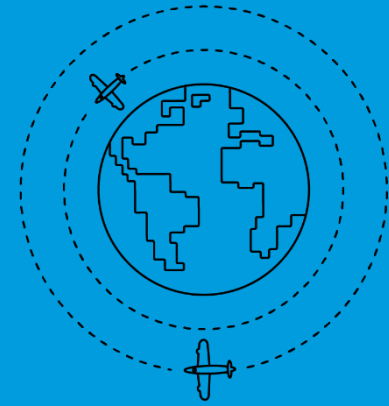


Global Vision Backed By Local Knowledge



Presentation on Recent Labour Law Updates

Contents

- Overview of Factory Act
- Overview of Gujarat Shop & Est Act 2019
- Supreme Court Judgment on PF
- Recent Updates in Various Labour Laws
- Announcement in Budget 2019-2020



OVERVIEW OF LABOUR LAWS

THE FACTORIES ACT, 1948

Factories Act, 1948

❖ Definition of “Factory” as per the Factories Act 1948:

- ❑ In any premises including precincts (the area within the walls or perceived boundaries) where manufacturing process is being carried on
 - with aid of power - 10 or more workers are working or were working on any day of the 12 months
 - Without aid of power – 20 or more workers are working or were working on any day of the 12 months
 - **Basic Criteria**
 - Manufacturing Process (Change in Nature of Input and Out Put)
 - Infusion of Object – (Raw Material)
 - Chain of Process/Activity

Factories Act, 1948 Continue

❖ What does the “Manufacturing process” means?

- It means making, altering, repairing, ornamenting, finishing, packing, oiling, washing –
Manufacturing
- cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or **Activity on Object**
- pumping oil, water, sewage or any other substance, or **Generation/Production**
- generating, transforming or transmitting power; or **Process**
- **composing types for printing, printing by the letter press,** lithography, photogravure or other similar process or book binding or – **Activity on Object**
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels or
- preserving or storing any article in cold storage. **Process**

Factories Act, 1948 Continue

Industry	Applicable under Factory Act	Remark
Restaurants	No	As per Section 2(m) of factory act restaurant does not include in meaning of “factory”.
Hotels		
Hospitals	No	Factories Act of 1948 clearly says that in any premises when 10 employees along with power (electric) or 20 employees without power (electric) engaged in as per sec. 2(k) of manufacturing process. Does not fit Manufacturing process.
Office with sales	No	Not covered under section 2(K) “manufacturing process” of Factories Act, 1948.

Factories Act, 1948 Continue

Industry	Applicable under Factory Act	Remark
Software development office	No	If an electronic data processing unit or a computer unit is installed in any premises or part therefor, shall not be constructed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.
Security guards providing Company	No	Security guard agencies not covered under section 2(K) “manufacturing process” of Factories Act, 1948.

Factories Act, 1948 Continue

Industry	Applicable under Factory Act	Remark
Schools	No	School and Educational institution not covered under section 2(K) “manufacturing process” of Factories Act, 1948.
Diamond Office with Planner/Galaxy/Boling Activity	Yes	Factories Act of 1948 clearly says that in any premises when 10 employees along with power (electric) or 20 employees without power (electric) engaged in manufacturing process they have to get registered under factories act.

Factories Act, 1948 Continue

❖ What does a “worker” means under the Factories Act?

- Worker means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process.
- But does not include any member of the armed forces of the Union.

Factories Act, 1948 Continue

❖ Which are the process covered under manufacturing process?

- Process carried out in salt works in converting sea water in to salt.
- Sun-Cured tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to company's main factory for their use in manufacturing cigarette.
- The operation of peeling, washing etc., of prawns for putting them in cold storage is a process with a view to the sale or use or disposal of prawns.
- Stitching old gunny bags and making them fir for use.
- In Paper factory, bankas grass packed in to bundles manually and dispatched to the factory.

Factories Act, 1948 Continue

- Work for garbling of pepper or curing ginger.
- A process employed for the purpose of pumping water.
- Receiving product in bulk, in packing and packing as per requirement.
- The making of Bidies.
- Preparation of food and beverages and its sale to members of club.
- ❖ **What are the provisions for fire exit?**
- “Horizontal Exit” –From a floor area to another floor at or near to same level in a building.
- Lifts, escalators and revolving doors shall not be considered as exits.

Factories Act, 1948 Continue

- The exits shall be marked in a language understood by the majority of the workers.
- Iron rung ladders or spiral staircases shall not be used as staircases.
- All exits shall provide continuous means of way to the exterior of a building
- There shall not be less than two exits serving every floor area above and below the ground floor, and at least one of them shall be internal enclosed stairway.
- No exit doorway shall be less than 100 cm. in width, doorways shall be not less than 200 cm. in height.
- Exit doorways shall open outward.
- Exit doorways shall be open without the use of keys. (Push bar)
- Hand rails shall be provided with a minimum height of 100 cm

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Rule 41 to 50 Prescribed under Sub. Sec. (3) of Sec. 19	Sign boards to be displayed	<ul style="list-style-type: none"> Where workers of both sexes are employed, there shall be displayed outside each latrine block notice in understandable language.
	Latrine Accommodation	<ul style="list-style-type: none"> One for 25 employees up to 100 Above 100, one for every 50 employees.
	Privacy of Latrines	<ul style="list-style-type: none"> Every latrine shall be under cover and so partitioned off as to privacy.
	Urinal accommodation	<ul style="list-style-type: none"> At least one urinal for 50 male worker till 500 and worker exceeds 500 one for every 100 or part thereafter

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Sec 40B	Safety Officer	<ul style="list-style-type: none"> • 1000 to 2000 – 1, 2001 to 5000 – 2 • 5001 to 10000 –3, Above 10000 – 4
Sec. 45 (1)	First Aid Box	<ul style="list-style-type: none"> • 1 for each 150 worker.
Sec. 45 (4)	Ambulance Room & VAN	<ul style="list-style-type: none"> • More than 500 employees.
Sec 49	Welfare Officer	<ul style="list-style-type: none"> ▪ 500 to 2500 – 1 WO ▪ 2500 to 3500 -1 WO+ 1 Asst WO
Sec 51	Weekly hours	<ul style="list-style-type: none"> • Adult worker – not more than 48 hours in a week.

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Sec 52	Weekly holiday	<ul style="list-style-type: none"> • Adult worker – First day of the week • No any worker working for more than 10 days consecutively without a holiday for a whole day.
Sec 53	C-off	<ul style="list-style-type: none"> • If worker is deprived of any holiday as per section 52, he shall be allowed c-off within the month in which the holidays were due to him or within the two months immediately following that month.
Sec 54	Daily hours	<ul style="list-style-type: none"> • Subject to the provisions of section 51 (48 Hrs a Week), Adult worker – not more than 9 hours in a day.
Sec 55	Interval of rest	<ul style="list-style-type: none"> • No worker shall work for more than 5 hours before he has an interval for rest of at half an hour.
Sec 56	Spread over	<ul style="list-style-type: none"> • Including spread over, shall not more than 10:30 hours in any day. • With the permission of chief inspector increase the spread over up to 12 hours.

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Sec 59	Extra wages for overtime	<ul style="list-style-type: none">• Work in factory more than 9 hours in any day or more than 48 hours, wage at a rate of twice of ordinary rate of wages.• ordinary rate of wages” means the basic wages plus such allowances, including the case equivalent of the advantages accruing through the concessional sale to workers of food grains and other articles as the worker is for the time being entitle to, but does not include a bonus and wages for overtime work.
Sec 60	Restriction on double employment	<ul style="list-style-type: none">• No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory.

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Sec 64	Overtime	<ul style="list-style-type: none"> • Working hours in a week 60 hours including overtime. • Maximum overtime in a quarter 50 hrs. • Quarter means a period of three consecutive months beginning on the 1st January, 1st April, 1st July, Or 1st October.
Sec 79	Annual leave with wage	<ul style="list-style-type: none"> • Worked 240 days or more in a factory during calendar year: <ul style="list-style-type: none"> ➤ Adult- 1 leave for 20 days of work/Child- 1 leave for 15 days of work ➤ 240 days include – ➤ Any days of Lay-off & permissible under Standing order ➤ Maternity Leave, Factory off, Week off ➤ Joining after 1st January - Mid Year Joining – one leave for every 20 days working ➤ Child-Mid Year Joining and work 2/3 of days, 1/15 days working

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Sec 79(2)	Benefit of leave to Nominee	<ul style="list-style-type: none">• If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his her or nominee, as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled.
Sec 79(4)	Leave Calculation	<ul style="list-style-type: none">• In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave, and fraction of less than half a day shall be omitted.
Sec 79(5)	Carry forward leave	<ul style="list-style-type: none">• The total number of days of leave that may be carried forward to a succeeding year shall not exceed 30 in the case of an adult or 40 in the case of Non-Adult

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Sec 80	Wages during leave period	<ul style="list-style-type: none">• For the leave allowed to him at a rate equal to the daily average of his total full time earning for the days on which he actually worked during the month immediately preceding his leave, exclusive of any overtime
Rule 35 to 40 Prescribed under Sub. Sec. (1) of Sec. 18	Quantity of drinking water. Source of Supply	<ul style="list-style-type: none">• 4.5 liters/person water shall be available during working hour.• Taps connected with public water supply or approved source in writing by the health officer.

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Rule 35 to 40 Prescribed under Sub. Sec. (1) of Sec. 18	Report from health officer	<ul style="list-style-type: none">• Have water test report at regular interval. (Twice in year but Advisable to have it Quarterly)
Rule 71 Prescribed under Sub. Sec. (4) of Sec. 45	Ambulance Room	<ul style="list-style-type: none">• This rule shall come into force in respect of any class or descriptions of the factories, on such dates as the state government may, by notification in the official Gazette, appoint in this behalf.• The ambulance room or dispensary shall be in-charge of a qualified medical practitioner assisted by at least on qualified nurse and such sub- ordinate staff as the Chief Inspector direct.

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Rule 72 Prescribed under Sec. 46	Canteens	<ul style="list-style-type: none">• Every factory wherein more than 250 worker are ordinarily employed
Rule 24-A	provision for lifting machines, chains, ropes and lifting tackles	<ul style="list-style-type: none">• Examined by a competent person at least once in every period of 12 months and a register shall be maintained in a prescribed form
Rule 68-R	Making available health records to workers	<ul style="list-style-type: none">• once in every six months or immediately after the medical examination whichever is earlier;

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Rule 68-T	Medical examination	<p>(a) Once before employment, to ascertain physical fitness of the person to do the particular job;</p> <p>(b) Once in a period of 6 months,</p> <p>(c) The details of pre-employment and periodical medical exam, carried out as aforesaid shall be recorded in the Register in Form No. 32.</p> <p>(2) No person shall be employed for the first time without a certificate of fitness in Form No. 33 granted by the Factory Medical Officer.</p>

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Rule 68-Y	Safety Committee	<p>250 or more worker employed.</p> <p>The representatives of the management on Safety Committee shall include:-</p> <ul style="list-style-type: none">• a Senior Official, who by his position in the organization can contribute effectively to the functioning of the committee, shall be the Chairman;• a Safety Officer and a Factory Medical Officer wherever available and the Safety Officer in such a case shall be the Secretary of the Committee;• a representative each from the production, maintenance and purchase departments.• Safety Committee shall meet as often as necessary but at least once in every quarter. The minutes of the meeting shall be recorded and produced before the Inspector on demand.

Factories Act, 1948 Continue

Sec / Rule	Provision	Requirements
Rule 77	Managing Committee	The Manager shall appoint a Canteen Managing Committee which shall be consulted from time to time as to: - (a) the quality and quantity of foodstuffs to be served in the canteen; (b) the arrangement of the menus; (c) times of meals in the canteen; and (d) any other matter pertaining to the canteen as may be directed by the Committee



GUJARAT SHOP & EST. ACT

AMENDMENT ACT 2019

Gujarat Shop & Est. Amendment Act 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**.

Gujarat Shop & Est. Amendment Act 2019.....Continue

- 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.

Gujarat Shop & Est. Amendment Act 2019.....Continue

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;

Gujarat Shop & Est. Amendment Act 2019.....Continue

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.

Gujarat Shop & Est. Amendment Act 2019....Continue

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.

Gujarat Shop & Est. Amendment Act 2019.....Continue

Duties of Employer:

Health/ Safety	11	Employer shall ensure cleanliness, lighting, ventilation and prevention of fire.
Fixing of Hours of Work	12	Daily 09 hours/Weekly 48 hours Give 30 minutes break after continues working of 5 hours Working hours and weekly off can be changed prior to approval form Inspector
Prohibition of Discriminati on of women	13	Women worker cannot work between 9PM to 6AM but can work when provisions of night crèche/Shelter/rest room/ladies toilet, adequate protection of dignity, honour and safety, protection of sexual harassment & their transportation from the shop or establishment to the door step of their residence exists, it may by order with prior consent from women worker & authorized by Inspector if he is satisfied.
Spread over Hours	14	Spread over hours should 10:30 hours and in case of intermittent and urgent work up to 12 hours
Overtime Payment	15	Twice at the ordinary rate of wage (Refer Wage definition as mentioned above) Should not exceed 125 hours in a 3 months

Gujarat Shop & Est. Amendment Act 2019.....Continue

Shift Working and Rest	16/1	Shops and Establishment can work in any shift at the discretion of the employer
	16/2	Shops and Establishment may work on all days subject to weekly (24 hours rest) of to all employees.
	16/3	In case of work on weekly off- compensatory holiday should be given within 2 months.
	16/4	Working hours and shift time should be communicated to worker and inspector in writing/mail
	16/5	Working on weekly off should be compensated at twice the rate of ordinary wages
Identity Card	17	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

Gujarat Shop & Est. Amendment Act 2019Continue

Annual leave/Casual leave/Sick leave and Other holidays

18

Casual Leave (CL)	7	Paid Leave	16*
Sick Leave (SL)	7	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, employees 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.

Gujarat Shop & Est. Amendment Act 2019....Continue

Drinking Water	19	Provision of drinking water should be made with adequate water supply
Latrine and Urinals	20	Sufficient number of latrine and Urinals/ Common facility of Urinal and Latrine are also ok due to constrain of space.
Creche facility	21	Upon every 30 women or else common crèche facility within one kilometre radius and subject to inspector approval.
First Aid Box	22	Provide First Aid facility
Canteen	23	For more than 100 employees/Common canteen subject to approval of inspector.

Gujarat Shop & Est. Amendment Act 2019....Continue

Annual return	27	Annual return should be submitted by all employer.
Penalty for contravention of the provisions of the Act.	29/30	Up to Rs.50,000/- If any fatal bodily injury or death due to violation of any provision of this act, penalty is; Imprisonment up to six month and monetary penalty is up to 50,000 or both
Offences by Companies.	31	All promoters are responsible and liable for proceedings.
Penalty for obstructions or refusal to provide register	32	Up to Rs.50,000/-

Gujarat Shop & Est. Amendment Act 2019

Opening and Closing Hours	35	Shops and establishment can remains open for 24 hours if situated <ol style="list-style-type: none">1. In Municipality Corporation area (Except 2AM-6AM)2. National Highway3. State Highways (Except 2AM-6AM)4. Railway Station5. State roadways Bus-station6. Hospitals7. Petrol Pumps8. Distract or in Minor Road (Except 11PM-6Am)
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SUPREME COURT JUDGMENT ON PF ON ALLOWANCES

Supreme Court Judgment on PF

The Supreme Court of India in its ruling of 28 February 2019 on whether various allowances such as conveyance allowance, special allowance, education allowance, medical allowance, etc. paid by an employer to its employees which are uniformly, ordinarily, necessarily fall under the definition of 'basic wages' for calculation of Provident Fund contributions, has ruled that only allowances of the following nature are excluded from 'basic wages' and are not subject to PF contributions:

- Allowances which are variable in nature; or
- Allowances which are linked to any incentive for production resulting in greater output by an employee; or
- Allowances which are not paid across the board to all employees in a particular category; or
- Allowance which are paid especially to those who avail the opportunity by fulfilling extra condition like overtime; or
- Allowances paid on discretionary basis & not earned in accordance with the terms of employment

In Case of Vivekanandan Vidyamandir

Case	Matter	Judgement	Conclusion
<p>Civil Appeal No. 6221 of 2011</p> <p><u>Applicant:</u> PF Department</p> <p><u>Respondent:</u> Vivekanandan Vidhyamandir</p>	<p>The respondent is an unaided school giving special allowance by way of incentive to teaching and non-teaching staff pursuant to an agreement between the staff and the management.</p> <p>The incentive was reviewed from time to time upon enhancement of the tuition fees of the students.</p> <p>The authority under the Act held that the special allowance was to be included in basic wage for deduction of PF.</p> <p>The Single Judge set aside the order.</p> <p>The subsequent Division Bench dismissed the appeal holding that the special allowance was not linked to the consumer price index, and therefore did not fall within the definition of basic wage, thus not liable to deduction.</p>	<p>PF Applicable on Special Allowance since the same was a part of the salary breakup payable to all employees and did not have any nexus with extra output produced by the employee out of his allowance, and thus it fell within the definition of “basic wage”.</p>	<p>Special allowance fall in the definition of basic wages because it has no link with extra work / output produced by employee.</p>

In Case Of Surya Roshni Ltd.

Case	Matter	Judgement	Conclusion
Civil Appeal No. 3965-3966 of 2013 <u>Applicant:</u> Surya Roshni Ltd . <u>Respondent:</u> PF Department	<p>The appellant was paying basic wage + variable dearness allowance (VDA) + house rent allowance (HRA) + travel allowance + canteen allowance + lunch incentive.</p> <p>PF deduction was not made on the special allowances.</p> <p>The authority under the Act held that only washing allowance was to be excluded from basic wage.</p> <p>The High Court partially allowed the writ petition by excluding lunch incentive from basic wage.</p> <p>A review petition against the same by the appellant was dismissed.</p>	<p>Only washing allowance & Lunch Incentive was not part of basic wage and PF is applicable on rest of all heads.</p>	<p>HRA, TA, Canteen Allowance which were commonly given to all employees fall under the definition of basic wages</p>

In Case Of U-Flex Ltd.

Case	Matter	Judgement	Conclusion
Civil Appeal Nos. 3969-3970 of 2013 <u>Applicant:</u> U-Flex Ltd. <u>Respondent:</u> PF Department	<p>The appellant was not deducting PF contribution on house rent allowance, special allowance, management allowance and conveyance allowance by excluding it from basic wage.</p> <p>The authority under the Act held that the allowances had to be taken into account as basic wage for deduction.</p> <p>The High Court dismissed the writ petition and the review petition filed by the appellant.</p>	PF Applicable on all allowances.	HRA, special allowance, management allowance and conveyance allowance, which were ordinarily, necessarily & commonly given to all employees fall under the definition of basic wages and it attract PF liability

In Case Of Montage Enterprise

Case	Matter	Judgement	Conclusion
Civil Appeal Nos. 3967-3868 of 2013 <u>Applicant:</u> Montage Enterprise <u>Respondent:</u> PF Department	<p>The appellant company was not deducting PF contribution on house rent allowance, special allowance, management allowance and conveyance allowance by excluding it from basic wage.</p> <p>The authority under the Act held that the special allowances formed part of basic wage and was liable to deduction. The writ petition and review petition filed by the appellant were dismissed.</p>	PF Applicable on Special Allowance	Special Allowance fall under the definition of basic wages and it attracts PF liability

In Case of Bridge & Roof Co (India) Ltd.

Case	Matter	Judgement & Conclusion
PETITIONER: BRIDGE & ROOF CO. (INDIA) LTD Vs. (1963) 3 SCR 978 RESPONDENT UNION OF INDIA DATE OF JUDGMENT: 11/09/1962	<p>The petitioner No. 1 is a public limited company engaged in a manufacture of engineering goods.</p> <p>In addition to basic wages and dearness allowance, it had introduced two Production bonus schemes. Certain difficulties and doubts having arisen on the question whether production bonus could be taken into consideration in calculating the contribution under s. 6 of the Employees Provident Fund Act, 1952</p>	<p>(a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.</p> <p>(b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages.</p> <p>(c) Conversely, any payment by way of a special incentive or work is not basic wages.”</p>

Impact of the Supreme Court Judgment...Continues

- **Impact of this Judgement:**
- Simple implication of this judgement is those who are getting less than 15,000/- monthly salary under whatever head is liable to pay PF contribution on 15,000/-
- It is still a court judgement and court judgement has not specified the impact. However, to avoid litigation with the PF authority, all company should have to come-up with the procedure of salary structure and how head bifurcation is being done.
- **Other meaning of this judgement is those who is having gross salary above 15,000/-, PF is not applicable. (Irrespective of Heads bifurcation)**

Impact of the Supreme Court Judgment

Way Forward

Provident fund contribution is applicable on the head of Basic + Dearness Allowance + Special Allowance.

Please define different heads under which salary has been paid especially for gross salary is below 15,000 per month.

In case of gross salary above 15,000 it should not be applicable according to this judgement.

Have a least heads for below 15,000 monthly salary and don't give it in uniform amount. It should not be uniform amount to all employees.

Bifurcate entire bunch of below 15,000 employees in two categories;

Category 1: Heads (Basic + DA + HRA + Traveling Allowance) – Make sure amounts are variable

Category 2: Heads (Basic + DA + HRA + Educational Allowance-Only with Kids) - Make sure amounts are variable

It will definitely justify that all employees are not getting uniform allowance and amount. Further take declaration from all employees below 15,000 for Traveling allowance and Educational allowance.

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
1	Basic wages or component of wages		Section 2(b) read along with Section 6 of the Act, 1952 . Bridge and Roof Company (India) Limited V. Union of India, (1962-II L.L.J. 490) , & Manipal Academy of Higher Education Vs. Provident Fund Commissioner LLR 2008 SC 443.
2	Special pay or special allowance	Included if it is in the nature of basic pay. Excluded , if it is in nature of special payment by doing special work. (Bridge & Roof , IInd & IIIrd Principle)	Gordon Woodroffe Ltd., Vs. Regional Commissioner, Employees Provident Fund, 2002 II LLJ 653 (Mad HC)

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
3	Dearness Allowance	Included in the basic wage (since included u/s.6)	Sec.2(b)(ii)
4	Wages during leave	Included in the basic wage	Being contract of employment
5	Wages during rest or holiday	Included in the basic wage	Being contract of employment
6	Cash value of food concession	included in the basic wage	Sec.2(b)

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
7	Food Concession tiffin allowance, Canteen Subsidy , Food Coupon etc.	Excluded from basic wage	<ul style="list-style-type: none"> • Indian Petrochemical Vs.RPFC (2011 LLR 717) • Deepak Nitrate Ltd. Vs.RPFC , SCA No. 2074 of 2000 (Gujarat HC) • RPFC Vs. Wipro Ltd 2009 LLR (SN)816= 2009 Lab IC 3050 • Mayur Wovens Pvt. Vs. EPFO, 2016 LLR 1025 • RPFC Vs. Wipro Ltd. 2009 IV LLJ 513 (Canteen Subsidy).
8	HRA	Excluded from basic wage	Sec.2(b)(ii)

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
9	Travel concession allowance, Conveyance allowance in the nature of travelling allowance.	Excluded from basic wage	Omega Zips Vs. Joint Director , ESI corp. 2018 LLR 48 , Regional Director ,ESIC Vs. Sundaram Clayton Ltd.Moppet ,(2004) 1 LLN630, Oriental Hotels Ltd. Vs. ESI. Corp. 2001 (1) LLN 943
10	City compensatory allowance	Excluded from basic wage If it paid depending upon posting of the employees	Guide-lines : If the CCA is changing on posting the employees , then excluded .
11	Retaining allowance retention allowance	Included in the basic wage	But , it is applicable in seasonal industries

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
12	Subsistence allowance	Excluded from basic wage	Anology taken 1997 AIR SC 3956 .
13	Project allowance	Excluded from basic wage	
14	Night shift allowance or night allowance	Excluded from basic wage	
15	Overtime allowance	Excluded from basic wage	Sec.2(b)(ii) / only statutory payment

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
16	Leave encashment	Excluded from basic wage	Manipal Academy of Higher Education V. Provident Fund Commissioner, 2008 LLR 717 SC
17	Bonus (as per Act)	Excluded from basic wage	Sec.2(b)(ii)
18	Production bonus or incentive or sale incentive, data punching incentive etc.	Excluded from basic wage	T.I.Cycles of India, Ambatuur, Chennai V. M.K. Gurumani & Ors., 2001 II LLJ 1068 (S.C.2J) Poompuhar Shipping Corporation Ltd. Vs. RPFC , 2017 LLR 24 Titagarh Paper Mills Co. Ltd Vs.Workmen, AIR 1959 SC 1095

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
19	Attendance incentive Washing allowance Field allowance Cash Handling allowance	Excluded from basic wage	Washing Allowance , if uniform is provided in the company or alternatively , working condition of the employee is demanding for payment of washing allowance. Bridge-Roof - Principle II & III
20	Service charges collected from customers and paid to employer	Excluded from basic wage	The Rambagh Palace Hotel, Jaipur V Rajasthan Hotel Workrs Union, Jaipur, 1977 (34) FLR 12 (S.C.3J)

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
21	Lay off compensation	Included if paid for illegal lay off If paid for legal lay-off , not basic wages .	P.V.Joseph V Official Liquidator & Ors., 2001 II LLJ 1217(Ker.HC) National Co-op. Sugar Mills Vs. PO, EPFAT, 2012 III LLJ 83 Mad. HC
22	Inam	Excluded from basic wage	Greysham & Company V. RPFC 1978 II LLJ 95 (Del.HC)
23	Medical/Sickness allowance	Excluded from basic wage	Medical/Sickness allowance

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
24	Maternity benefit	Included in the basic wage	Since wages on leave included.
25	Good work reward	Included in the basic wage	D.C.M., Shriram Consolidated Ltd., V. The Regional Provident Fund Commissioner, 2004 III LLJ 396 (Raj.DB)
26	Ex-gratia adhoc payment	Excluded from basic wage	Gurukripa Beedi Industry(Pvt.) Ltd., Bantwal, DakshinaKannada V. Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Mangalore & Anr. 2010 I LLN 228 (Karn.HC)

Interpretation of Basic Wages under EPF Act...Continue

#	Wage components	Coverage	Basis
27	Special allowance (as per settlement) In the nature of incentive. Special Allowance , misc. allowance , supplementary allowance etc., if paid to all employees	Excluded / If it is paid to all , included) Ref. Bridge-Roof (Ist. Principles)	Gurukripa Beedi Industry(Pvt.) Ltd., Bantwal, DakshinaKannada V. Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Mangalore & Anr. 2010 I LLN 228 (Karn.HC)

Interpretation of Basic Wages under EPF Act

#	Wage components	Coverage	Basis
28	Commission	Excluded from basic wage	Usha Sales Ltd. Vs. RPFC, 1980 Lab.IC 546 , Del. DB.
29	Full & Final Settlement amount		Universal Brakes (P) Ltd. Vs. PO, EPFAT , 2012 LLR 133 (Mad. HC).
30	Back Wages awarded by Court .		Swastik Textile Engineers Pvt. Ltd. Vs. Virjibhai Mavjibhai Rathod , 2008 LLR 472 (Guj. HC).
31	Notice Pay in Lieu of termination		India United Mills Ltd. Vs. RPFC ,1959 II LLJ 733 (Bom. HC).
32	Karigar Charges		RPFC Vs.Syndicate Overseas Pvt.Ltd. 2001 LLR 953 (Bom. HC)



RECENT UPDATES IN VARIOUS LABOUR LAWS

Revision in the eligibility conditions for SUPER SPECIALTY TREATMENT...Continue

- ❑ Revision in the eligibility conditions for super specialty treatment to the Insured Person and Members of their family
- ❑ In the 175th meeting held on 18/09/2018, have approved a revised eligibility conditions to reduce hardship faced by the insured person. This new eligibility condition's Office Memorandum is published on 29/10/2018 and notified thereafter.

	Total days of contributions	Total Month / Year require
Insured Person	78 days of contribution period	Maximum 6 months (From the date of registration in IP) Earlier it was 2 years.
Family member of Insured Person	156 days of contribution period	Minimum 1 year (From the date of registration in IP) Earlier it was 2 years.

'Atal Bimit Vyakti Kalyan Yojna' under ESIC Act, 1948

- ❑ Insured Persons (IPs) will benefit from newly launched scheme of ESIC 'Atal Bimit Vyakti Kalyan Yojna'. The ESI Corporation has approved '**ATAL BIMIT VYAKTI KALYAN YOJNA**' for Insured Persons (IP) covered under the Employees' State Insurance Act, 1948. This scheme is a relief payable in cash directly to the Bank Account in case of unemployment and while they search for new engagement.
- ❑ The cash benefit given to the unemployed persons searching for new employment will be 25 percent of his average earning of 90 days.

Proposed changes under ESIC Act, 1948

- ❑ The ESIC has approved the proposal for increasing the funeral expenses from existing Rs 10,000/- to Rs 15,000/- being paid on the death of Insured Person.
- ❑ ESIC has issued draft notification for suggestion / objection on reducing ESIC Contribution rate
 - Employer Contribution from 4.75 % to 4 %
 - Employee Contribution from 1.75 % to 1 %

Updates under ESIC Act, 1948

BUILDERS ASSOCIATION OF INDIA PETITIONER(S)

VERSUS

THE EMPLOYEES STATE INSURANCE CORPORATION & ORS. RESPONDENT(S)

SLP No. 13351/2018

Supreme Court has as on 06.07.2018 stayed ESIC Dept. Notification Dated 31.07.2015 for extension of ESIC scheme on Construction workers with immediate effect.

Amendment in Guidelines for PMRPY Scheme

- ❑ Ministry of Labour & Employment has amendment in scheme guideline for Pradhanmantri Rojgar Protshana Yojana and insert the clause (as para no. A (h)) in PMRPY Guidelines as :

To avail benefit the benefit under PMRPY scheme for a particular month employer has to required to submit PF ECR & pay the same on or before 15th day of subsequent month otherwise employer will not be eligible for availing benefits under PMRPY scheme for that month.

Non-Refundable Advance for PF member

- According to the notification no.G.S.R.1182 (E) of Ministry of Labour and Employment dated 6th December 2018, member of EPF can now withdraw PF amount as non-refundable advance maximum up to 75% of the credit PF balance of his / her account, if he / she remains unemployed for a period not less than one month.

Fixed Terms Employment

❖ **Employment (Standing Orders) Central (Amendment) Rules, 2018**

- ❑ Central Government hereby makes the following rules further to amend the industrial employment (Standing Orders) central rules, 1946 as;
- ❑ All the changes will be effective from 16th March 2018 and it will be called as Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018;
- ❑ Applicability of Fixed terms employment has been extended to all sectors. Earlier it was only restricted to apparel manufacturing sector.
- ❑ Existing employee appointed by the company shall not be converted in to fixed term employment.
- ❑ There should be written Fixed terms agreement between workman and company for a fixed period and should include; Hours of work, Wages, Allowances and other benefits and it should not be less than that of a permanent workman.

Fixed Terms Employment.....Continue

- ❑ Fixed term employment workman is entitled for all statutory benefits available to a permanent workman even if his \ period of employment does not extend to the qualifying period of employment required in the statute. Means employee shall be eligible for leave/Gratuity/bonus although he has not completed eligibility criteria for leave and gratuity under different law.
- ❑ Under Industrial dispute act 1947, Notice period or Payment of Notice period for the termination of employment is necessary. However, with this amendment, No workman employed on fixed term employment basis is entitled for the notice period or payment of notice period and even non-renewal of fixed term employment contract shall be treated as terminated service.

Fixed Terms Employment.....Continue

- ❑ Although opportunity of explanation shall be given in case of charges of misconduct against any temporary workman. If the temporary workman has completed more than 3 months in employment, he is entitled to have 2 weeks' notice period. He shall be informed the reason of termination prior to 3 months employment.
- ❑ Principle employer can directly hire fixed term employee without mediator like manpower supplier or contractor.

Amendment in EPS Scheme Quashed by Supreme Court

- ❖ Supreme Court has upheld Kerala High Court order which has quashed EPFO Notification no. G.S.R. 609(E) Dated: 22.08.2014 which increase wage limit from Rs.6,500/- to Rs.15,000/- & restrict Employee Pension Scheme up to wage limit of Rs. 15,000/- for the member who join the EPS scheme on or after 01.09.2014.

Declaration in Budget for Labour Law

- ❑ Standard deduction for Medical Allowance & Travelling Allowance Increase from 40,000 to 50,000
- ❑ Tax Free Gratuity limit increase from 10 lakhs to 20 lakhs
- ❑ The New Scheme Pradhan Mantri Shram Yogi Mandhan ensure Monthly Pension of Rs. 3,000 for unorganized Sector workers (who are not member of EPF / ESIC / NPS) with monthly premium of Rs. 55 to Rs. 200

Modification in PF Inspection Policy

- ❑ In addition to lump sum withdrawal, members can opt full / part repayment of loans out of monthly PF contributions
- ❑ Provision of Equated Monthly Installments (EMI) facility for repayment of loans to EPF members
- ❑ Central PF Commissioner vide circular no. CAIU/011(5)2016/Inspection/20509 Dated: 27.02.2018 has authorized Regional PF commissioner for conducting inspection of establishment which fall in category A & B of the “Defaulter List” without prior permission from CAIU (Central analysis and intelligence unit)
 - Category “A” means establishment default for 4 or more wage months
 - Category “B” means establishment default for 2 or 3 wage months



THANK YOU FOR
YOUR TIME AND
ATTENTION