

## **THE Bombay Shops & Establishment Act, MINIMUM WAGES ACT, 1948**

In the first instance the operation of the Act is confined to the Municipal Areas specified in Schedule- I to the Act but the state Government is required to extend the operation of the Act to other areas having population of 25000 or more.

The premises governed by the Act are Shops, Commercial Establishment, Residential Hotels and Clubs, Restaurants, Eating Houses, Theatres and other places of public amusement or entertainment.

This Act is also applicable to Factories having total manpower less than 10 with the aid of power & less than 20 without the aid of power or where premises is not covered under Factories Act.

### **The Act not applicable to Chartered Accountants and Legal Practitioners.**

Since the Mumbai Divisions Bench has struck down the Amendment Act 64 of 77 to the extent it included the establishments of Chartered Accountants and Legal Practitioners in the case of Narendra Kesrichand Fuladi & Anr V/s State of Maharashtra 1986 and M/s. A F Ferguson & Co. and Ors. V/s. The state of Maharashtra in CWP 1232 of 1995 judgement dated 05.05.2006.

### **Registration (Sec 7) :**

The employer of an establishment has to apply within 30 days to the Inspector of the Local area concerned in the prescribed form (Form A) along with the prescribed fees for getting the establishment registered under the Act.

On receipt of the application and the fees the Inspector, on being satisfied about the correctness of the particulars contained in the application, will register the establishment and will issue a registration certificate.

If there is any change in the said particulars, the employer has to notify the same to Inspector by applying in the prescribed form (Form E) accompanied by prescribed fees and get the registration certificate suitably amended.

The employer has to get the registration certificate renewed every year by applying to the Inspector in the Prescribed form (Form B) accompanied by prescribed fees.

### **Renewal :**

The employer has to get the Registration Certificate renewed every year by applying to the Inspector in prescribed form (Form B) accompanied by prescribed fees. The employer can get it renewed for the period of maximum 3 years. The application for renewal may be made before 15 days from the Expiry of period of registration Certificate.

### **Closure of Business Activities:**

At the time of closure of business activities the employer has to notify to the Inspector within 10 days of closure, then the Inspector will cancel the registration of the Establishment.

### **Measures to be taken by an establishment in respect of the health and safety of the employees :**

Every establishment must take appropriate measures as

- ❖ per the provisions of the Act and the Rules;
- ❖ to keep the premises clean;
- ❖ to keep the premises ventilated;
- ❖ to keep the premises sufficiently lighted during working hours;
- ❖ to protect the premises against fire; and
- ❖ if a manufacturing process is carried on in the premises to provide and maintain a first-aid box.

### **Powers of the Inspectors appointed under the Act:**

An Inspector appointed under the Act has power:

- ❖ to enter any place which is an establishment;
- ❖ to make examination of the premises, registers, records and notices;
- ❖ to take evidence of any person;
- ❖ if he suspects that an employer has committed an offence under Section 52 or 55, to seize the necessary registers, records or other documents and retain them for a reasonable period for examination thereof or for prosecution of the employer. {Section 63}

### **Rate of wages prescribed under the act for overtime work:**

When any employee is required to work overtime, i.e. in excess of the limit of hours of work, he must be paid for a such work at double the rate of his ordinary wages. The limit of hours of work for the purpose of calculating overtime is 9 hours in any day and 48 hours in any week {Section 63}

### **Requirements of the Act regarding notice of termination of service of an employee :**

- ❖ If an employer wants to terminate the services of any employee who has been in his continuous service employment for one year or more, the employer can terminate his services by giving him 30 days' notice in writing or wages in lieu of such notice.
- ❖ If an employer wants to terminate the services of any employee who has been in his continuous service employment for less than one year but more than three months, the employer can terminate his services by giving him 14 days' notice in writing or wages in lieu of such notice. {Section 66}

### **Effect of the termination of services of an employee without giving such person notice or wages in lieu of notice as per Section 66 of the Act:**

If the services on an employee are terminated without giving such person any notice or wages in lieu of notice, as per Section 66 of the Act, his termination is bad in law and he is entitled to reinstatement with continuity of service and full back wages.

**Effect of other laws conferring on an employee rights or privileges which are more favourable than those conferred under the Shops and Establishments Act:**

If the rights or privileges conferred on an employee under any other law, contract, custom, usage, award, settlement or agreement are more favourable than those conferred under the Shops and Establishments Act, then, the former will prevail over the latter. {Section 69}

**Restrictions on the working hours of employees in residential hotels, restaurants and eating houses:**

The main restrictive provisions of the Act about the working hours of employees in residential hotels, restaurants and eating houses are as follows:

- a. A restaurant or eating house cannot be opened earlier than 5 a.m. and closed later than 12 midnight for service. {Section 19}
- b. An employee in a restaurant or eating house may be required to commence work from 4.30 a.m. onwards. He cannot be required to work after 00.30 a.m. {Section 19}
- c. An employee in a residential hotel, restaurant or eating house cannot be required or allowed to work for more than 9 hours in a day and 48 hours in a week. {Section 21}
- d. He must be allowed an interval of rest of at least one hour after five hours of continuous work. {Section 22}
- e. His spread-over cannot exceed 12 hours in a day. {Section 23}
- f. He must be given at least one day in a week as a holiday. No deduction can be made from his wages on account of such holiday. {Section 24}

**Note:** The above restrictions can be relaxed in certain circumstances.

**Restrictions on the working hours of employees in theatres and other places of public amusement or entertainment:**

The main restrictive provisions of the Act about the working hours of employees in theatres and other places of public amusement or entertainment are as follows:

- a. A theatre or other place of public amusement or establishment must be closed at the latest by 00.30 a.m. {Section 26}
- b. An employee in a theatre or other place of public amusement or entertainment cannot be required or allowed to work for more than 9 hours in a day or 48 hours in a week {Section 28}
- c. He must be allowed an interval of rest of at least one hour after five hours of continuous work. {Section 29}
- d. His spread-over cannot exceed 11 hours in a day. {Section 30}
- e. He must be given at least one day in a week as a holiday. No deduction can be made from his wages on account of such holiday. {Section 31}

**Note:** The above restrictions can be relaxed in certain circumstances.

**Restriction placed by the Act on the employment of children:**

The employment of children is totally prohibited. Anybody who is below the age of 15 years is considered to be a child. No child can be required or allowed to work whether as an employee or otherwise in any establishment. {Section 32}

**Restrictions placed by the Act on the employment of women:**

Restrictions are placed on the closing hours for women as well as on giving them dangerous work. Thus no woman can be required or allowed to work, whether as an employee or otherwise, in any establishment after 9.30 p.m. In other words, women cannot be required or allowed to attend work late in the evening. Similarly no woman working in any establishment, whether as an employee or otherwise, can be required or allowed to perform work involving danger to her life, health or morals. {Subsection 33 & 34A}

**Restrictions placed by the Act on the employment of young person's:**

Anybody who is between the age of 15 years and 17 years is considered to be a young person. No young person can be required or allowed to work, whether as an employee or otherwise, in any establishment:

- a. after 7.00 p.m.;
- b. for more than 6 hours in any day; and
- c. if the work involves danger to life, health or morals. {Section 33, 34 & 34A}

**Software and IT Establishment:**

- ✓ Includes customer service care centres
- ✓ Unconditional exemption for opening and closing hours.
- ✓ Work of females after 9.30 pm subject to provisions of facilities like conveyance, transport etc.
- ✓ Provisions of rest rooms and lockers for females if required
- ✓ Females to be provided jobs jointly or in groups.
- ✓ Conditions of stretch of work hours and paid holidays allowed.
- ✓ The applicability of certain laws or section is suspended.
- ✓ IT industry is generally declared as a public utility service in states of significance.
- ✓ Sectors like BPO are free from even maintaining registers as expected in most Act.
- ✓ Inspectors are in itself restricted in EPZs, EOUs.

**Annual leave to the employees:**

Provisions of the Act about the grant of annual leave with wages are as under:

- An employee is entitled to annual leave with pay for 21 days for 240 days of work.
- An employee who has not worked for one year is entitled to leave with pay for 5 days for every 60 days of work.
- An employee is entitled to be paid before his leave begins half the amount of his leave pay.
- Leave with pay can be accumulated upto 42 days.
- A discharged employee is entitled to leave pay for the balance of leave to his credit. { Subsection 35 to 37}

**Employees of shops and establishments entitled to any additional holidays over and above leave with pay:**

In addition to annual leave with pay an employee of a shop or re-establishment is entitled to a paid holiday

on 26th January, 1st May, 15th August and 2nd October every year. {Section 35(4)}

**Offences under the Act and punishment for them:** There is a large number of offences under the Act and the majority of them are punishable with fine which would be not less than one thousand rupees and which may extend to five thousand five hundred rupees. {Subsection 52 to 61}

**Maintenance of registers and records**

- Muster Roll cum Wages Register in Form No II Rule 27 (I)
- Leave Register in Form No. M
- Leave Cards in Form No. N
- Muster Cards cum Wage slips
- Inspectors' visit book
- To display various notices such as working hours, list of holidays, date of payment of wages etc.