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A- NOTIFICATIONS

1. SHOPS IN MAHARASHTRA CAN NOW STAY OPEN 7 (SEVEN) DAYS A WEEK
   
   With a view to give businessmen more flexibility, the Industries, Energy & Labour Department, Government of Maharashtra has issued a notification dated March 17, 2015 allowing all retail shops registered under Maharashtra Shops and Establishment Act, 1948 to remain open on all 7 (seven) days of the week. However, it has further clarified that:
   
   (i) The exemption shall remain in operation for a period of 1 (one) year from the date of the said notification;
   
   (ii) The shop shall not remain open after 10 p.m on any day, as opposed to the earlier deadline of 8:30 p.m;
   
   (iii) Even though shops have been allowed to remain open for certain additional hours, no female employee would be allowed to work after 9:30 p.m;
   
   (iv) The employees shall be entitled to overtime wages if they work for more than 9 (nine) hours in a day in accordance with Section 63 of the Maharashtra Shops and Establishment Act, 1948;

   (v) Taking into consideration the additional hours so permitted, the employer may appoint new staff or schedule the shifts in a manner that the spread over of an employee shall not exceed 11 (eleven) hours in a day and that no employee shall be required to work for more than 9 (nine) hours in a day or for more than 48 (forty eight) hours in a week.

2. MAHARASHTRA GOVERNMENT PERMITS MAINTENANCE OF RECORDS/REGISTERS IN ELECTRONIC FORMAT

   The Maharashtra Government vide a notification dated April 8, 2015 has permitted all organizations/establishments/factories complying with the following acts to maintain their employee related records/registers electronically:

   
   2. Maharashtra Shops & Establishment Act, 1948;
   
   3. Minimum Wages Act, 1948 (hereinafter referred to as “MW Act”);
   
   4. Payment of Wages Act, 1936 (hereinafter referred to as “PW Act”);
   
   5. Equal Remuneration Act, 1976 (hereinafter referred to as “ER Act”);
   
   6. Payment of Bonus Act, 1965 (hereinafter referred to as “Bonus Act”);

Notwithstanding the above, organizations/establishments/factories, as the case may be, shall make such records available in hard copy as and when required by the concerned authorities.

3. SHORT CODE SMS SERVICE FOR EMPLOYEES PROVIDENT FUND MEMBERS

On March 11, 2015, the Ministry of Labour and Employment, Government of India launched an additional facility of short code SMS for Employees’ Provident Fund (EPF) members who have activated their Universal Account number (UAN). The facility will provide the EPF members with their details as available with the Employees’ Provident Fund Organization (EPFO). The members of EPFO who have activated their UAN can send an SMS from their registered mobile number. This facility is available in ten languages.

B- PROPOSED LEGISLATIONS

The Central Government plans to replace 44 (forty four) labour laws with 5 (five) codes relating to industrial relations; wages; social security; industrial safety and welfare. The said move is aimed to decrease the multiplicity of compliances in labour laws, improve labour relations along with easing the process of doing business in India to boost the ‘Make in India’ initiative of the Government of India.

These proposed codes, once passed by the Parliament, are expected to overhaul the labour law framework in India. Pursuant to discussion with all stakeholders, the Government is likely to introduce two codes pertaining to industrial relations and wages, namely, the Labour Code on Industrial Relations 2015 (hereinafter referred to as “LCIR Bill”) and the Labour Code on Wages Bill, 2015 (hereinafter referred to as “Wage Code”) in the monsoon session of the Parliament (August 5, 2015 to September 30, 2015).

Please find hereinbelow a brief write up providing an insight into the codes as proposed to be introduced.¹

1. LABOUR CODE ON INDUSTRIAL RELATIONS

The Government has proposed to integrate 3 (three) important labour law statutes, viz., the Industrial Disputes Act, 1947 (“ID Act”), the Trade Unions Act, 1926 (“TD Act”) and the Industrial Employment (Standing Orders) Act, 1946. In this regard, the Labour Ministry has introduced a first draft of the LCIR Bill in May, 2015. The following are some of its key features:

(i) The LCIR Bill proposes to increase the quantum of compensation for retrenchment and closure to 45 days’ average pay for every year of continuous service from the current provision of 15 days’ average pay for every year of service. Further, an industrial establishment employing

¹ Kindly note that the provisions mentioned herein are proposals which are subject to change pursuant to discussions and debate in both houses of Parliament of India.
less than 50 (fifty) workers is not required to follow the procedure of retrenchment, i.e., giving 1 (one) months notice, 45 (forty five) days average salary for every completed year, etc.

(ii) An industrial establishment in which less than 300 (three hundred) workers are employed would not require prior government permission/approval for retrenchment, lay off and closure of the industrial establishment. Currently, as per the ID Act, every undertaking employing more than 100 (hundred) workers has to apply to the appropriate Government for prior permission at least 90 (ninety) days before the date on which the intended closure becomes effective.

(iii) An industrial establishment employing more than 50 (fifty) but less than 300 (three hundred) workers shall serve a 60 (sixty) days notice to the appropriate Government, before the date on which the intended closure is to become effective. The reasons for closing down the industrial establishment have to be stated in the notice. As per the provisions of the ID Act, at present, every undertaking having more than 50 (fifty) workers but less than 100 (hundred) workers has to send a notice to the appropriate Government at least 60 (sixty) days before the date on which the intended closure is to become effective, stating clearly the reasons for the intended closure of the undertaking.

(iv) 100 (hundred) workers or 10% (ten percent) of the total workers employed in an establishment, undertaking or industry can join together to form a Trade Union and register the same under the LCIR Bill. Currently, 7 (seven) or more people are required to get a Trade Union registered under the Trade Union Act.

(v) In an industrial establishment in which 100 (hundred) or more workers are employed in the preceding 12 (twelve) months, the employer shall necessarily need to constitute a works committee consisting of representatives of employer and workers engaged in the establishment. A works committee would be required to promote measures for securing amity and good relations between the employer and the employee.

(vi) Workers employed in an industrial establishment cannot go on a strike without giving a 14 (fourteen) days notice to the employer. Further, if 50% (fifty percent) or more workers take casual leave on any given day, it will be treated as a strike. Currently, only employees working in a Public Utility Service are required to give notice before going on strike.

2. **UNIFIED WAGE CODE**

By introduction of the **Wage Code** on March 19, 2015, the Labour Ministry has proposed to merge 4 (four) legislations, namely, MW Act, PW Act, Bonus Act and ER Act into a comprehensive code. Each of these laws defines wages differently. In order to simplify the implementation of the provisions, the Wage Code has adopted the definition of ‘wage’ as stipulated by the MW Act.
Salient Features of the Proposed Wage Code:

(i) Under the MW Act, both the Central Government and the State Governments are empowered to fix, revise, review and enforce the payment of minimum wages to workers in respect of ‘scheduled employments’ (i.e., a specified list of employments provided under the MW Act which include inter alia employment in industries such as oil, rice mill, flour mill, mines, sweeping & cleaning, stone-breaking & stone-crushing, etc.) under their respective jurisdictions. The Wage Code proposes to remove the concept of ‘scheduled employments’ as provided under the MW Act, thereby extending the applicability of the statutory minimum wages to all workmen employed in the State.

As per the Wage Code, the State Government(s) alone shall have the power to fix the minimum wages for all categories of employment.

In light of the aforesaid provision, with the States alone being empowered for fixing the minimum wages for all employments under their jurisdiction under the Wage Code, there seems to be an ambiguity with respect to the procedure for fixing of wages for employments under the jurisdiction of the Central Government.

(ii) The State Government shall review or revise minimum rates of wages at intervals not exceeding 5 (five) years, if the minimum rates of wages have a component of variable Dearness Allowance worked out on the basis of rise in Consumer Price Index Numbers for industrial workers; otherwise such review or revision shall be made at intervals of 2 (two) years.

(iii) Wage Code is one of the first legislations providing express application of the provisions to transgenders.

(iv) The provisions of the ER Act, 1976 have been watered down to a certain extent. While the Wage Code prohibits discrimination amongst male, female and transgender employees on the grounds of gender in the matter of wages in respect of work of same or similar nature, it remains silent on prohibiting gender discrimination in the recruitment of employees (which was specifically provided in the ER Act, 1976).

(v) The Wage Code has done away with the labour inspector and replaced the same with the post of a facilitator. Unlike the inspectors appointed under the MW Act, it is expected that facilitator(s) appointed by the Government would play a more positive and facilitative role. The facilitator shall be required to supply information and advice to the employers and workers on the most effective means of implementing the provisions of the code. Further, in case of a default, before initiation of prosecution proceedings under the Wage Code, the facilitator shall give an opportunity to the employer by way of a written direction to comply with the provisions of the Wage Code.

(vi) Under the Wage Code the appropriate authority shall maintain a list of defaulting employers.
While the MW Act imposes a paltry sum of INR 500 (Rupee Five Hundred) as fine in the event wages paid are below the statutory minimum wages prescribed under the MWA, the Wage Code proposes to increase the penalties many fold. Kindly note that the increased penalties as provided under the Wage Code are in addition to the compensation (maximum of upto 10 times) payable to the employee on the directions of the concerned authority appointed under the Wage Code.

WE TRUST THE AFORESAID INFORMATION WOULD BE OF ASSITANCE TO YOU

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