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Annotation on Latest Amendment in Gujarat Shops and Establishment

-Dated 31st March 2019



The Gujarat Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2019 received the assent of the Governor and is published in the "Gujarat Government Gazette" on the 7th March, 2019 as being notified. The said regulation provides for the following ;

⇒ **Applicability (As per Section 1.2/1.3) :**

- It is applicable to whole of Gujarat State.
- Section 7 pertaining to registration of Shops and Establishment is not applicable if total number of employees are **less than 10**.
- **Explanation on Section 7:**
- **For Less than 10 employees (Opening):** An intimation of having commenced the business to the Inspector in whose jurisdiction the establishment is located, by submitting online application with following documentation
 - ◇ Self-declaration and self-certified documents containing details;
 - ◇ Name of the employer and manager
 - ◇ Name of the establishment and detailed address
 - ◇ Nature of business
 - ◇ Number of workers.

Receipt of Intimation shall be maintained by the shops and Establishment.

For Less than 10 employees (Closing):

Intimation within 30 days of closing of business to the Inspector in whose jurisdiction the establishment is located, by submitting online application.

Penalty: Non registration penalty is Rs.10,000.

⇒ **Definitions (As per Section 2) :**

Shops: It includes

- Any premises where goods are sold, either by retail or wholesale or
- Where services are rendered to customers, and includes an office,
- A store-room, godown, warehouse or work place, whether in the same premises or otherwise, mainly used in connection with such trade or business, but does not include a factory;



Establishment: It Includes

- any business, trade, manufacture or
- any journalistic or printing work, or
- business of banking, insurance, stocks and shares, brokerage or exchange profession or
- Any work in connection with, or incidental or ancillary to, any business, trade or profession or manufacture;
- Any medical practitioner (including hospital, dispensary, clinic, polyclinic, maternity home and such others)
- Architect, engineer, accountant, tax consultant or any other technical or professional consultant;
- A society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not,
- any business, trade or profession or work connection with or incidental or ancillary.
- shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment; to whom the provisions of the Factories Act, 1948 do not apply.

Wage: Means

- All remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would.
- Any additional remuneration payable under the terms of employment;
- Holiday payment/Leave payment/Overtime Payment
- House rent allowance payable in cash

But Does Not Includes:

- Bonus
- Value of any accommodation
- Any travelling allowance or the value of any travelling concession;

Worker: Means

- Any person including a person engaged through an outsourcing agency (except an apprentice under the Apprentices Act, 1961) employed to do any manual, unskilled, 52 of 1961.
- Skilled, technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied.

⇒ **Duties of Employer:**

| Provisions | Section | Law and Annotations |
|---|---------|--|
| Health/ Safety | 11 | <ul style="list-style-type: none"> Employer shall ensure cleanliness, lighting, ventilation and prevention of fire. |
| Fixing of Hours of Work | 12 | <ul style="list-style-type: none"> Daily 09 hours/Weekly 48 hours 30 minutes break after continues working of 5 hours Working hours and weekly off can be changed prior to approval form Inspector. |
| Prohibition of Discrimination of women | 13 | <ul style="list-style-type: none"> Women cannot work between 9PM-6AM but can work in crèche/ Shelter/ladies toilet with prior consent from Inspector and transportation facility provided to females. |
| Spread over Hours | 14 | <ul style="list-style-type: none"> Spread over hours should 10:30 hours and in case of intermittent and urgent work up to 12 hours. |
| Overtime Payment | 15 | <ul style="list-style-type: none"> Twice at the ordinary rate of wage (Refer Wage definition as mentioned above) Should not exceed 125 hours in a 3 months. |
| Shift Working and Rest | 16/1 | <ul style="list-style-type: none"> Shops and Establishment can work in any shift at the discretion of the employer. |
| | 16/2 | <ul style="list-style-type: none"> Shops and Establishment may work on all days subject to weekly (24 hours rest) of to all employees. |
| | 16/3 | <ul style="list-style-type: none"> In case of work on weekly off- compensatory holiday should be given within 2 months. |
| | 16/4 | <ul style="list-style-type: none"> Working hours and shift time should be communicated to worker and inspector in writing/mail. |
| | 16/5 | <ul style="list-style-type: none"> Working on weekly off should be compensated at twice the rate of ordinary wages. |
| Identity Card | 17 | <ul style="list-style-type: none"> Employer has to issue identity card with Company name and address/Employee name/Designation/Department/Date of Joining/ Photograph/Signature of Issuing authority/Signature of Employee. |

⇒ **Leave Provision (As per Section 18) :**

| | |
|--|-----|
| Casual Leave (CL) | 7 |
| Sick Leave (SL) | 7 |
| Paid Leave | 16* |
| Paid Festival Holidays (26 th Jan/15 th Aug/2 nd Oct/ 5 Other festivals selected by employer | 08 |

- **Paid Leave:** Subject to completion of 240 days in previous calendar year, employee is entitled for one leave on every 20 days of working. Consider lay-offs/maternity leave as per maternity act/ leave availed/absence due to disablement as working days for the calculation of 240 days but shall not be considered for earn leave.
- In case of working on Paid festival Holidays, payment at **double rate** and compensatory holiday should be given to employees.
- **Paid Leave is en-cashable**
- **Accumulation of Leave** Up to 63
- Employee has to apply leave prior to 15 days of the leave date other-wise employer can refuses for the leave.
- Employee can demands for leave encashment in excess of 63 leaves, If worker apply leave before 15 days and employee refuses, and he should have balance sick or paid leave.

⇒ **Welfare Provision:**

| Provisions | Section | Law and Annotations |
|---------------------|---------|--|
| Drinking Water | 19 | <ul style="list-style-type: none"> • Provision of drinking water should be made with adequate water supply |
| Latrine and Urinals | 20 | <ul style="list-style-type: none"> • Sufficient number of latrine and Urinals/ Common facility of Urinal and Latrine are also ok due to constrain of space. |
| Crèche facility | 21 | <ul style="list-style-type: none"> • Upon every 30 women or else common crèche facility within one kilometre radius and subject to inspector approval. |
| First Aid Box | 22 | <ul style="list-style-type: none"> • Provide First Aid facility |
| Canteen | 23 | <ul style="list-style-type: none"> • For more than 100 employees/Common canteen subject to approval of inspector. |

⇒ Records & Returns:

| Provisions | Section | Law and Annotations |
|-------------------------------------|---------|---|
| Maintenance of records and register | 26 | Electrically or Manually maintained register is acceptable subject to it should be in prescribed format. All register shall be kept in the premises of shops and establishment to which they relate. |
| Annual return | 27 | Annual return should be submitted by all employer. |

⇒ Offences & Penalties:

| Provisions | Section | Law and Annotations |
|---|---------|--|
| Penalty for contravention of the provisions of the Act. | 29/30 | <ul style="list-style-type: none"> Up to Rs.50,000/- If any fatal bodily injury or death due to violation of any provision of this act, penalty is; <ul style="list-style-type: none"> Imprisonment up to six month and monetary penalty is up to 50,000 or both |
| Offences by Companies. | 31 | <ul style="list-style-type: none"> All promoters are responsible and liable for proceedings. |
| Penalty for obstructions or refusal to provide register | 32 | <ul style="list-style-type: none"> Up to Rs.50,000/- |
| Opening and Closing Hours | 35 | Shops and establishment can remains open for 24 hours if situated <ol style="list-style-type: none"> In Municipality Corporation area (Except 2AM-6AM) National Highway State Highways (Except 2AM-6AM) Railway Station State roadways Bus-station Hospitals Petrol Pumps Distract or in Minor Road (Except 11PM-6Am) |



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