



news flash

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Proposed Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017

INTRODUCTION

The Government of India has introduced the Model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016 (“**Model Bill**”).

The States are free to modify their individual Acts, if they so desire either by adopting the Model Bill as it is or after modifying its provisions as per the requirement of that particular State/UTs.

Pursuant to the Model Bill, the Maharashtra Government has passed the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (the “**Proposed New Act**”) which has received the assent of the Governor of Maharashtra and been published in the Maharashtra Government Gazette on 7 September 2017. The Proposed New Act will repeal the existing Maharashtra Shops and Establishments Act 1948 (“**Existing Act**”) and will apply to establishments employing 10 or more workers.

EFFECTIVE DATE

The Proposed New Act will come into force on such date as the State Government may by notification in the Official Gazette appoint. The Government of Maharashtra is yet to notify its effective date.

SALIENT FEATURES

Some of the salient features of the Proposed New Act are as follows:

- 1) **Applicability:** The Proposed New Act is applicable to establishments employing 10 or more persons. The provisions of the Existing Act are applicable to all establishments irrespective of the number of employees.
- 2) **Chief Facilitator and Facilitator:** The Proposed New Act provides for appointment of a “Chief Facilitator” and a “Facilitator” instead of an inspector as under the Existing Act.

- 3) **Exemptions:** Section 3 of the Proposed New Act lists specifically 13 categories of establishments and workers who are exempt from its provisions. There is no provision for any other establishment to apply for exemptions. Two such exemptions are pertinent to note as follows:
- a. A worker occupying position of confidential, managerial or supervisory character in an establishment, a list of which shall be displayed on the website of establishments and in absence of the website at a conspicuous place in the establishment and a copy thereof shall be sent to the Facilitator.
 - b. Member of the family of an employer which is defined to mean “*wife, husband, son, daughter, father, mother, brother or sister of an employer who lives with and is dependent on such employer.*”
- 4) **Wider meaning given to the term Employer:** The term “employer” under the Existing Act means a person owning or having ultimate control over the affairs of an establishment. The term “employer” has been given a wider meaning under the Proposed New Act and includes:
- i. in the case of a firm or association of individuals, a **partner** or members of the firm or association;
 - ii. in the case of a company, a **director** of the company;
 - iii. in the case of an establishment owned or controlled by the Central Government or a State Government or any local authority, the person or persons appointed to manage the affairs of such establishment by the Central Government or the State Government or the local authority, as the case may be.
- 5) **Establishment:** The Proposed New Act has done away with the term “commercial establishment” and instead only provides for one head i.e. "establishment" which covers (amongst other things) any business, trade, manufacture, establishment of any medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant, a society registered under the Societies Registration Act, 1860, a charitable or other trust, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment; to whom the provisions of the Factories Act, 1948 does not apply, etc.
- 6) **Registration for establishments employing 10 or more workers:** An employer having 10 or more workers is required to register the establishment within 60 days from the date of commencement of the Proposed New Act or from the date on which the establishment commences its business by submitting an online application to the Facilitator of the local area concerned.
- 7) **Intimation by establishments employing less than 10 workers:** Establishments employing less than 10 workers are required to merely give an intimation of having commenced its business to the Facilitator by submitting the online application in the prescribed form. However, if at any point the number of workers in the establishment become 10 or more, then the employer of such establishment is required to obtain the registration certificate.
- 8) **Labour Identification Number:** On receipt of the online application the Facilitator will issue a registration certificate online along with the Labour Identification Number (LIN).
- 9) **Validity of the registration certificate:** The registration certificate will be valid for such period as may be requested by the applicant subject to a maximum period of 10 years as against 36 months under the Existing Act.

- 10) **Opening & closing hours:** The State Government will issue separate notification to fix the opening and closing hours of different classes of establishments, different premises, shopping complex or malls, or different areas.
- 11) **Prohibition of discrimination against women:** The Proposed New Act prohibits discrimination against women in the matter of recruitment, training, transfers, promotion or wages. A woman can work only between 7:00 a.m. and 9:30 p.m. However, the woman worker with her consent will be allowed to work during 9:30 p.m. and 7:00 a.m. subject to adequate protection of their dignity, honour and safety, protection from sexual harassment and transportation being provided by the employer as per the Act.
- 12) **Interval of rest:** Interval of rest has been reduced to 0.5 hour from the existing 1 hour after 5 hours of work under the Proposed New Act.
- 13) **Spread-over:** The spread-over of a worker in establishment has been reduced to 10.5 hours in any day, as against 11 hours under the Existing Act.
- 14) **Overtime:** Overtime cannot exceed 125 hours in a period of 3 months as against 6 hours in a week under the Existing Act.
- 15) **Freedom to open 24x7:** An establishment can be kept open for business on all days in a week but every worker shall be allowed weekly holiday of at least 24 consecutive hours of rest.
- 16) **Identity card:** The employer is required to furnish to every worker an identity card.
- 17) **Leave:** A new provision has been introduced, which entitles every worker to 8 days of casual leave in a year, which will lapse if it is not availed at the end of the year. Every worker who has worked for a period of 240 days or more will be allowed leave with wages at the rate of 1 day for every 20 days of work performed during the previous year. Under the Existing Act every employee who worked for not less than 240 days during a year, irrespective of the date of commencement of his service, is allowed leave for a period of not less than 21 days.
- 18) **Accumulation of leave:** A worker can accumulate earned leave up to a maximum of 45 days as against 42 days under the Existing Act. Further the worker is allowed to encash leave in excess of 45 days, if the employer refuses to sanction the leave.
- 19) **Festival holidays:** The workers are now entitled to 8 festival holidays in a calendar year namely 26 January, 1 May, 15 August, 2 October and four such other festival holidays as may be agreed between the employer and the workers.
- 20) **Welfare measures:** Welfare measures such as first aid, canteen, drinking water, latrines and urinals, crèche facility have been introduced. Establishments employing 100 or more workers are required to provide and maintain a canteen for the use of its workers. Every establishment employing 50 or more workers shall provide and maintain a crèche within a radius of 1 kilometre.
- 21) **Electronic records and registers:** Employers can maintain registers and records electronically.

- 22) **Penalty:** The penalty for contravention of the Proposed New Act and the rules has been enhanced to INR 100,000 and in case of continuing contravention an additional fine which may extend to INR 2000 for every day during which the contravention continues. Further, for repeated offenders the fine may extend to INR 2,00,000. The Existing Act provides for a minimum fine of INR 1,000 and a maximum fine of INR 5,000.
- 23) **Existing Act to be repealed:** On and from the date of commencement of the Proposed New Act, the Existing Act, will stand repealed.

ALMT ANALYSIS

The Proposed New Act is a welcome legislation and seems to provide various benefits both for employers and workers some of which are summarised as follows:

1. Establishments with less than 10 workers will no longer be regulated under the Proposed New Act and will not require any registration except that such establishments need to intimate the Facilitator of having commenced its business. Whilst such small establishments will have freedom to breathe and will not be burdened with the compliances under the Proposed New Act, however, such relaxed measures may also lead to cases of undue exploitation of workers in relation to number of hours, leave, overtime, etc.
2. The Proposed New Act has also made special provisions relating to women and has prohibited discrimination against women in the matter of recruitment, training, transfers, promotion or wages. It has also been made clear that a woman can work only between 7:00 a.m. and 9:30 p.m. and only with her consent and subject to the provisions of safety met by the employer as per the Proposed New Act, she will be allowed to work during 9:30 p.m. and 7:00 a.m. Further, crèche facility has also been introduced under the Proposed New Act as a welfare measure in favour of women.
3. The Proposed New Act gives freedom to the establishments to be open 24x7. This is a welcome change as it will create more job opportunities and will give the establishments flexibility and convenience to operate full time.
4. The Proposed New Act specifies 13 exemptions under section 3, however, it has not clarified the status of the existing establishments who have availed exemptions which are listed in Schedule II of the Existing Act. It remains to be seen whether these establishments will need to reapply for availing such exemptions or the exemptions will lapse after the Proposed New Act is in force.
5. It is significant to note that the Act does not apply to (i) a worker occupying position of confidential, managerial or supervisory character, whose names are displayed on the website or at a conspicuous place in the establishment and also sent to the Facilitator; and (ii) member of the family of an employer i.e. wife, husband, son, daughter, father, mother, brother or sister of an employer who lives with and is dependent on such employer. These are new type of exemptions which are not available under the Existing Act.
6. The registration certificate of an establishment can be applied for 10 years as against the existing 3 years. This is a big relief to employers from applying for renewal after every few years.
7. The State Government is yet to notify Rules under the Proposed New Act which will set out various conditions of employment such as opening and closing hours of

establishments, manner of applying for registration, appointment of Chief Facilitator and Facilitator, maintenance of registers, filing of annual returns, etc.

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