mean sending the complaint to: Another independent Internal Committee (IC) within the organization (if one exists).
- The Local Committee (LC) set up by the government in the district, normally lead by District Collector, in the absence of an Internal Committee (IC) in the Group Company.
- The Chairperson should not be involved in any part of the investigation process, to ensure fairness.
- The organization must also protect the Chairperson from any form of retaliation or negative consequences resulting from filing the complaint.

113. Whether it is mandatory for the factories to display name board of the factories in Tamil language?

Yes, The Tamil Nadu Factories Rules, 1950, mandates that the name board of a factory shall be displayed conspicuously at the entrance of the factory premises, primarily in Tamil, with English and others as secondary languages, in a font size ratio of 5:3:2, respectively.

The Tamil Nadu Shops and Establishments Act requires the name board of every establishment to be in Tamil, with English in the second place followed by other languages, if used.

Ref: Rule 113 Tamil Nadu Factories Rule & Rule 15 Tamil Nadu Shops and Establishment Act and G.O. Ms. No. 1541, Labour and Employment Department, dated 29.07.1982,

114. If there were no Standing Orders framed by the company when the workmen were admitted into service, is there a need to bring the fact to the knowledge of workmen?

- Yes
- There may be occasions where no Standing Order was framed by the company when the workmen were recruited and admitted into service. In such cases, the workmen cannot be bound by Standing Orders that were introduced at a later stage, unless and until the said Standing Orders are properly communicated to them.
- However, once the subsequently framed Standing Orders are duly made known to the workmen, they become applicable to those employees as well. It is, therefore, crucial to ensure that the implementation of the Standing Orders is effectively brought to the attention of all employees.
- This becomes particularly important in situations where disciplinary proceedings are initiated, as adherence to the procedural requirements laid down in the Standing Orders is essential for the validity of such proceedings.

Ref: Management of M/s Rajasthan Patrika Ltd Vs Jasod Singh, 2012 LLR 978 (Del HC)

115. When the employee has been given accommodation by the management of the mill and if an accident occurs in the said premises, can it be considered to have occurred “in the course of and arising out of employment”?

No, there should be a nexus between employment and injury. Providing accommodation by itself cannot form a basis to claim compensation on the ground that the accident is arising out of and in the course of employment.

Ref: Lakshmidhar kumbhar vs Divisional Manager Orissa Forest development corporation, Sambalpur 2015 LLR 84 Orissa High Court

116. Can the Enquiry Officer recommend the punishment to be imposed and its quantum?

The Enquiry Officer has no power to recommend the punishment to be imposed including its quantum. His role is only to elucidate and conduct an enquiry, thereby give findings/reports as to whether the charges are proved against the employee concerned.

The recommendation of punishment is direct interference with the power to be exercised by the Disciplinary Authority, which is not permissible.

Ref: Constable No.405 Civil Police, Anjani Pandey Vs State of U.P. and other 2023 LLR 1230 (All.HC)

117. Can the workmen approach the Authorities under Industrial Establishment Standing Order Act, to determine the question of applicability of Standing Order?

The applicability of Standing order under Industrial Establishment Standing Order Act vest exclusively with the Labour Court /Industry Tribunal under the ID Act. Item 2 of the Second Schedule deals with “application and interpretation of Standing Orders” which can be dealt with by Labour Court/Industrial Tribunal and hence, the **certifying Officer/Authority have no jurisdiction to determine the question of applicability of Standing Order.**

118. Can the Labour Court grant interim relief to the workmen in an industrial dispute, wherein the management has raised objection on the status of Workmen under the ID Act?

When the management has specifically taken a stand that the employee is not a workman under the ambit of ID Act, the Labour Court cannot grant interim relief without determining the question as to whether the claimant is a workman or not.

Ref: HIRA sugar Employees Co-operative Consumers Vs PP Korvekar and others 1995 LLR 1 (Karnataka High Court).

119. What should organization do if there is no senior female member available to be appointed as the chairperson of the Internal Committee?

Sec 4 of the POSH Act states that the chairperson of the IC must be senior woman employee within the organization. However, in the absence of such a candidate, the POSH Act, 2013 permits the appointment of chairperson from other units of that organization and accordingly, the role of the chairperson can be assigned to that candidate.

120. Can the management take disciplinary action in respect of an act which has not been mentioned as “Misconduct” in the Standing Order?

The supreme Court of India has held that:

- If a particular act is not incorporated as misconduct in the certified Standing Order, no workmen can be dismissed for their specific misconduct.
- Even if the Standing Order contains a blanket clause stating “any act prejudicial to the interest of discipline”, would not be sufficient unless the misconduct is specifically mentioned.
- However, the general misconduct of “causing willful damage to work or property of the employer” as specified in the certified Standing Order is valid and can be interpreted as cause of misconduct.

Advisory: Members may review their Standing Order in the current changed scenario.

Ref: Glasgow Lab (P) Ltd vs Presiding Officer, Labour Court, AIR 1984 SC 505

- 121. When a worker or salesman fails to achieve their target, can the management terminate their services? In some cases, management obtains a resignation letter from the employee, stating that it may be used by the management in the event of non-achievement of target. Is such a resignation letter valid in law?**

As per the decision of the court, such a resignation letter is not valid. However, the **management has got the right to issue a memo asking for an explanation in relation to non-achievement of the fixed target and proceed with appropriate disciplinary action.**

Ref: PA Babu Jayaprakash vs MD, Karnataka Soaps and Detergents Ltd, Bangalore & Others, 2003 LLR 38.

- 122. When the management has adopted the practice of paying exgratia to the worker at the end of each year, considerably for a longer period of time, can the same be stopped on account of precarious financial condition?**

An ex-gratia payment made to an employee for a substantial period becomes an **accrued right**. To discontinue it, the management must issue a 21-days' Notice of the proposed change to both the impacted workmen and the Authorities of the Labour Department under Section 9A of the Industrial Disputes Act.

- 123. When an accident occurs in the factory leading to death of an employee, can the employer be prosecuted both under the Indian Penal Code (IPC) and the Factories Act, 1948?**

As per Section 26 of the General Clauses Act, an offender can be prosecuted only under one enactment. Since the **Factories Act, 1948 bars parallel prosecution**, the prosecution under Section 304A of the IPC (causing death by negligence) is illegal.

Ref: GV Prasad Son of Shivaramkrishanayya and another Vs State and another, Karnataka High Court 2025 LLR 22

- 124. When can an Internal Committee decline to hold enquiry under the POSH Act?**

The internal committee may decline to hold an enquiry under the following circumstances:

- ✓ The allegations are not covered in the definition or where the POSH act does not apply.
- ✓ Complaint is time-barred

✓ Complaint is voluntarily withdrawn through mutual settlement.

If the IC determines that the complaint is frivolous/malicious, however reason should be recorded and the same is subject to scrutiny.

125. In an industrial dispute when the Labour Court awards compensation in lieu of reinstatement and back wages, whether the said compensation would attract EPF contribution?

The Madras High Court held that **such an employee cannot be treated as being in the service of the said management and hence, no EPF contribution would be attracted.**

Ref: M/s.Universal Brakes (P) Ltd, Coimbatore vs The Presiding Officer, EPF Appellate Tribunal and others, 2012 LLR Page 133 Madras High Court.

126. Can Factories Inspectorate issue a Notice of Prosecution to the Occupier, based on the Inspection Report alleging that the Register of Adult Workers is not being maintained?

The statutory duty to maintain a “Register of Workers” under Section 62 of the Factories Act is fixed on the manager and not on the **occupier, therefore, the occupier cannot be prosecuted.**

Ref: State of Maharashtra vs Sampatlal Mensukh Bothara 1991 I LLJ page 107

127. When terminating an employee and paying Notice Pay, whether the management is bound to contribute EPF for the Notice Pay?

The word “Emoluments” described under Section 2 of the Employees’ Provident Funds Act, 1961 (EPF) covers earnings by an employee, while on duty or on leave (with wages). Hence, the amount paid as Notice Pay for termination does not fall within the term basic wages (emoluments earned while on duty) and therefore PF cannot be deducted from it (i.e) the said **Notice Pay will not attract EPF contribution.**

Ref: India United Mills Vs RPFC AIR 1969 BOM 203 / 1969 II LLJ page 733

128. In the case of an offence involving moral turpitude, the employer can forfeit the Gratuity in respect of dismissed employee. Whether the said principle of law is also applicable to Provident Fund?

No. The Gratuity Act specifically provides for forfeiture, if the services of such employee has been terminated for any act which constitutes an offence involving moral turpitude, more specifically if such offence is committed by him in the course of his employment.

But in respect of PF, even if the dismissal is on account moral turpitude, the Provident Fund amount cannot be forfeited.

Ref: Section 4(6) of The Payment of Gratuity Act, 1972

129. In the case of Factories situated in multiple locations, can one manager be responsible for multiple factories/units?

Under the Factories Act, 1948, the manager is the designated employee responsible for the factory's operations. Therefore, a manager's presence is generally required at the factory. **Each factory must therefore have a designated manager to fulfill the duties outlined in the Act.** Typically, one manager cannot oversee multiple factories at different locations.

130. If a medical certificate is issued by ESI dispensary without requisite details, will the certificate be a valid one?

Any medical certificate issued without indicating the **nature of the treatment or the details of the disease for which the employee had been undergoing treatment**, the same would not be valid /admissible.

Ref: Nimai Charan Rout Vs General Manager, M/s Utkal Asbestos Ltd, Dhenkanal, 2016 LLR 29 Ori HC.

131. Under the EPF Act, if the Authority has passed an Order of Attachment and freezes the employer's account as per the provisions of Section 8F (3) of EPF Act, can the banker debit their due from the said account?

The Madras High Court has held that **the banker of an employer is not entitled to operate an account by way of debiting their due from the employer's account.** If the bank acts without complying with the Order of the EPF Authority and appropriates the available amount for its dues, it would be construed as an erratic and illegal act. **The banker would therefore be treated as a defaulting employer and EPF Authority is at liberty to attach the property of the bank, in addition to taking all other actions for recovery.**

Ref: Parveen Travels Pvt Ltd Vs Regional Provident Fund Commissioner -I and Recovery officer and another 2024 LLR 1348 Maras High Court.

132. Can the members on the POSH Internal Committee serve indefinitely?

- Rule 5 of the POSH Act stipulates a fixed tenure of **3 years** for the Presiding Officer and other members of the Internal Committee, including the External Member. Upon completion of the 3-year term,

the committee should be dissolved and reconstituted with a new Committee.

- Existing members of the Internal Committee are eligible for membership in the newly constituted Committee.

133. When the EPF Authority passed an Order under Section 14B (imposing damages for delayed remittance of EPF contribution) & 7Q (charging interest) of the EPF Act, an employer requested to waive the damages. However, the EPF Authority passed an Order confirming the imposition of damages, which was challenged before the Tribunal. In such case, can the Tribunal insist for pre-deposit to grant the stay?

- Settled law is that there is **no condition to remit certain percentage of the demand/amount (by way of pre-deposit) in relation to the damage imposed** as determined u/s 14B of the Act. Hence, the grant of conditional stay is erroneous and unsustainable in law.
- Pre-deposit will arise only where the demand is raised in relation to EPF **contribution** under Section 7A of the Act.

Ref: M/s English Blazer vs The Regional Provident Fund Commissioner Karnataka HC 2024 LLR 1346

134. When excess payment is paid to the retired employees, can the management ask the employee to refund the said amount?

It is settled law that when **excess payment due to calculation error with regard to Gratuity/bonus etc** is made to retired employee for no fault on his part, such amount cannot be deducted after his retirement from his retiral dues and the same cannot be demanded by way of refund, to make good the difference.

Ref: Food Corporation of India Vs Tappan Kumar Chowdry 2015 LLR (SN) 210 Cal HC.

135. When an employee is transferred from one place to another place, but he refuses to comply with the Transfer Order, can it be treated as “abandonment” of job on his own accord?

No, it is necessary to hold enquiry in this regard. The Supreme Court has held that not joining the place of transfer should be treated as a **“misconduct warranting disciplinary proceedings”**. Hence, it is imperative that **an enquiry be conducted, if an employee fails to comply with the Transfer Order**. The Order of termination issued by the management (for the reason that the employee has not joined the place of transfer) without following the due process of law (impartial hearing/enquiry) is thus not valid.

***Ref: Kovartis Industry Steel West Bengal and others 2007 LLR 113 SC
Competent Security Services Vs Government of New Delhi 2015 LLR
Page No.169 Del HC.***

- 136. If an employee has accepted retrenchment compensation, would it be open for him to challenge retrenchment before the Court?**

Yes, even if the employee has accepted the compensation amount, he can still question the validity of retrenchment.

Ref: P Manikannan Vs the Management CLSPL 164, Pombur Primary Agricultural Cooperative Bank and other. 2024 LLR Web P.286 Madras High Court.

- 137. When an agreement between the management and trade union comes to an end (as per the terms of the agreement), can the management deny all benefits after the agreement period (till substituted by a fresh settlement)?**

In general, when the agreement is about to come to an end, the trade union or worker representatives would raise certain charter of demands, in addition to serving notice of termination of settlement under section 19(2) of Industrial Disputes Act. As per the Orders of various High Courts, **until a new settlement is arrived between the parties, the existing settlement will continue to bind both the parties** and this has also been upheld by the Supreme Court of India.

***Ref: Mettur Chemicals Podhu Thozhilalar Sangam. vs Chemplast Sanmar Limited, Mettur 1998 LLR page no.31 Madras High Court. /
The Life Insurance Corporation of India vs D. J. Bahadur & Ors on 10 November 1980***

- 138. Whether non possession of registration and license by the employer and the contractor will lead to automatic absorption of contract labour?**

Non possession of registration and/or license under the Contract Labour (Regulation & Abolition) Act, 1970 attracts only penal provisions prescribed under Sections 23 and 25 of the said Act (imprisonment and/or fine). Hence, **there cannot be any automatic absorption of contract labour by the employer.**

Ref: Dena Nath And Ors vs National Fertilizers Ltd. And Ors 1992 AIR 457

- 139. Can the management terminate an employee without conducting an enquiry when the employee admits his misconduct?**

Mere admission of misconduct by an employee is not enough to dismiss him from service without conducting an enquiry. This will

create certain impediments if the termination is challenged. Hence, **even in the case of admission of misconduct by the employee, it is advisable to conduct a formal enquiry.**

Ref: Kamala vs Management of Yemmegundie Estate and others 2000 ILR2001KAR1031

- 140. When the Labour Court comes to the conclusion that the enquiry conducted by the management is not valid, what is the option available for the employer?**

Denovo enquiry (afresh/from the beginning) can be conducted by the management, to prove the charges (already framed) in the Labour Court. In such case, the dismissal is valid from the date of dismissal by the management.

Ref: Shankar Chakravarti v. Britannia Biscuit company Ltd and another 1979 2 LLJ 194 SC and SBI v. R K Jain and other 1971 2 LLJ 599 SC

- 141. Can the employer dispense with enquiry while executing the “punishment of dismissal”?**

The power of an employer to dispense with enquiry can be exercised only when it is reasonable and not practical/feasible to hold the enquiry. In such cases, the **burden of proof lies on the management.**

Ref: Union of India and another v. Tulasiram Patel 1985 2 LLJ 206 SC and Indian railway construction company Ltd v. Ajay kumar 2003 LLR 337 SC

- 142. When a worker is absent continuously for more than 8 days and if this act is being construed as a reasonable cause for automatic termination as per the Standing Order, can the management terminate without following the due course of law?**

As per the Supreme Court judgment before taking any action, relating to ending the tenure of a workmen, fair play requires adoption of following steps by the management:

- reasonable opportunity to put forth the case to be granted to the worker **and**
- domestic enquiry to be conducted complying with principles of natural justice.

Ref: D.K.Yadav Vs JMA Industries Ltd 1993 II LLJ Pg No.676

- 143. On specific charges, when the management initiates criminal action along with departmental enquiry and the criminal court acquits the**

employee, whether it would debar the employer from proceeding with departmental enquiry?

No, the criminal proceedings and the departmental enquiry are entirely different and mutually exclusive. However, when the employee was terminated on the basis of conviction by Criminal Court and on an appeal, he was acquitted he will be **entitled to reinstatement but cannot claim back wages for the period during which he was not in service.**

144. When the charges against two persons are substantially the same and a joint enquiry is held, where both are found guilty, whether the management can impose higher punishment for one person and lesser punishment for another person?

On the basis of the principle laid down by the “Doctrine of Discrimination”, the punishment would be considered as a patent discrimination, **in the absence of any aggravating factor** (wilfulness or intentionally committing the offence, effect of the misconduct on the employer, loss of trust, previous warnings etc).

145. Can the management take Aadhaar card of employee as proof of “Date of birth”?

No, the Employees' Provident Fund Organization (EPFO) and the Employees' State Insurance (ESI) Authorities have recently removed Aadhaar as a valid document for acceptance of proof of date of birth. This decision was made following a directive from the Unique Identification Authority of India (UIDAI), which clarified that Aadhaar should not be considered proof of birth.

Acceptable Documents for proof of Date of Birth include:

- Birth Certificate issued by the Registrar of Births and Deaths
- Marksheet issued by any recognized Government Board or University
- School Leaving Certificate (SLC)/School Transfer Certificate (TC)/ SSC certificate containing Name and Date of Birth
- Certificate based on service records
- Central/State Pension Payment Order
- Domicile Certificate issued by the Government

Medical certificate issued by Civil Surgeon after examining the member medically and supported with an affidavit on oath by the member duly authenticated by a Competent Court

146. Can the management challenge the interim Order passed by the Labour Court before the High Court?

Generally, the Labour Court's interim Order cannot be challenged before the High Court, as held by the Supreme Court in *M/s Dena Bank vs. Kundadia Case*.

This means that typically, interim orders passed by Labour Courts under Section 30(2) of the Industrial Disputes Act, 1947, are not directly challengeable in a High Court. Instead, parties must wait for the final order to be passed.

Ref: Dena Bank Vs Kundadia (2011) 15 SCC 690

147. In an enquiry proceeding if the delinquent employee refuses to take the assistance of co-employee for the enquiry proceedings and fails to participate in the enquiry, can he claim that the enquiry is violative of principle of natural justice?

- **No.**
- In spite of providing **fair opportunity** to the delinquent, if he refuses to attend the enquiry proceeding and issues lawyer's notice stating that action cannot be taken during the pendency of a civil suit, he cannot seek undue protection.
- The Madras High Court has held that since the delinquent employee himself did not participate in the enquiry he cannot complain about non-compliance of principles of natural justice.

Ref: Lt.Col. Vasant Kumar Vs M/s Srilanka Airlines 2018 LLR 394 (Mad.HC)

148. When an employee is transferred from one unit to another units of the same management, whether it could be considered as break-in-service and if the employee completes a length of service of around 6 years in both units put together, whether he is eligible for gratuity?

- It is to be understood that the employee concerned did not resign or join another organization.
- **The cumulative period of service in both units of the same management should be considered for the purpose of calculating continuous service to be eligible for gratuity.**
- Hence, eligible for gratuity, if 6 years completed in different units of the same management.

Ref: Mercedes Benz India Pvt Ltd vs Noshir Nani Desai, 2024 LLR 242 (Bom.HC.)

149. Can the management insist the employee to open an account in the bank, where the employer is holding the account?

No, the employer cannot insist that the employee should open the bank account only in the bank in which employer is holding the bank

account. Section 6 of the Payment of Wages Act, 1936 does not have any such stipulation.

Ref: Malabar Cancer Centre Society Vs Dinesh Kumar, 2012 LLR 625 (Ker.HC.)

150. When the employee is served with warning notice or show cause notice, and he refuses to sign as token of receipt of such management communication, whether it amounts to misconduct?

- An **employee cannot refuse to receive a warning notice or show cause notice** and the said act amounts to misconduct.
- Outcome of acceptance/non-acceptance of official communication should be **addressed in Standing Order**.
- To ensure that the employee refusing to receive the notice, does not contest the case on the ground of non-service of letter/show cause notice, it is essential, that the **remarks of the person/clerk who was deputed to serve the notice are recorded** properly.
- The said show cause letter can also be served **through RPAD/e-mail**, a service mode containing acknowledgement.
- Display the Show Cause letter in **the notice board** of the unit with an endorsement on the notice as 'REFUSED TO ACCEPT AND HENCE DISPLAYED ON NOTICE PERIOD'.
- After proper service of the show cause notice, the employer can proceed for disciplinary proceedings as per the provisions of law, which includes hearing the employee and considering the reply submitted by the employee in writing to the management.
- **Fairness must be established at both ends**

151. Can the management refuse to release the gratuity on the failure of the employee providing “no due certificate” which is a condition precedent in the establishment?

As per the Madras High Court the **gratuity of an employee cannot be withheld by merely stating that the employee has not produced no due certificate**. Such a condition precedent does not have statutory force to withhold the gratuity,

Ref: Shajahan Vs Managing Director, Tamil Nadu State Transport Corporation 2007 LLR page No.543 (Mad HC.)

152. Is there any difference between chargesheet and show cause notice?

- Both are formal documents issued by the employer, presenting the facts and information surrounding the incident, thereby seeking an explanation from the employee, without having drawn any conclusions
- A Show Cause Notice is a statement which informs the delinquent employee of the acts alleged to have been committed by him and seeks his explanation in respect of them, a **fact-finding exercise**.

- Whereas a Charge Sheet is a statement of allegations and contains clearly spelt out charges **quoting penal provisions contained in the Standing Orders.**
- In Ashok Kumar Monga vs. UCO Bank, the Delhi High Court held that if the Show Cause Notice itself contains specific details and complete particulars of charges and the delinquent employee could understand the charges, **even Show Cause Notice can be treated as Charge Sheet.**
- The Punjab & Haryana High Court has held that the very purpose of chargesheet is that the delinquent employee must be aware of the charges against him and that a **show cause notice can be a substitute for charge sheet.**

153. When the employee submits a resignation letter, should the management accept and retire him?

- Generally, the employer cannot decline to accept the resignation of an employee and the Supreme Court of India has emphasized that the resignation would be effective only if accepted by the employer in the normal course.
- **General exceptions include the following:**
 - When disciplinary proceedings are pending, relieving the employee would be based on the outcome of the said proceedings.
 - If an employee in a crucial position were to leave suddenly, it may significantly impact management functions. In such cases, management may insist that the employee stay for a certain period, as per the terms of their appointment.

154. Whether the probationer is entitled to claim minimum wages?

- The probationers cannot be denied the minimum wages as fixed under the Minimum Wages Act, 1948 since, no distinction is made in the definition of employee under the said Act.
- Thus, **Probationer is an employee even though on a probation**

155. What is the significance of appointment letter and is it mandatory to be issued by the employer?

- An appointment letter clearly sets out the **terms and conditions** of employment and also covers areas of retirement, emoluments, leave holidays, transfer etc.,
- There should not be any ambiguity in the terms and conditions.
- A proper appointment order is a **critical reference point/solution** to many problems that may arise between the management and the employees during the course of employment.
- There is no mandate to issue Appointment order.

- However, toward buyer compliance the appointment order is being insisted for due compliance.

The ensuing new labour code mandates the issue of appointment order.

156. Is there any format for full and final settlement to be obtained from the employee?

No form for such a receipt is prescribed under the Industrial Dispute Act or any other Act, the **general format/model for such receipt (given below) can be used by the management:**

“Received a sum of Rs..... (Rupees.....) from the management of M/s..... in full and final settlement/satisfaction of all my claims/demands for gratuity, earned wages, leave wages, bonus, retrenchment compensation and notice pay or any other claim in connection with my employment with the management, I have no claim/demand for reinstatement or reemployment. I agree to withdraw all my claim/demand and undertake that I will not raise any claim / complaints and undertake that I will not raise any claim or whatsoever against the management.”

157. When the management pays the consultant by way of honorarium, will it be legally correct for him to claim gratuity on completion of 5-year period as per the Payment of Gratuity Act, 1972?

- **Yes**
- The Madras High Court held that 'honorarium' would amount to emoluments paid for the work and therefore would be **covered in the term 'wages'** and hence the consultant is entitled to gratuity.

Ref: D Ramadas Vs Appellate Authority under Payment of Gratuity Act by Dy. Commissioner, Salem 2003 LLR 72 (Mad HC)

158. When the employee has been paid full and final dues of retirement except gratuity which has been kept pending an account of criminal case against the employee, whether the management is to pay interest for gratuity, when the concerned employee is acquitted in the criminal case?

- Yes, the management must pay the interest from the date of retirement till the date of payment of gratuity, even though the criminal case is pending. As per sec 7(3) of payment of Gratuity Act, 1972 interest is to be paid.
- The management cannot assume that the employee would be found guilty in the criminal proceedings

159. When the factory wants to increase the retirement age of an employee from 58 years to 60 years, should the management intimate the proposed change to their employees?

- As per Sec 9A of the Industrial Dispute Act, 1948 it is considered as the change in the terms of employment falling under the fourth schedule of the Act. Hence, **21 days' notice** should be given by way of displaying in the notice board.
- However, if there is a provision in the Standing Order or a settlement with the trade unions regarding the increase of retirement age that will hold good and there does not arise a need for 21days notice.

160. In industrial dispute challenging the termination of an employee in the labour court, the court awarded compensation of Rs.2 lakhs in lieu of reinstatement and back wages, whether the management is to make the payment of PF contributions for the said amount?

- The criteria to decide depends upon the fact, whether the employee is treated to be **"in service"** or not.
- When there is a settlement between the management and the concerned employee specifying that during the pendency of court proceedings the **employee agrees to take monetary compensation**, he cannot be treated as an employee in service and hence no EPF contribution for said amount.

However, if the **court awarded the back wages** by way of compensation, this would attract EPF contribution as if he is in service

161. What are the guidelines for holding enquiry by the Internal Committee under POSH Act?

- The Delhi High Court has unequivocally established that enquiries must be conducted in **a fair and transparent manner, consistent with the principles of natural justice and in accordance with the relevant provisions of the Act** and any associated rules. Further, the court emphasized the importance of following established procedures to ensure a fair and impartial enquiry.
- The guidelines include issuing notice to the respondent(person against whom complaint raised) within seven days of receiving the complaint by the IC, obtaining reply within 10 days from the respondent, completing the inquiry within 90 days of receiving the complaint and submitting report of its findings to the employer within 10 days of completing the inquiry.

Ref: Ashok kumar singh vs University of Delhi 2017 LLR 1014 (Del. HC).

162. Is it mandatory to provide casual leave with wages?

- **No**, the Factories Act, 1948 prescribes only annual leave and there is no provision for casual leave.
- In general, the Certified Standing Order permits casual leave to be availed by the employee to the tune of around 10 days in a year, without any provision for grant of wages.
- Casual leave can be availed for one day in a month to accommodate any emergency/unforeseen personal requirements.

Ref: Section 79 of The Factories Act, 1948

163. If the management transfers an employee to another department/unit, can the employee refuse to join in the transferred department/unit. How should the management proceed in this case?

- The employer should at the first instance refer the "Standing Order" as to whether a provision for the said transfer is contained in the same.
- The employer can have discussions with the particular employee and understand their concerns, to assess the reasons for refusing the transfer.
- The Management can explain the reasons behind the transfer and proceed with the transfer, subject to the condition that the reason for transfer is genuine and not malafide.
- **It is therefore advisable that the management should mention the said provision regarding the right reserved by the management for transferring the employee in the "Appointment Order" drawing inference from the "Standing Order".**

Ref: National Hydroelectric Power Vs Shri Bhagwan - (Supreme Court) - upheld that transfer is an incidence of service.

164. Can credit be claimed of GST paid on motor vehicles purchased in the name of the Company and used for transportation of goods?

Yes

- Motor vehicles (trucks, tempos, and other goods carriers) used for transporting goods manufactured by the company is an activity carried on in the course of their business. Hence, **credit is eligible**.
- ITC is also available on **services** like insurance, repair, and maintenance related to such vehicles.

Ref: Section 17(5) of GST Act.

165. Can credit be claimed for GST paid on lease/rent paid for hiring motor vehicles for transportation of employees?

- ITC is **available** on leasing/renting of motor vehicles with seating capacity more than 13 persons.
- ITC **cannot** be claimed on GST charged by the service provider to rent motor vehicles if the approved seating capacity is less than 13 persons.
- ITC is **available** if it is mandatory for the employer to provide the transportation services.

Ref: Section 17(5) of GST Act.

166. Can credit of GST paid on insurance of factory building be claimed and utilised?

- GST Act does not block the availment of credit of GST paid on building Insurance. Hence, the manufacturer/taxpayer is **eligible** to take credit of GST paid on building Insurance and utilise the same for further payment of GST on outward supplies.

Practice adopted by the Industry:

- The textile mills are in the practice of insuring the factory or godown, either as a standalone policy or comprehensive policy.

Ref: Section 17(5) of GST Act

167. As a manufacturer, the company discharges GST on purchase of Motor vehicles & conveyances for transportation of employees. Can credit of GST paid be claimed?

- **No**, if the Motor vehicles used to transport workers/employees, has a seating capacity of less than or equal to 13 persons (including the driver).
- **Yes**, if the seating capacity of such motor vehicles exceeds 13 persons.

Ref: Section 17 of GST Act.

168. One of the employees refuses to work in a particular department and expresses interest to work in another department of his liking, what is the option for employer and its legal implication?

- Refusal of the workman to perform duties as directed by employers will be construed as **disobedience**.
- The employer can initiate **disciplinary action**.

Ref: DCM Shriram Consolidated Vs OP Gupta 2006 LLR 682 (Del. HC)

169. What is mean by protected workmen?

- According to the Industrial Disputes Act, a "protected workman" is defined as a worker who is a member of a registered trade union recognized by the employer or the appropriate

government. This recognition provides them with certain advantages during industrial disputes.

- An employee qualifies as a protected workman if they meet all the following conditions:
 - They are a member of a trade union registered under the Trade Unions Act, 1926.
 - They have completed at least 240 days of continuous service in the industry.
 - Their trade union is recognized by the employer or the appropriate government.
 - Their trade union or federation designates them as a protected workman, and their name is notified in the official gazette and communicated to the employer.
 - The validity of the protected workman is 12 months only.

Rule 65 of The Tamil Nadu Industrial Disputes Rules, 1958

170. When a woman employee files a complaint against another woman alleging sexual harassment under the POSH Act, whether such complaint is maintainable under the Act? How can the Internal Committee proceed in this matter?

Yes

- According to Section 2(m) of the POSH Act, the word "**respondent**" denotes the person against whom an aggrieved woman has filed a complaint. This can include individuals of all genders - male, female, or transgender. Therefore, the Act allows complaints of sexual harassment even if the perpetrator and the victim are of the same gender.
- As per the POSH Act, **only women can file a complaint** of sexual harassment.
- The Internal Committee (IC) should accept the complaint and proceed with the inquiry as per the POSH Act/Rules, which may involve calling for an explanation from the respondent.

Ref: Sections 3(2) & 9 of POSH Act, 2013/Dr. Malabika Bhattacharjee vs. Internal Complaints Committee, Vivekananda College (High Court of Calcutta)

171. An ex-army person retires at the age of 45 years and joins a private factory, whether he is eligible for pension under both Employees' Pension Scheme (EPS) and Pension Regulations for the Army Personnel?

Yes, he is eligible to get pension under EPS when he joins the private organization, subject to his contribution after retirement from army. He can simultaneously claim defense pension granted from the defense funds, contributed earlier by the retiree.

172. Whether it is necessary for management to register the settlement arrived between trade union/employees with the Registrar under the Indian Registration Act in non-judicial stamp paper?

No. The settlement arrived between the employer and employees as per the Industrial Disputes Act, 1947 should be jointly sent along with a copy to the Government (i.e) the **Labour Commissioner/DISH.**

173. Whether Suspension Allowance/Subsistence Allowance attracts ESI and EPF contributions?

Yes, ESI contribution (both employer and employees share) is payable on subsistence allowance, since the subsistence allowance is part of "wage" as defined under Sec.2(22) of the ESI Act. Consequently, contribution is payable on the amount of subsistence allowance paid to the suspended employee.

No, as far as **PF contributions** are concerned, subsistence allowance does not attract EPF contributions.

Ref: Supreme Court Civil Appeal No.3850 of 1993 in RD, ESIC Vs M/s Popular Automobiles, Order dated 29.9.97.

174. If the complainant fails to cooperate/appear for enquiry before the Internal Committee under "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Act", what would be the consequence?

- Hearing the complainant and the affected/Respondent is required for administering justice. No one should be judged without a chance to respond. However, **if the complainant refuses to participate in the enquiry proceedings or does not appear before the Internal Committee even after giving a final notice or fails to revert to the queries raised by the IC for three consecutive events, dismissing the complaint would not violate the principles of "Natural Justice".**
- The IC should record the reasons for closure of the complaint on this ground.

Ref: Sec 11(3) of POSH Act, 2013.

175. Whether any permission needs to be obtained for restructuring/altering the structure/extension of Factories?

Yes, permission needs to be obtained for restructuring/extension of Factories building, even before initiation of construction activity.

Ref: Section 6 of the Factories Act, 1948 and Rules in Form I.

176. Who is an excluded employee under the EPF Act, whom the employer need not cover under the EPF Act?

Para 2 (f) of the Employees Provident Fund Act, 1952 specifies about excluded employees and the **categories of employees falling under the subject include:**

- i. An employee who is the member of the fund and withdraws the full amount of the accumulation from the EPF.
- ii. An employee at the time of entering is getting more than Rs.15,000/- as wages per month.
- iii. Apprentices under the Act apprentice as well as apprentices under Certified Standing Order.
- iv. Employee attaining the age of 58 years and withdrawing the full amount standing to his credit
- v. Employee migrating from India for permanent settlement abroad or taking employment abroad.

Note:

- i. An employee who after opting for voluntary retirement service before attaining 58 years and also gets his EPF account settled, but rejoins the organization is not an excluded employee and hence should be covered under the EPF Act (as he is not attained the age of 58 years).
- ii. If an employee at the time of entry is covered under the EPF Act by virtue of his wages being Rs.15000/- or below, he must be continuously covered even if he draws more than Rs. 15000/- per month. However, the EPF contribution may be restricted to 15000/- per month.

Ref: Para 69 (1) (a) (b) or (c) of EPF Act

177. Is it mandatory for the employer to maintain the muster roll under Form 25 of the Factories Act, 1948?

- Generally, as per the Rule 103 of the Tamil Nadu Factories Rule, 1950 muster roll under Form 25 is to be maintained. However, **if the particulars required under Form 25 is maintained by the mill in the custom-made register, the same would be acceptable.** Whenever the authorities visit the mill for inspection, the management must be able to show the details of workers working in the factory at that point of time.
- **The register must be maintained for period of 3 years.**

178. Will the domestic enquiry get vitiated on the non-supply of enquiry report?

In general, before taking any final decision by the management based on the enquiry findings it is advisable for the employer to

furnish the copy of enquiry report to delinquent. It is for the employee to find out the record made by the enquiry officer including the relevant evidence and also to find out whether the enquiry officer misconstrued the evidence or was unsupported by it. Unless prejudice is caused by non-supply of enquiry report the enquiry will not be vitiated as per the Supreme Court order. Even the Kerala and Madras High Court also endorsed the same. However, as stated earlier it is desirable to furnish the enquiry report to delinquent ask him for his explanation.

Ref: Electronics corporation of India Vs B Karunakar, 1994 LLR 391 (SC), Muthusaravanan Vs Deputy Registrar, Cooperative Housing society, Avinashi 1999 LLR 834 (Mad.HC)

179. What are all the precautions the employer is to take in respect of the resignation letter submitted by the employee?

The legal position is very clear that once the resignation is submitted by the employee the same must be accepted by the employer and this acceptance from the management must be communicated to the concerned employee. It is relevant to note that from the date of resignation letter to the date of communication of the employee of the acceptance resignation letter, the employee would be treated as in service.

180. Can the management fix two different working hours for the staff and factory worker?

Yes, the nature of work varies between the plant workers and the office setup employees so long as the number of hours of work per day is not violating the law, different working hours may be prescribed by the management for administrative staff and plant employees

181. Whether notice pay at the time of resignation be adjusted against the gratuity by the resigned employee?

No, gratuity being a social security benefit cannot be attached in the court of law and even the notice period amount cannot be adjusted even if the employee agrees for it.

182. Is there any mandatory provision for the encashment of earned leave or annual leave while the employee is in the service under the Factories Act, 1948?

- There is no provision of encashment of annual leave with wages without availing the leave while in service, only in the case of discharge or dismissal, superannuated or death the encashment will apply.

- However, as the employer needs the service of employee, sometimes refusing to grant leave, the practice of encashment continues in the mills when the employee is service.

183. Is the contract worker eligible for gratuity under the Contract Labour (Regulation and Abolition) Act, 1970? If so, who is responsible for the gratuity payment, the principal employer or contractor?

- As per definition of “employee” under the Payment of Gratuity Act, 1972, the contract worker is eligible to get the gratuity.
- On the combined reading of Sec 4 (1) of the Payment of Gratuity Act, 1972 and Sec 21 (4) of The Contract Labour (Regulation and Abolition) Act, 1970, the principal employer is not liable for the payment of gratuity but liable only to the extent of wages and no other amount can be claimed as per the recent Calcutta High Court Order in Kajalpouri Vs The Appellate Authority and another.

Ref: 2024 LLR Pg.no.400

184. Can the Director/Factory Manager be prosecuted in respect of industrial accident, when necessary personal protective equipment and safety instructions given by the employer were neglected by the victim?

- Sections 97 and 111 of the Factories Act, 1948 defines offences by workmen and obligation of workers.
- The High Court of Jharkhand has clearly held that, “**the negligence and violations of the safety instructions by the employee cannot be a cause for prosecution of the employer**” with reference to above mentioned legal provisions.

Ref: Deepak Dokania, vs The State of Jharkhand in Cr.M.P. No. 742 of 2014, High Court of Jharkhand, Order dated 25.04.2024.

185. While calculating the bonus, can the employee demand bonus on the payment of “subsistence allowance”?

No. Subsistence allowance is payable to an employee on account of his employment in the organization, wherein no work is performed. Hence, it cannot be considered as remuneration under section 2 (21) of payment of Bonus Act, 1965.

186. Can the company deduct an outstanding loan amount from an employee's gratuity payment, particularly when the employee provides a written consent letter authorizing this deduction?

- The employer **cannot** recover the loan amount from the gratuity amount.
- The undertaking, if any, given by the employee to recover the loan amount is **not valid**.

- The gratuity **cannot be attached** even by way of a decree by the civil court.

Ref: Ram Ranjan Mukherjee Vs Mining and Allied Machinery Corporation, 2001 LLR 297 (Cal.HC)

187. When an employee has met with an accident while on duty, can he make a claim under the Employees Compensation Act, 1923 without sending a notice to the employer?

Various High Courts have held that it is **not necessary for the employee to give notice to the management**, particularly when the employer is aware of the incident by way of spending money for medical treatment.

Ref: United India Insurance Company Ltd, Hyderabad Vs Ramulu, 2000 LLR 344 (AP HC)/Section 10 of Employees Compensation Act, 1923.

188. How long should the registers be maintained by the employer under the ESI Act, 1948?

Regulation 32 of the Employees' State Insurance (General), Regulations, 1950 casts the responsibility on every employer to **preserve the register maintained under the Regulations for a period of five years**, from the date of last entry therein.

Ref: Dy.Regional Director Vs Mahalaxmi process 2014 LLR SN 329 2014 (140) FLR 64 (Raj HC)/ Rule 32 (Register of Employees), 66 (Maintenance of Accident Book) and 102-A (Inspection Book)

189. If a company retrenches employees without serving a notice of retrenchment to the appropriate government, is the retrenchment considered illegal?

- Retrenchment is removal of employees, due to economic reasons like company restructuring, mergers, **cost-cutting measures** or for any reason whatsoever.
- Before retrenching the employees from their jobs, it is **mandatory to notify** the appropriate government or prescribed Authority.
- **The Supreme Court of India has held that serving the notice to appropriate Government does not constitute as a condition precedent, for retrenchment.** Hence, not serving the retrenchment notice to the statutory authority would not be considered as non-compliance, consequently, the same would not invalidate the retrenchment.

Ref: District Rural Development Agency V Mukeshkumar Gandhal Jadav 2024 LLR 1 (SC)/ Sections 2(oo) & 25F of the Industrial Dispute Act, 1947

190. Is the new Labour Code advantageous to the employer or employee?

- The new Code has advantages both for the employer and employees.
- **From the employer's perspective the following are the advantages:**
 - Uniform "wage" definition across the code. Thus, the code removes the confusion about the term "wages" created by different definitions under various labour enactments.
 - Introduction of "fixed term employment" (prevalent in apparel manufacturing).
 - The Code provides that 50% of the gross wages will be the base for Statutory compliance.
 - The Standing Orders provision will apply only when the number of employees is 300 or more (as against the current application, if the employee level is 100 or more. (Central Enactment))
 - The threshold limit increased to 300 Nos (employees) from the existing 100 Nos (employees) for obtaining permission to Retrench, Lay-off and Closure.
- **From the employee's perspective the following are the advantages:**
 - Uniform "employee" definition across the code.
 - Mandatory issue of appointment Order.
 - Fixed-term employees shall receive gratuity on a prorata basis.
 - Reskilling Fund for laid off workers.
 - Annual Health checkup at employer's cost.
 - Enhanced welfare benefits for workers like Annual Leave eligibility for 190 days, restroom (for 50 workers), Canteen (for 100 worker), Welfare officer appointment (for 250 worker) etc.

191. Foreseeing, the man power scenario prevailing currently, what would be the wages in the textile mills in the next three years and what are the steps to be adopted currently, to address the future abnormal increase in wages by the management?

Currently, the wage level varies between Rs.350/- per day to Rs.450/- per day (without including other statutory cost/benefits/concession). Considering the employees' cost in retail showroom and investment promotions in the northern States through the State Textile Policies, luring the migrant workers to be retained in the respective States, the **wage level is likely to increase to around Rs.1000 per day in a period of 5 years.**

Advisory:

Statutory increase in the wage cost being beyond the control of management, it is advisable that for the current given wages, **scientific work assignment** may be implemented effectively and thereby **increase productivity of the existing labour force**, a means to reduce the quantum of workforce to be engaged.

192. Is there any provision under the Factories Act or the Rules regarding earned leave for half day?

- There is no provision under the Factories Act or the Rules regarding grant of earned leave (EL) for half-a-day.
- Section 79(4) of the Factories Act states that while calculating earned leave of a worker on the basis of one day for 20 days of actual service, any fraction of leave for half day or more shall be treated as full day only.

In practice, with the Union Agreements/Standing Orders/customary practice, some managements have liberalized the EL Rules and one or half days are permitted, to maintain industrial cordiality and enable smooth operations of the factories/establishments.

193. Is there any time limit for completing an enquiry under “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act” (POSH Act), 2013?

Under the POSH Act, 2013, the time limit for completing an enquiry is **90 days** from the date of receipt of the complaint.

Ref: Sec 11 of POSH Act, 2013

194. Can exemption be claimed from the mandate to provide the facility of creche under Factories Act, 1948?

Exemption shall be provided by Director, Department of Industrial Safety and Health under the following circumstances:

- 1. If the number of children kept in creche was less than 5 in the preceding year**
- 2. If the number of married women or widow employed does not exceed 15 or**
- 3. If the factory works less than 180 days in a calendar year**

Director, DISH may exempt such factories from the said provision, if he is satisfied with **alternative arrangements**, which may be in the nature of:

- ✓ Creche building with a minimum accommodation, at the rate of (1.9) meters per child
- ✓ Suitable washroom for washing the clothes of the children
- ✓ Adequate supply of soap, clean clothes & towels and

- ✓ Adequate number of female attendants who are provided with suitable clean clothes for use, while on duty, to look after the children in the creche.

Ref: Sec 48 of The Factories Act, 1948/Rules 73 to 76 & 76A of the Tamil Nadu Factories Rule, 1950

195. Whether Director and the Managing Director drawing wages will be treated as employees, to be covered under ESI Act?

The Punjab & Haryana High Court has held that Director/Managing Director ought to be covered under ESI Act, if remuneration is below the prescribed ceiling.

Ref ESI Vs M/s AV Auto Industries Ltd 2028 LLR 835 (P&H HC)

196. Is the employer responsible for accident occurring to an employee while commuting from or to workplace?

An accident occurring to an employee while commuting from his residence to the place of employment **for duty** or from the place of employment to his residence **after performing duty**, shall be deemed to have **arisen out of and in the course of employment**, if **nexus** between the circumstances, time and place in which the accident occurred and the employment is established.

Ref: 51 E of the Employees State Insurance Act, 1948

197. What are the components to be considered for the purpose of PF contribution and what is the percentage of the gross earnings to be covered under the EPF Act, 1952?

- The Employees' Provident Funds Act (EPF Act) of 1952 does not specify any percentage of gross earnings for EPF contributions.
- Instead, the Act mandates contributions on basic wages, dearness allowance (DA), retaining allowance and the value of food concessions.
- The Supreme Court of India has clarified that all wages and allowances, **except** house rent allowance (HRA) and those paid discriminatorily, are subject to EPF contributions (i.e) allowances like conveyance and production incentives, if paid uniformly to all employees, are to be included in the EPF calculation. The contingency payment (based on certain parameters) not paid uniformly to all workers will not attract EPF contributions.

Ref: Sec 2 & Sec 6 of The Employees' Provident Fund (Miscellaneous and Provisions) Act, 1952.

198. In the event of an industrial accident, the employer (in the case of non-coverage under Employees State Insurance Act, 1948), may pay a lump sum amount to the relatives of the deceased employee. Can this payment be considered as compensation under the Employees' Compensation Act, 1923 (ECA)?

- The statutory mode of payment of compensation is to **deposit the compensation amount with the jurisdictional Commissioner** under Employees Compensation Act, 1923.
- Payment of the compensation amount directly to the relatives of the deceased employee or through any other mode is **not legally valid**.
- Employer may be directed by the Authorities to deposit the compensation amount with the Commissioner, if demanded by the relatives of the deceased employee at a later date, in the guise of non-receipt of statutory compensation, **in addition** to the lump sum directly paid as compensation.

Ref: Section 4 of the Employees' Compensation Act, 1923

199. Whether providing creche facility in the factory is mandatory?

In every factory wherein **more than 30 women workers** are ordinarily employed, it is mandatory to maintain creche facility, for the use of children under the age of 6 years.

Ref: Sec 48 of The Factories Act, 1948

200. Is it mandatory to provide subsidy for running canteen?

- **No**
- Food, drink and other items served in the canteen shall be sold on **non-profit basis**.
- In computing the cost of food, the following items are to be excluded and shall not be taken into consideration:
 - Rent for land and building.
 - Depreciation and maintenance charges of the buildings and equipment
 - Cost of purchase of equipment furniture utensils etc.,
 - Water charges, lighting, cost of fuel required for cooking or heating food stuffs.
 - Wages of the canteen employees and cost of uniforms.

Ref: Rule 68 of Tamil Nadu Factories Rule, 1950

201. The Factories Act mandates maintenance of canteen for the welfare of workers. Is there any threshold limit for compulsory maintenance of canteen?

Every factory where **more than 250 workers are ordinarily employed in a year**, maintaining canteen is a must.

Ref: Sec 46 of the Factories Act, 1948

202. Whether it is necessary to give a notice of “change in service conditions” as required under Section 9A of the Industrial Disputes Act, if an employer wants to introduce Bio-metric attendance system?

- **No**
- The Madras High Court has upheld that introducing computerized time attendance system will not come within the purview of Sec 9A of the Industrial Disputes Act. Therefore, providing a notice to the workmen or departmental Authorities is not required, as there is no adverse change in condition of service and there is no violation of provisions of the Factories Act or the Rules.

Ref: Sec 9A of ID ACT and 2003 LLR 244 (Mad HC)

203. Normally when a worker is laid off, he would be entitled for the lay off compensation. When is an employer not liable to pay lay off compensation?

A laid-off worker will not be eligible for unemployment compensation if:

- The employer provides an alternative employment in the same establishment or any other establishment belonging to same employer within a radius of 5 miles and such alternative employment does not require special skill set or previous experience.
- If the worker does not present himself for work at the appointed time during the normal working hours at least once a day.
- Refusal to accept alternative employment by the laid off worker.
- If such lay off is due to strike or slowing down of production by workmen in another part/department/section of the establishment.

Ref: Sec 25 E of ID Act

204. When an employee shall be disqualified from receiving bonus?

If he is dismissed from service on

- a) fraud or
- b) riotous or violent behavior in the premises of establishment
- c) theft, misappropriation or sabotage of any property of the establishment.

205. When is an employee eligible to receive a bonus under the Payment of Bonus Act, 1965?

When the employee has worked for not less than 30 working days in that year.

Ref: Section 26 of Payment of Bonus Act, 1965

206. What are the circumstances in which gratuity be withheld/forfeited by the employer?

- Employee causing any damage or loss or destruction of property of the employer, due to willful omission or negligence, Gratuity shall be forfeited to the extent of damage/loss.
- Employee terminated for riotous or disorderly conduct or other act of violence.
- Employee terminated for an act which constitutes an offence involving moral turpitude during course of his employment.

207. What is the difference between lockout and Strike?

- Lockout is a weapon in the hands of employer for temporarily closing the industry or suspension of work or refusal to employ any number of employees.
- Whereas strike is a dangerous tool in the hand of workers/trade union and accordingly the workmen refuse to work under a common understanding.

Ref: Industrial Disputes Act, 1947

208. Whether the management can change the leave with wages or holidays or working hours and rest interval at their own discretion at any time?

- Leave, holidays, working hours and rest intervals are conditions of service, a change of which cannot be carried out without giving atleast 21 days' notice.
- No such notice is required when there is settlement to make such change with workmen / trade unions.
- Government may exempt any class of Industrial Establishments or any class of workmen in the public interest, from such compliance by issuing a Notification.

Ref: Section 9A and 9B of the Industrial Disputes Act, 1947

209. What are the functions of “works committee”?

- To promote good relation between employees and employer
- To resolve the difference of opinion between employer and employees.

210. Is the constitution of works committee mandatory?

- Establishment employing 100 or more workers in the preceding 12 months period **may** constitute Works Committee.

- Appropriate State Government governs the same through State Rules.
- The committee comprises of equal representatives of employers and workmen.
- The committee shall meet atleast once in a quarter (Central Rules)/month (TN Rules)
- Decisions taken in the meeting shall be sent to the JCL within 14 days from the date of meeting.

Ref: Section 3 of Industrial Disputes Act, 1947 and The Tamil Nadu Industrial Disputes Rules, 1958

211. Under the payment of the Gratuity Act whether the employer should check 240 days of working, every year for continuous service?

In the case of 'absence', due to the employer conducting an enquiry and imposing punishment, "break-in-service" during the 240 days of working is to be verified for that specific year. However, there must be a provision to handle break-in-service in the **Standing Order** of the organization.

212. Whether Apprentices trained under National Apprenticeship Promotion Scheme (NAPS) would be provided with wages as prescribed under Tamil Nadu Minimum Wages Act (Rs. 512.20/day) or Stipend rate prescribed by Central Government which varies from Rs.5000/- to Rs.9000?

Apprentices trained under NAPS will be provided with Stipend at the rate prescribed by the Central Government, as per clarification received from Additional Chief Secretary, Labour, Government of Tamil Nadu.

Ref: Communication from Additional Chief Secretary to Labour, Welfare and Skill Development Department, Govt. of Tamilnadu - Lletter No.16499/R2/2022-4 dated 30.08.2023

213. Would vast stretch of land (several acres) surrounding a textile factory also be considered as "premises" under the Factories Act?

Yes, '**Open Land**' will be considered as part of premises under the Factories Act, 1948. The same has been confirmed in many judicial decisions.

Ref: 1999 LLR 100 (SC)

214. Whether the textile wet processing falls under hazardous process under the provisions of the Factories Act, 1948?

No, as per the clarification given by the Director of Industrial Safety and Health (DISH), textile processing does not fall under hazardous process.

Ref: DISH Communication dated 28.11.2023

215. If a worker has joined an organization at anytime in between the year during the calendar year, what is his eligibility to receive earned leave?

If a worker has joined an organization on any day during the calendar year, he will be eligible to get the leave with wages subject to the following:

- He/she has worked for 2/3rd of the number of days in the remaining days of the calendar year.
- Entitlement is credit of one day for every 20 days worked.

Ref: Section 79 of Factories Act, 1948

216. Is it permissible to nominate any person other than spouse as nominee under Employees' Provident Fund Act (EPF), 1952?

- It is mandatory for the members to nominate their nominees conferring the right to receive the PF amount that stands to their credit.
- Before marriage the person nominated by the employee is entitled to the benefit.
- After marriage only **Spouse** is entitled for pension by default, being the family member.

217. Is there any provision under the Factories Act or the Rules regarding earned leave for half day?

- There is no provision under the Factories Act or the Rules regarding grant of earned leave (EL) for half-a-day.
- Section 79(4) of the Factories Act states that while calculating earned leave of a worker on the basis of one day for 20 days of actual service, any fraction of leave for half day or more shall be treated as full day only.
- In practice, with the Union Agreements/Standing Orders, some managements have liberalized the EL Rules and one or two days and half days are permitted as EL to maintain industrial cordiality and enable smooth operations of the factories/establishments.

218. Is there any time limit for completing an enquiry under the POSH Act, 2013?

Under the POSH Act, 2013 the time limit for completing an enquiry is 90 days from the receipt of the complaint.

219. How long will an employee, who is a member of ESI, remain covered when his wages increase above the coverable ceiling?

- Any employee who crosses the salary limit (upto Rs.21,000 per month), will remain covered till the contribution period ends.
- The contribution period in a financial year is April to September and October to March. i.e. an employee covered at the beginning of contribution period, would remain covered till the end of contribution period.

220. An employee eligible for gratuity applies for the same with the employer after 30 days from the due date. Would it affect the gratuity claim of the employee?

- No.
- It is the responsibility of the employer to arrange to pay the gratuity to the eligible employee within 30 days from the due date. i.e., from the date of leaving the job or termination from the job.
- For any reason, if the employer failed to process the claim, the amount shall be deposited within the time frame with the Controlling Authority (jurisdictional labour commissioner) under the Payment of Gratuity Act.
- Interest would be chargeable beyond 30 days period.

Ref.: 2017 IV LLN Page No. 253 Mas HC

221. To promote retention of employees, we pay production bonus to them once every quarter. Will it attract ESI liability?

No, Since the said incentive is paid at an interval exceeding two months, it would not fall within the ambit of wages under Sec 2 (22) of the Act.

Ref: Employees' State Insurance Corporation, Bangalore Vs. Lamina Suspension Products Pvt.td, New Mangalore, 2002 LLR 558 (Kan HC).

222. Whether an apprentice is entitled to get gratuity?

As per the Apprentice Act, 1961 an apprentice is not eligible for gratuity.

Ref: S.Arunachalam Vs MD, Southern Structures (2001)IILLJ1457MAD

223. What is the difference between settlement under Section 12(3) and settlement under Section 18(1) of Industrial Disputes Act, 1947?

12(3) settlement is tripartite settlement among the employer, employee and conciliation officer (Government representative). Whereas, 18(1) settlement is between employer and employee.

12(3) settlement binds all parties and workmen in the factory including the future employee. However, 18(1) settlement binds

only the parties who are the signatories in the settlement and will not cover the future employee

224. Is continuous service of 5 years compulsory for claiming gratuity by an employee?

The Hon'ble Madras High Court has decided the eligibility for gratuity as follows:

“After completion of four years of service, in the 5th year the employee should put in a service of 240 days or 10 months and 18 days”.

225. Can the worker demand to include National and Festival Holidays (NFH-9days) for the purpose of eligibility criteria of 240 days in calendar year to get earned leave/annual leave with wages?

No, statutorily there is no provision to include N&F holidays to reckon 240 days.

226. Who is eligible to get earned leave/annual leave with wages?

A worker who has worked for 240 days or more in a calendar year shall be allowed 1 day of earned leave for every 20 days of work performed. To qualify for 240 days in a calendar year the days of lay off, maternity leave and leave earned during the previous year alone should be included along with actual days present.

Ref: Sec 79 of the Factories Act, 1948 for details