

LABOUR LAWS, LABOUR CODES, APPLICABILITY, COMPLIANCE

LABOUR CODES	LABOUR LAWS
Code on Wages, 2019	<ul style="list-style-type: none"> • Payment of Wages Act, 1936 • Minimum Wages Act, 1948 • Payment of Bonus Act, 1965
Code on Social Security, 2020	<ul style="list-style-type: none"> • Employees' Compensation Act, 1923 • ESI Act, 1948 • EPF C MP Act, 1952 • Maternity Benefit Act, 1961 • Payment of Gratuity Act, 1972
Occupational safety, Health C Working Conditions (OSH C WC)	<ul style="list-style-type: none"> • Factories Act, 1948 • Interstate Migrant Workers Act, 1979 • BOCW Act, 1996
Code on Industrial Relations, 2020	<ul style="list-style-type: none"> • Trade Unions Act, 1926 • Industrial Employment (SO) Act, 1946 • Industrial Disputes Act, 1947

Wage/ Max Ceiling or Maximum Compensation (Head Count)

COMPENSATION	LABOUR LAWS
Rs. 20 Lakh	Payment of Gratuity (10+)
Rs. 7 Lakh	EDLI under EPF C MP Act (20+, 10+)
Rs. 25000	ESI Act for DAP Employees (10+, 20+)
Rs. 24000	Payment of Wages Act
Rs. 21000	<ul style="list-style-type: none"> • Payment of Bonus Act, • ESI Act (20+, 10+)
Rs. 15000	<ul style="list-style-type: none"> • PF Calculation (20+, 10+) Emp. • Compensation Cal (20+, 10+) (in case of Death or Total Disablement)
Rs. 7000	Bonus Calculation (on minimum wages or Rs. 7000, whichever is higher)

Head Count Compliance

COUNT	COMPLIANCE
1000	<ul style="list-style-type: none"> • 10th Day • Payment of Wages • 7th Day
100	Standing Orders (SO)
10, 20	Factories Act
7 C 10%	Trade Unions

Minimum days to work to be eligible for benefit/payment

MINIMUM DAYS	BENEFIT/PAYMENT
240	Accounts for 1 year. Gratuity
80	Maternity benefit
78	Contribution for ESI benefit
42	Payment to be done within 42 days, when claimed under Employee Compensation Act
30	Payment of Bonus

Code on Wages, 2016

Payment of Wages Act, 1947

- Timely payment of wages
- Ceiling Rs. 24000 pm
- Payment by 7th day if head count <1000 C 10th day if more
- Fines deduction limit is 3% of wages (maximum), if more fine, deduct in next month wages.
- Wages include all regular payment + HRA
- Once covered, employee continues to cover even if wages increase.
- Upon termination, pay within 2 working days
- Maintain register of wages, deductions, overtime, fines C attendance.
- Preserve records for minimum 3 yrs from last entry unauthorized deductions to claim within 2 years.
- Proper enquiry, show cause notice and consider installment to pay deductions by employees.

Case Law-

Comino binani zinc ltd. - Liability of principal employer to pay if contractor fails to pay by virtue of contract labour act.

Minimum Wages Act, 1648

- Fixation of minimum rates of wages i.e. basic + Variable DA, for schedule employments in part 1 C 2 (non agriculture C agriculture) with 1000+ workers in a state.
- National floor level min. wage is Rs. 178/day.
- Variable DA is updated twice a yr (April 1 C October 1) on basis on CPI.
- Standard working hours is 8 hrs/day.
- Overtime (OT) is 1.5 or 2 times i.e. if worked on weekend or weekly off other than weekend. C OT > min. wage rate per day.
- If under pay, pay back wages i.e the difference C no. of days worked.
- Check state wise data base i.e. roles, geographic area, etc.
- Preserve records for 3-5 yrs.

Case Law-

CPWD director general- even if employee gets more than minimum wages, overtime not to be calculated on minimum wages but on actual wages.

Payment of bonus Act, 1665

- Minimum bonus liability of employer is 8.33%. every factory and other est. (20+ workers).
- Wage ceiling is Rs. 21000 pm.
- Calculation ceiling is Rs. 7000 or minimum wages, whichever is higher.
- Employee must work for 30+ days to be eligible for bonus.
- Once applicable, remains applicable.
- To be paid within 8 months from end of FY.
- Actual working days accounted on annual basis i.e paid holidays + week offs + authorized leaves - unpaid leave - unauthorized absence.

- If misconduct---> dismissal of bonus.
- Bonus is a deferred wage.
- Set off is excess payment of bonus (more than min.) so in next year can pay minimum of 8.33%, set off to be done for preceding 4 yrs only.
- Set on is insufficient surplus, so pay bonus in next year (has to pay minimum bonus at least)

Case Law-

ONGC - Suspended employees when reinstated has statutory eligibility for bonus for the entire period of suspension.

Social Security

- Employee Compensation Act, 1923 provides compensation to injuries arising in C out of work.
- For injuries beyond 3 days.
- In wages HRA is included (benefit/privilege).
- Calculation ceiling of Rs. 15000 on death (50%) C permanent total disablement (60%). 25% of actual monthly wages is given in temporary disablement.
- Payment to do in 42 days of claim raised.
- ESI act prevails for ESI covered employees.
- For death: $50\% * 15000 * \text{factor}$ (in schedule 4 of the act).
- For Perm. Tot. disab: $60\% * 15000 * \text{factor}$ no pay for minor injury, intoxication, Disobedience.
- Notice of accident asap or within 7 days.
- Claim within 2 yrs of accident. funeral expenses Rs. 5000.
- Age is a important factor here.
- Retain documents for minimum 5 yrs.

Case Law-

Laxmi - Death by heart attack arising out C in course of employment is payable under this act.

ESI Act, 1648

- Provides medical care C cash benefits (sickness, maternity C employment injury)
- Wage ceiling Rs. 21000, for DAP Rs. 25000
- For contribution to ESI, HRA is included C for eligibility its excluded from wages. 0.75% contri by employee C 3.25% by employer.
- Employee earning Rs. 176 per day don't have to pay contri. contribution to be done by 15th day of following month.
- Sickness: 50% of daily wages for 91 days.
- Funeral Rs. 10000 and family benefit as well.
- Contri period is bi annually, April 1 C October 1. 78 days of contribution to get Benefits with grace period of 3 months.
- If salary increases, then coverage till period end C no need to continue.
- Conveyance allowance is excluded as part of wages for all acts.

Case Law-

Hyderabad asbestos- All employees in factories also include persons in connection with work of factory.

EPF s MP Act, 1652

- Provident fund, pension C insurance.
- Calculation ceiling of Rs. 15000 pm (basic + DA only) C continues to cover once applicable.
- 12% by employee C 8.33% EPS, 3.67% EPF C 0.5% EDLI)
- EDLI only paid by employer.
- EDLI for employees exempted C unexempted, both, is $(30 \times 15000 \text{ or salary}) + 2.5 \text{ L}$, so maximum of Rs. 7 L in case of death of employee.

Case Law-

Bombay printer- Contribution need not to be paid for retired employee who have withdrawn PF C are called for casual needs at office.

Maternity Benefit Act, 1661

- A wage protection C benefits act. benefits to women, WFH, 26 weeks (8 weeks pre C 18 post) leave for 1st two child then 12 weeks (6 weeks pre delivery).
- ESI act have wage limit but this act not. so who not covered under ESI gets covered here.
- Additional 30 days of leave for illness. miscarriage gets 6 weeks leave.
- Adopted child < 3 months age gets 12 weeks of leave.
- 80 days to work in 12 months to get benefits.
- Establishments with 10+ also covered.
- Rate to pay is avg daily wages and no reduction in wage or position.
- WFH only after maternity leave of 12 weeks at least.
- Nursing breaks of 30 mins each, 2 breaks/day till 15 months age of child.
- Creche facility for 50+ employees.
- Retrenchment is last to be.

Case Law-

B. Shah - Sunday is also included in cal. of the amt. i.e. gets benefits for entire period of actual absence.

Payment of Gratuity Act, 1672

- Long service, retirement benefit, tax free.
- 5 years of continuous service or 240+ days worked.
- Pay within 30 days is Resigns, deduct only loss/ misconduct.
- Death: gets full regardless of service years.
- Immediate payment for permanent disability.
- Can't be waived off via employee contract. last salary $\times (15/26) \times$ years of service.
- Maximum is Rs. 20 L, tax free.

Case Law-

Mahanadi coal fields- Employer can withhold gratuity during pendency of disciplinary proceedings.

OSH s WC

Factories Act, 1648

- Conditions of work, health, safety.
- With power 10+, without power 20+ employees.
- Must be a manufacturing process.
- Working hours: 9hrs/day C 48hours/week.
- 1 holiday for 24hrs. if worked on weekly holiday-give off within 3 days C consecutive maximums can work for 10 days.
- Overtime is 2times of ordinary hourly rate.
- Rest for 30 mins after 5hrs of work and spread over time is 10.5hrs/day (inclusive of rest C other).
- Creche facility for 30+ women.
- Overtime in a quarter is 50hrs (maximum).
- No overlap of shift work. preserve record for minimum 5 yrs.
- 1 day EL per 20 days worked (30 maximum), use only 3 times in a year.
- Advance salary pays if taken leave > 4 days

Case Law-

Telegraph constructions- Keeping safety equipment in rooms is not enough to fully comply, the worker must be informed C given training on how to use it.

Factories Act, 1648

Head Count of Workers C Facility

Head Count of Workers	Facility
1000	safety officers
500	Medical Room welfare officer
250	Canteen
150	<ul style="list-style-type: none"> • 1 box of first aid • shelter/rest/lunch room
30 Women	Creches
20	1 seat of latrine C urinals, 6m away drinking water

Inter-State Migrant Workmen (ISMW) Act, 1976

- To protect migrant workers.
- 5 or more ISMW on any day.
- Register within 30 days.
- Contractor to have valid license in home C host state.
- Pay displacement allowance (50% of monthly wage or Rs. 75, whichever is higher).
- Journey allowance, to C fro of permanent residence + wages during leave period in advance.
- Provide suitable stay facility, Rs. 2000-5000 per worker per month.
- Medical facility free of charge.
- E-Shram portal to register.
- This law is mainly for compliance of contractors , if they're hiring any ISMW, and Principal employer need to make sure the benefits C fair wage C working conditions.

Case Law-

Bandhua Mukti Morcha - Welfare statutes must be interpreted broadly, one cannot use narrow definitions to escape obligations to migrant workmen

Building s Other Construction Worker (BOCW) Act, 1966

- For building C construction activities.
- 10+ workers, must register.
- If project cost > Rs. 10L, pay welfare cess.
- Work covered under factories act or mines act is excluded here.
- Its a kind of mini factories act.
- Register within 60 days of work commencement.
- Washrooms (1 per 25 workers) 50+ creche facility.
- 250+ canteen facility.
- 5000+ safety officer.
- Provide suitable accommodation.
- Welfare cess, a 1% of project cost, quarterly payment to state welfare board C used to fund welfare schemes for construction workers.

Case Law-

UP Power Transmission - If the contract is just for supply or installation (no real construction), BOCW cess should not be charged.

IR- Industrial Relations, 2020

Trade Unions Act, 1947

- Minimum membership is 7 or 7+ who must apply and to be maintained is 10% or 100 workers in a union.
- Age more than or equal to 15 yrs.
- Making joint committee with employer for policy making & transparency.

Case Law-

Rohtas Industries - Employers have no claim for damages against employees in illegal strike.

Industrial Employment Standing Orders Act, 1946

- All the labour acts into action. Terms & conditions, rights & obligation of employment. Scheduled provisions
 1. classification of workmen
 2. working hrs & shifts
 3. attendance & leave
 4. disciplinary procedures
 5. grievance redressal
 6. termination procedures
- Coverage- 100+ workers any day (part time & full time, both).
- Make SO procedure: send 5 copies to certifying officer and 15 days period for objection by trade union, then appeal within 30 days from date of certifying officer's order. i.e. 15 days pre approval & 30 days post and then SO becomes implemented.
- Needs to display at all prime locations. Remains Valid (keep on regular reviewing every 2-3 yrs)

- Can't take disciplinary action without SO except criminal offence.

Case Law

IOCL - No modification in SO when settlement to that matter is in operation

Industrial Disputes Act, 1947.

- Dispute must have direct nexus with employment.
- Wage disputes, service conditions, disciplinary matters, union recognition, retrenchment/closure, welfare activities.
- Authorities: works committee
- For prohibited strikes (public utility services): 6 weeks prior notice to employer & 14 days to appropriate government.
- Lay off compensation: 50% of basic & DA per day of laid off. (must have worked for 240 days at least)
- Retrenchment compensation: 1yr (or 240 days) worked, give 1 month of notice to employees and 15 days of wages for each completed year.
- Follow last in first out rule for retrenchment.
- Reinstatement rights for retrenched workers.
- Maintain works committee records, workers records & TU recognition records.

Case Law

Haryana Agriculture Board- Reinstatement with back wages if retrenchment without complying to S-25F (retrenchment procedures).