



LABOUR LAW UPDATES

A. Introduction

Ministry of Labour and Employment has recently introduced the following amendments for the benefit of the employees:

S. No.	Amendments	Notification No.	Date of Notification	Effective Date of Amendment
1.	The Payment of Gratuity (Amendment) Act, 2018	16 and 1283	29 March 2018	29 March 2018
2.	Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018	G.S.R. 235(E)	16 March 2018	16 March 2018

Further, the Ministry of Labour and Employment has issued the following draft labour codes inviting objections/ suggestions from the public:

- Labour Code on Occupational Safety, Health and Working Conditions, 2018
- Labour Code on Social Security and Welfare, 2018

These labour codes are still in draft form and will be effective once they are notified in the Official Gazette.

B. Important Amendments to Payment of Gratuity Act, 1972 (“Gratuity Act”)

1. Section 2A – Continuous Service

For the purpose of calculating the period of “continuous service”, the maternity leave period in case of a female employee specified in the Explanation to Section 2A(2) has been increased from 12 weeks to 26 weeks.

2. Section 4 - Payment of Gratuity

The maximum amount of gratuity payable to an employee has been doubled from Rs. 1,000,000 to Rs. 2,000,000 under Section 4(3) of the Gratuity Act.

C. Important Amendments to Industrial Employment (Standing Orders) Central Rules, 1946 (“Central Rules”)

1. Schedule to the Industrial Employment (Standing Orders) Act 1946 (“Standing Orders Act”)

In paragraph 1 of the Schedule to the Standing Orders Act, the words “*fixed term employment workmen in apparel manufacturing sector*” has been substituted by the words “*fixed term employment*”.

2. Rule 3A – No conversion from Permanent Employment to Fixed Term Employment

A new rule 3A has been inserted which prohibits an employer from converting the posts of permanent workmen existing in his industrial establishment on the date of commencement of the amendment to the Standing Orders Rules (i.e. 16 March 2018) as fixed term employment.

3. Rule 5 – Particulars of Workmen

Under Rule 5 (6A) an employer is now required to state the number of fixed term employment workmen in the statement of particulars of workmen to be submitted under section 3(3).

4. Amendments to Schedule 1 – Model Standing Orders in respect of Industrial Establishments not being Industrial Establishments in Coal Mines

a. Paragraph 2 - Classification of Workmen

(i) Sub-clause (3A) to paragraph 2 of Schedule 1 has been substituted to provide for a category of “*fixed term employment workmen*”.

(ii) Sub-paragraph (h) has been substituted to define “fixed term employment workman” as “*a workman who has been engaged on the basis of a written contract of employment for a fixed period:*

Provided that-

(a) *his hours of work, wages, allowances and other benefits shall not be less than that of a permanent workman; and*

(b) *he shall be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute”*

b. Paragraph 13 – Termination of Employment

Sub-paragraph (2) has been substituted to provide that subject to the provisions of the Industrial Disputes Act, 1947:

(i) no notice of termination of employment shall be necessary in the case of temporary workman whether monthly rated, weekly rated or piece rated and probationers or badli workmen; and

(ii) no workman employed on fixed term employment basis as a result of non-renewal of contract or employment or on the expiry of such contract period without it being renewed, shall be entitled to any notice or pay in lieu thereof, if his services are terminated.

However, the services of a temporary workman cannot be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the matter prescribed in paragraph 14.

5. Amendments to Schedule 1A – Model Standing Orders for Industrial Establishments in Coal Mines

a. *Paragraph 3 – Classification of Workmen*

Similar amendments have been made to paragraph 3 of Schedule 1A as are reflected in paragraph 2 of Schedule 1 (see above).

b. *Paragraph 13 – Termination of Services*

Sub-paragraph (b) has been substituted to provide that subject to the provisions of the Industrial Disputes Act, 1947:

- (i) no notice of termination of employment shall be necessary in the case of temporary and badli workmen; and
- (ii) no workman employed on fixed term employment basis as a result of non-renewal of contract or employment or on the expiry of such contract period without it being renewed, shall be entitled to any notice or pay in lieu thereof, if his services are terminated.

However, a temporary workman, who has completed 3 months continuous service, shall be given 2 weeks notice of the intention to terminate his employment if such termination is not in accordance with the terms of the contract of his employment.

Further when the services of a temporary workman, who has not completed 3 month's continuous service, are terminated before the completion of the term of employment given to him, he shall be informed of the reasons for termination in writing and when the services of a badli workman are terminated before the return to work of the permanent incumbent or the expiry of his (badli's) term of employment, he shall be informed of the reasons for such termination in writing.

D. Draft Labour Code on Occupational Safety, Health and Working Conditions, 2018

The draft of Labour Code on Occupational Safety, Health and Working Conditions, 2018 amalgamates the following 13 labour laws relating to safety and health standards, working conditions, welfare provisions for the employees and leave and hours of work:

- (i) The Factories Act, 1948;
- (ii) The Mines Act, 1952;
- (iii) The Dock workers (Safety, health and Welfare)Act, 1986;
- (iv) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- (v) The Plantations Labour Act, 1951;
- (vi) The Contract Labour (Regulation and Abolition) Act, 1970;
- (vii) The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- (viii) The Working Journalist and other News Paper Employees (Conditions of Service and Misc. Provision) Act, 1955;
- (ix) The Working Journalist (Fixation of rates of wages) Act, 1958;
- (x) The Motor Transport Workers Act, 1961;
- (xi) Sales Promotion Employees (Condition of service) Act, 1976;

- (xii) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
- (xiii) The Cine Workers and Cinema Theatre Workers Act, 1981.

The provisions of this Code will be applicable to an employer employing 10 or more employees. Such employers will need to obtain registration certificate from the Registering Officer according to the procedure laid down in the Code.

E. Draft Labour Code on Social Security and Welfare, 2018

This Code simplifies, rationalizes and consolidates the laws relating to social security of workforce in order to create a system for universal social security in India.

It provides measures for protection of workers to ensure access to healthcare and income security and various other schemes framed under the Code.

The Code will be applicable to:

- all workers employed by any entity within the territory of India,
- a worker who may also be the owner or the proprietor of an entity,
- international workers and
- an Indian citizen, working outside the territory of India, who opts to become a covered worker of social security schemes under the Code.

The Code has been prepared after amalgamating, simplifying and rationalizing the relevant provisions of the following 15 central labour acts:

- (i) Unorganised Workers' Social Security Act, 2008;
- (ii) The Mica The Employees' Compensation Act, 1923;
- (iii) The Employees' State Insurance Act, 1948;
- (iv) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
- (v) The Maternity Benefit Act, 1961;
- (vi) The Payment of Gratuity Act, 1972;
- (vii) The Unorganised Mines Labour Welfare Fund Act, 1946;
- (viii) The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972;
- (ix) The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare (Cess) Act, 1976;
- (x) The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976;
- (xi) The Beedi Workers Welfare Cess Act, 1976;
- (xii) The Beedi Workers Welfare Fund Act, 1976;
- (xiii) The Cine Workers Welfare (Cess) Act, 1981;
- (xiv) The Cine Workers Welfare Fund Act, 1981;
- (xv) The Building and Other Construction Workers Cess Act, 1996.

F. ALMT Analysis

- 1) An employee is now entitled to a maximum amount of Rs. 2,000,000 towards gratuity under the Gratuity Act.
- 2) For calculating continuous service, maternity leave of 26 weeks would be considered in case of female employees as opposed to 12 weeks.
- 3) The Standing Orders Act read with the Central Rules recognize "fixed term employment workmen" in all sectors. Prior to the amendment, the fixed term employment provisions were only applicable to workmen under apparel manufacturing.

- 4) A permanent workman who has been working as such with an establishment as on 16 March 2018 cannot be converted to fixed term employment workman.
- 5) The draft Labour Code on Occupational Safety, Health and Working Conditions, 2018 provides for workers under various establishments to avail the facilities of safe and healthy working conditions.
- 6) The Draft Labour Code on Social Security and Welfare attempts to create a uniform law relating to social security of workforce.

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