

13. Where by virtue of *any award, agreement (including settlement) or contract of service*, the worker is entitled to a longer period of leave than that provided by the aforesaid Rules, he will be entitled *such longer leave*.

14. The Rules contained in these sections *do not apply to railway factory* administered by the Government which are governed by leave Rules approved by the Central Government.

15. If an award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Act, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourably therein.

Wages during leave period : For the period of leave allowed to a worker according to Rules, he shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he actually worked during the month immediately preceding his leave. The average rate is to be calculated, exclusive of any overtime and bonus, but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of foodgrains and other articles. The cash equivalent, referred to above, is to be computed according to the method used when calculating the extra wages payable for overtime work.

If the employment of a worker who is entitled to leave is terminated by the occupier of the factory before he has taken the entire leave to which he is entitled, he must be paid wages for the leave period not taken and such wages must be paid before the expiry of the second working day after such termination. Similarly, if the worker quits his service after having applied of leave allowed. Wages for the leave period, if not paid by an employer, shall be *recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936*.

Extra Wages for Overtime

(1) Where a worker works in a factory for more than nine hours in any day or for more than 48 hours in any week, he shall in respect of overtime work, be entitled to *wages at the rate of twice his ordinary rate of wages*.

(2) For the purpose "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

(3) Where any workers in factory are paid on the piece rate basis, the time rate of their work will include the following Rules :

- (i) if the workers had been paid on the same or identical job during a month immediately preceding a month during which overtime work was done, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days of the overtime work. Also such time rates shall be deemed to be the ordinary rates of wages of those workers.
- (ii) In the case of worker who had not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earning of the worker for the days on which he actually worked in the week in which the overtime work was done.

For the purposes of this sub-sections in computing the earnings for the days on which the workers actually worked, the allowances include the cash equivalent in order to buy foodgrains and other articles through concessional sale as the worker is for the time being entitled to. But any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall not be included.

(4) The cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

Explanation 1. - "Standard family" means a family consisting of the worker, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2. - "Adult consumption unit" means the consumption unit of a male above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 0.8 and 0.6 respectively of one adult consumption unit.

(5) The State Government may make Rules prescribing - (a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and (b) the registers that shall be maintained in factory for the purpose of securing compliance with the provisions of this section.

PENALTIES

| <i>Offence</i> | <i>Penalty</i> |
|---|---|
| 1. Any Contravention of the Act or the rule made thereunder | 1. Imprisonment up to two years fine up to Rs. 1,00,000, or with both. |
| 2. Continuous contravention after first conviction (Sec. 92) | 2. Fine up to Rs. 1,000 per day of contravention. |
| 3. Repetition of the same offence within two years of conviction (Sec. 94). | 3. Imprisonment up to 3 years and minimum fine of Rs. 10,000 which may be extended up to Rs. 2,00,000 or with both. |
| 4. Obstructing Inspector (Sec. 95) | 4. Imprisonment up to six months and fine up to Rs. 10,000, or with both. |
| 5. Penalty for disclosing results of analysis under Sec. 96. | 5. Imprisonment up to six months and fine up to Rs. 10,000, or with both. |
| 6. Contravention of Sec. 41B, 41C, and 41H (Secs. 96A) | 6. Imprisonment up to 7 years and fine up to Rs. 2 lakhs. |
| 7. Continuous of these offences after the first conviction. | 7. Rs. 5,000 per day of failure or continuance of contravention. |
| 8. If offences continues after one year | 8. Imprisonment up to ten years. |
| 9. Offences by workers-contravention of Sec. III (Sec.97) | 9. Fine up to Rs. 500. |
| 10. Penalty for using false certificate of fitness of child to work (Sec. 98) | 10. Imprisonment up to two months and fine up to Rs. 1,000 or with both. |
| 11. Double employment of child (Secs. 99) | 11. Fine up to Rs. 1,000. |

In any proceedings for an offence for the contravention of any provision of this Act or rules framed thereunder it is for the person who is charged with such offence, to prove that it was not reasonably practicable or all practicable measures were taken to satisfy the duty or requirement and avoid such contravention (Sec. 87A). If any contravention of any provision relating to safety or dangerous operation results in accident causing death or serious bodily injury, the fine to be imposed is not to be less than Rs. 35,000 in case of fatal, and Rs. 10,000 for serious injury. The court can impose fine less than the minimum amount prescribed under the Act for adequate and special reasons mentioned in the judgement. (Secs. 92, 94,99).

Obligation of Employers

- (a) Under the Act every employer or occupier of a factory is under an obligation to
 - (i) *obtain approval of the Government* of the location, plan and construction of the factory, and also licence and registration certificate for operating the factory; and
 - (ii) *implement all the provisions of the Act*, and undertake the health, safety and welfare measures as required under the Act.
- (b) *Send a written notice to the Chief Inspector* at least 15 days before occupying or using any premises as a factory, containing the name and address of the factory and occupier and manager, nature of manufacturing process, number of persons to be employed, and nature and quantity of power to be used.
- (c) *Provide all benefits and facilities to the workers* regarding annual leave, weekly holidays, extra wages for overtime, washing facility, first-aid, canteens, creches, rest and lunch rooms are required under the Act.
- (d) *Display notices, maintain registers and records* as required under this Act, and submit to the Government returns required for the proper enforcement of the Act.
- (e) *Report fatal and other accident and occupational disease* if contracted by any workman, to the Government or its specified authority in such form or manner as may be prescribed.

Obligations of Employees

No worker in a factory - (a) shall wilfully interfere with or *misuse any appliance, convenience or other things provided in a factory* for the purpose of securing the health, safety or welfare of the workers therein; (b) shall wilfully and without reasonable cause *do anything likely to endanger himself or others*; (c) shall wilfully neglect to *make use of any appliance or other thing provided in the factory* for the purposes of securing the health of safety of the workers therein and (d) *spit outside the spittoons* provided within the premises, otherwise he is liable to be fined upto Rs. 5.

If any worker contravenes any of the provisions of this section or of any Rule or order made thereunder he shall be punishable with imprisonment which may extend to 3 months or with fine which may extend to Rs. 100 or with both.

Rights of Employers

The rights of an employer under the Act are practically the same as the obligations of the employees. He can make the workers observe health and safety provisions of the Act. Again, he has the right to *refuse employment to children and other young persons* who do not produce fitness

certificate from a certifying surgeon. He has also the *right to go ahead with his plans to start constructing a new factory*, and extend the existing one if he does not hear from the Government within three months of his submission of necessary papers and information. He has also the *right to appeal against the decisions of the Government* in this and other respects.

Rights of Employees

Rights of employees are really the obligations of employers under the Act. The workers can *claim minimum health and safety measures, welfare facilities, annual leave, observance of working hours for adults, women and children* as provided under the Act. A worker can *refuse to work in contravention of any provision of the Act*, and observe the statutory working hours, rest intervals, weekly holidays, and overtime restrictions. He can *claim overtime payment* at double the ordinary rates of wages, and also advance payment for annual leave if the period of leave availed of is not less than four days. He can also claim wages for the proportionate annual leave even before he puts in qualifying service if he is discharged or dismissed. Employees have also the right to

- (i) *obtain from the occupier information relating to workers health and safety at work;*
- (ii) *get trained within the factory* wherever possible or to get himself sponsored for getting trained at a training centre or institute, duly approved by the Chief Inspector, where training is imparted for workers health and safety at work; and
- (iii) *represent to the Inspector* in the matter of inadequate provision for protection of his health and safety in the factory. (Secs. 104A).

General Remarks

The present Factories Act is in operation for the last six decades and during this period it has benefited the factory workers considerably by improving their working and employment conditions. The recent amendment of this Act has not only widened its coverage, but has also strengthened its safety and health measures, and improved the provisions for welfare amenities. The amendment also makes it obligatory for some employers to appoint safety officers, and provides for more deterrent penalties for various offences under the Act. There are nearly 2,10,000 factories employing about 95,00,000 persons who are benefited from the provisions of this Act. Since this Act has improved the working conditions in factories it has benefited the employers also by contribution towards the increase in industrial productivity and harmony. The gains from this Act can be multiplied by implementing and enforcing it more effectively. For this the State Government will have to improve quality and strength of their Factory Inspectorates, and the workers and their unions will have to be more vigilant in policing the Act. In the management supervisors are in much better position to ensure proper implementation of most of the provisions relating to welfare, health, safety and working hours. Denial of benefits and facilities available to the workers under this Act has been straining relations between the management and their workmen, and not infrequently this has been creating individual grievances and disputes. This has also been vitiating working environment in the factory, and thereby making it difficult for the supervisor to get the best out of his workers. It is, therefore, in the interest of the managements and their supervisors that the provisions of this Act operate effectively, and the workers get that they are entitled to.

Difficulties in Application in New Processes

Quite a number of new processes have come to be used in numerous establishments on account of fast changing technology. It often becomes very difficult to decide whether they are covered under the definition of 'manufacturing process; or not. In the same way, it also becomes often difficult to identify whether a process is 'hazardous' or not. In many cases, difficulties also arise regarding the number of person employed in an establishment of the purpose of covering it under the definition of 'factory' and in many others, determination of age also becomes a difficult task. There have been reports that occupiers engage workers, but claim that they belong to their family. Besides, in a number of establishments hazardous processes and operations are carried on, but they do not come under the purview of the Act as they employ less number of workers than that required for being called a factory. In spite of the shortcomings, the Factories Act, 1948 has contributed much towards improvement of the physical working conditions in factories and protecting the workers against health hazards. It has also provided the basis and guidelines for enactment of similar other laws applicable to other kinds of establishments.

Recommendations of the Second NCL (2002)

The second National Commission on Labour (2002) has recommended the enactment of a general law relating to hours of work, working conditions, annual leave with wages, welfare, contract labour, and others, applicable to various categories of establishments alike. For ensuring safety at the work-places, the Commission has suggested enactment of one omnibus law providing for different rules and regulations on safety applicable to different activities. The Commission has also worked out a draft general law relating to hours of work, leave and other working conditions at work-places.

LEADING CASES AND CASE LAWS

- *Ardeshir H. Bhuwandiwalla Vs. State of Bombay (1962) 20 FJR 113 SC*
Salt works which consist merely of open stretches of large areas of land with some temporary shelters, in which salt is manufactured by the process of evaporation of sea water would fall within the definition of factory.
- *V.P. Gopal Rao Vs. Public Prosecutor AIR (1970) SC 66*
The processes of moistening, stripping and packing of sun cured tobacco leaves are all manufacturing processes.
- *Suhsid Geigy Ltd. Vs. State of Gujarat (1978) 53 FJR 401*
All workmen who quit their employment would be entitled not only to accumulated leave from previous calendar years but also to leave upto the period of work during the calendar year in which they quit their employment.
- *Christian Medical College Hospital Vs. Inspector of Factories (1984) 11 LLJ 237.*
The laundry department of a hospital, meant for washing only the linen used in the hospital and being run by engaging the employees of the hospital, by turn, is not a factory.
- *East West Hotels Ltd. Vs. ESIC 1986 11 LLJ 840*
The activities carried on in a kitchen attached to a hotel amount to a manufacturing process.

- ↪ *Bhatia Metal Containers Pvt. Ltd., Vs. State of U.P. and Others (1990) II LLJ 534*
By virtue of the Factories Amendment Act (20 of 1987), one of the directors of the company alone can be deemed to be the occupier of the factory.
- ↪ *W.S. Industries (I) Ltd. and Another Vs. Inspector of Factories, Karnataka (1990) 77 FJR 139*
In the case of a company, a director or a person nominated by the board of directors can be occupier for the purposes of the Act.

ILLUSTRATED PROBLEMS

Problem 1 : In case of public emergency, the Tamil Nadu State Government by notification in the *Official Gazette*, exempts P.S.G. Iron Factory from all the provisions of the Factories Act for a period of six months. Is this notification valid?

Ans. : No, the notification is invalid. According to Sec. 5 of the Factories Act, 1948, in case of public emergency, the State Government may exempt any factory or class or description of factories from all or any of the provisions of this Act except Sec. 67 (which deals with prohibition of employment of young persons) by notification in the *Official Gazette*. However, the period of exemption shall not exceed 3 months at a time. In view of the provisions of Sec. 5 (quoted above), the exemption granted to P.S.G. Iron Factory from all the provisions of the Factories Act for a period of six months is ultra vires (beyond the powers of) the Tamil Nadu State Government. The notification is therefore invalid.

Problem 2 : A certifying surgeon, not being able to perform his duties personally, authorises another qualified medical practitioner to exercise his powers. Is it valid?

Ans. : The authorisation is invalid unless effected with the approval of the State Government. Sec. 10(2) of the Factories Act, 1948, provides that a certifying surgeon may, with the approval of the State Government, authorise any qualified medical practitioner to exercise any of his powers. In the given problem, a certifying surgeon, not being able to perform his duties personally, authorises another qualified medical practitioner to exercise his powers. Such authorisation, however, requires the approval of the State Government in view of the provisions of Sec. 10(2). Presuming that such approval has not been obtained (as the problem is silent about it), the authorisation is invalid.

Problem 3 : State with reasons, in the light of the Factories Act, whether the following statements are valid or not :

A worker who has been allowed leave for not more than 5 days, in case of an adult, and 4 days, in case of a child, shall, before his leave begins, be paid the wages due for the period of leave.

Ans. : The Statement is correct (Sec. 81).

Problem 4 : Two factories have been established at Chennai. One of these belongs to the Central Government and the other belongs to the Government of Tamil Nadu. State, Whether the provisions of the Factories Act, 1948 will be applied to these factories.

Ans. : Yes, the provisions of the Factories Act, 1948 will be applied to these factories. According to Sec. 116 of the Factories Act, unless otherwise provided, this Act shall apply to factories belonging to the Central or any State Government. Both the factories, therefore, shall be governed, *inter alia*, by the provisions of the Factories Act, 1948.

Problem 5 : 'A', who is adult worker, works in factory 'X' for the eight hours everyday from 6 a.m. to 2 p.m. Without informing anyone he takes up work in factory 'Y' for four hours everyday from 4 p.m. to 8 p.m. What action can be taken against him by factory 'X' on coming to know of the fact?

Ans. : The management of factory 'X' cannot proceed against 'A' under Sec. 96 read with Sec. 60 of the Factories Act, 1948. Sec. 60 of the Factories Act, 1948, prohibits the double employment of worker, *i.e.*, his employment in a factory on any day on which he has already been working in any other factory. Therefore, the management factory can proceed against 'A' for violation of this provision of the Factories Act. He may be asked to pay fine under Sec. 97, and may be punishable with imprisonment for a term which may extend to 3 months. Moreover, the management of factory 'X' can initiate disciplinary action against 'A' and after giving due notice to him as required by Sec. 2(a) of the Industrial Disputes Act, 1947 proceed to dismiss him from service for accepting double employment.

Problem 6 : The manager of factory asks a worker to work for 70 hours including overtime in a particular week. Discuss the reasons whether the worker is bound to work for such long hours in a week.

Ans. : The worker is not bound to work for 70 hours (including overtime) in a week. Ordinarily, no adult worker can be required to work in a factory for more than 48 hours in any week (Sec. 51) and for more than 9 hours in a day (Sec. 54). But, the State Government may exempt a factory from provisions relating to weekly hours, weekly holidays and daily hours to enable it to deal with an exceptional pressure of work (Sec. 65). However, even in such a case, the total number of hours of work in any week, including overtime, shall not exceed 60. In view of the provisions of Secs. 51, 54, 60 and 65 of the Factories Act, 1948 (quoted earlier), the worker is not bound to work for 70 hours in a week.

Problem 7 : The working hours including rest interval of a woman employed in a factory have been fixed from 2 p.m. to 11 p.m. Are the working hours valid? Give reasons for the answer.

Ans. : No, the working hours are invalid. Sec. 66 of the Factories Act, 1948 provides that no woman shall be required or allowed to work in a factory except between 6 a.m. and 7 p.m. The State Government may, by notification in the *Official Gazette*, in respect of any factory or class of factories, vary these limits but no such variation shall authorise the employment of any woman between 10 p.m. and 5 a.m. Accordingly, in the given problem, the woman concerned cannot be asked to work after 7 p.m. under ordinary circumstance. Further, even if the State Government varies the working hours in relation to this factory she cannot be allowed to work after 10 p.m. Hence the working hours are invalid.

Problem 8 : Manufacturing process is carried on in a workshop attached to a public institution maintained for the purposes of education or reforming. State with reasons whether State Government can grant exemption from all the provisions of the Factories Act to such public institution.

Ans. : Yes, the State Government can grant exemption from all the provisions of the Factories Act to a workshop attached to a public institution. Sec. 86 of the Factories Act, 1948 empowers the State Government to exempt any workshop or work-place where a manufacturing process is carried on and which is attached to a public institution maintained for the purposes of education, training or reformation, from all or any of the provisions of the said Act. However, before granting exemption from the provisions relating to hours of work and holidays, the persons controlling the

Notes. :

- (i) In 1998 the conditions of minimum period of 240 days work is satisfied because the worker availed of 10 days leave with wages.
- (ii) In 1999 the above condition is satisfied as the worker was laid off for 60 days.
- (iii) Under Sec. 79 fraction of half a day or more is to be treated as one full day's leave and fraction of less than half a day shall be omitted.
- (iv) In 2002 the worker is not entitled to leave as he did not work for a minimum period of 240 days in the year.

(b) If the worker was discharged on 1-12-2002 it will make no difference and he will be entitled to 78 days leave.

7. Calculate the earned leave of the following four factory workers under the Factories Act, 1948.
- (a) Who was appointed on 1st January, 2002 and had worked for 280 days in the said year?
 - (b) Who was employed on 1st April 2002 and had worked for 200 days in the said year?
 - (c) Who was employed on 1st January 2002 and worked on all the working days of the year (*i.e.* 303 days) except for a period of 10 days when he was laid off; and
 - (d) Who was appointed on 1st July 2002 and had worked for 120 days in the said year;

[Ans. (a) 14 days (b) 10 days (c) 15 days (d) 6 days].

Note. : In each case the number of days a worker had worked in the year is divided by 20 because subject to the minimum period (which is satisfied here in all cases) an adult worker is entitled under Sec. 79 to one day earned leave for every 20 days of work performed.

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THE SHOPS AND ESTABLISHMENTS ACT

CHAPTER OUTLINE

STATE LEGISLATION ON SHOPS AND ESTABLISHMENTS

PROVISIONS RELATING TO SHOPS

- **OPENING AND CLOSING OF SHOPS**
- **DAILY AND WEEKLY HOURS OF WORK**
- **WEEKLY AND ADDITIONAL HOLIDAYS**

PROVISIONS RELATING TO ESTABLISHMENTS

- **EMPLOYMENT OF CHILDREN, YOUNG
PERSONS**
- **CLEANLINESS, LIGHT, VENTILATION ETC.**
- **ANNUAL HOLIDAYS WITH WAGES**
- **PAYMENT OF WAGES**
- **AUTHORISED DEDUCTIONS**
- **DISMISSAL FORM SERVICE**

OBLIGATIONS AND RIGHTS OF EMPLOYERS AND EMPLOYEES

Legislation regulating the working and employment conditions of workers in shops and establishments including commercial establishments, who are not covered by the Factories Act, or Mines Act, or Plantations Labour Act, or any other enactment regulating working conditions, has been enacted by all State Governments, except Nagaland, for their respective States. In some States like Karnataka, J & K. and Orissa, this legislation is known as Shops and Commercial Establishments Act, and in others it is named as Shops and Establishments Act. In pursuance of a decision taken by the Standing Labour Committee in 1950, the Government of India drafted a Bill for enacting a Central law to regulate the working conditions of employees of shops and commercial establishments as a model for the guidance of the State Governments, and for enactment of a similar legislation where it did not exist. After considering the response received from the State Governments, the proposal for a Central Law for shops and establishments was dropped, because practically all the State Governments, including some Union Territories, had already enacted such a legislation with practically the same provisions as contained in the proposed Central Bill in regard to working hours, rest interval, spread-over, overtime, weekly holidays, and leave with wages. In fact, some State legislations had also additional provisions regarding casual and sick leave, termination of service, compensations for accidents, maternity leave and payment of wages.

So, at present the Shops and Establishments Act is a State legislation. It is administered by the State Governments in their respective territories. Each State Government has framed its own rules for carrying out the purposes of this Act, and has also set up its own inspectorate for enforcing its provisions. The following study regarding the scope and provisions of this legislation is based on such Acts as are now in force in ten States and Union Territories, *i.e.*, Assam, Bihar, Delhi, Gujarat, Jammu and Kashmir, Madhya Pradesh, Maharashtra, Karnataka, Orissa and West Bengal. This joint study has been attempted so that in this so-called unorganised sector of employment, *i.e.*, shops and establishments, both the employers and employees should know as to what are their statutory obligations and rights.

Scope and Coverage

In all States this Act extends to the whole of the State, and within the State it covers such areas as the State Government may notify from time-to-time. It is applicable to all persons employed in or about an establishment, with or without wages, including persons employed indirectly through an agency or contractor, apprentices, clerical and other staff of a factory who are not covered by the Factories Act. It also covers persons discharged or dismissed whose claims have not been settled in accordance with this Act. It, however, excludes members of the employer's family.

The Shops and Establishments Act, provides for the regulation of conditions of work in shops, commercial establishments, restaurants, theatres and other establishments, and for certain other purposes.

The Shops and Establishments Acts in the country have been state enactments. The Acts in operation in the country include: the Acts of Tamil Nadu (1947), Assam (1948), Maharashtra (1948), Gujarat (1948), Bihar (1953), Delhi (1954), Orissa (1956), Madhya Pradesh (1958), Punjab (1961), Rajasthan (1958), Haryana (1958), Kerala (1960), Karnataka (1961), Uttar Pradesh (1962), and Goa (1973). Such Acts are also in operation in union territories.

DEFINITIONS

Child: 'Child' means a person who has not completed the age of fourteen years. [Sec.2(IA)].

Young person 'Young person' means a person who is not a child and has not completed the age of eighteen years [Sec.2(22)].

Shop : "Shop" means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns and warehouses, whether in the same premises or otherwise, used in connection with such business but does not include a restaurant, eating-house or commercial establishment.

Establishment : "Establishment" means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the (State) Government may by notification, declare to be an establishment for the purposes of this Act.

Employee: 'Employee' means a person wholly or partially employed for hire, wages including salary, reward, or commission and in connection with any establishment and includes 'apprentice', but does not include a member of the employer's family. It also includes a person employed in a factory who is not worker within the meaning of the Factories Act, 1948, and for the purpose of proceedings under this Act, includes an employee, who has been dismissed, discharged or retrenched for any reason whatsoever [Sec.2(4)].

Employer: 'Employer' means a person who owns or exercises ultimate control over the affairs of an establishment and includes a manager, agent or any other person in the immediate charge of the general management or control of such establishment [Sec. 2(5)].

PROVISIONS APPLICABLE TO SHOPS (Sections 7-11)

Opening and Closing Hours of Shops : No shop shall on any day be opened earlier or closed later than such hours as fixed by the State Government. Any customer who was being served or was waiting to be served in any shop at the hour fixed for its closing may be served during the quarter of an hour immediately following such an hour. No person shall carry on, in or adjacent to a street or public place, the sale of any goods after the hour fixed for closing of shops dealing in the same class of goods except newspapers in that locality. *i.e.*, selling outside the shop is prohibited after closing hour.

Daily and Weekly Hours of Work in Shops : No person employed in any shop shall be required or allowed to work therein for more than eight hours in any day and 48 hours in any week. If any such persons work for any period in excess of the time limit fixed, he is entitled to overtime wages. However, the period of work including overtime work, shall not exceed 10 hours in any day and in the aggregate 50 hours in any week. Further, he should be given an interval for rest of at least one hour after four hours of work in any day. The spread-over of work periods of such a person is not to exceed more than 12 hours in any including the intervals for rest.

Closing of Shops and Grant of (Weekly and Additional) Holidays : Every shop is to remain entirely closed on one day of the week. The shopkeeper has to specify that day in a notice exhibited in a conspicuous place in the shop and the day so specified is not to be altered by the shopkeeper more than once in three months. Every person employed in a shop is to be allowed in each week a holiday of one whole day. This provision is not applicable to any person whose period of

employment, in the week including any days spent on authorised leave, is less than six days or a person who has been allowed a whole holiday on the day on which the shop has remained closed.

Besides one whole day, the State Government may by notification require shops to be closed at such hour in the afternoon of one weekday in every week. Every person employed in any such notified shops(s) is to be allowed in each week an additional holiday of one-half day. The State Government may, for this purpose fix different hours for different shops or different classes of shops or for different areas or for different times of the year. There should be no deduction of wages of any person employed in a shop on account of weekly holiday (one whole day) and additional holiday (one-half day).

PROVISIONS APPLICABLE TO ESTABLISHMENTS OTHER THAN SHOPS (Sections 12-16)

Besides the above provision in Sections 7 to 11 the following provisions are also applicable.

Employment of Children and Young Persons : They are allowed to work only between 6 a.m. and 7 p.m. Young persons are not allowed to work for more than 7 hours in any day and 40 hours in any week. They are also not allowed to work overtime (Sections 17-19).

Cleanliness, Ventilation, Light and Precautions Against Fire : The premises of every establishment should be kept clean by lime washing, colour washing, painting, varnishing, disinfecting and deodorizing. Proper ventilation and sufficient lighting should also be provided in accordance with such standards and by such methods prescribed by the Inspector. Precautions against fire should be provided as prescribed (Sections 20-24).

Annual Holidays With Wages (Sections 25-28)

Every person employed in any establishment after 12 months of continuous service, is entitled to annual holidays with wages for a period of 12 days, in the subsequent period of 12 months, such holidays with wages may be accumulated upto a maximum period of 24 days. Further, he is entitled to (i) 12 days leave with wages on the ground of sickness incurred or accident sustained by him and (ii) 12 days casual leave with wages on any reasonable ground.

If a person entitled to any holidays as above is discharged by his employer before he has been allowed the holidays or he quits his employment (after having applied for he has been refused the holidays), the employer shall pay him the amount payable in respect of such holidays. Similarly, if a person entitled to sick leave is discharged by his employer when he is sick or suffering from the result of an accident, the employer should pay him the amount payable in respect of such period of leave.

While calculating a period of 12 months continuous service the following interruptions in service need not be considered.

- (i) on account of sickness, accident or authorised leave (including authorised holidays) not exceeding 90 days in the aggregate for all three, or
- (ii) by a lock-out, or
- (iii) by a strike which is not an illegal strike, or
- (iv) by intermittent period of involuntary unemployment not exceeding thirty days in aggregate.

The term '*authorised leave*' shall not include any weekly holidays or half-holiday allowed under this Act. The wages for such holidays with wages is payable at a rate equivalent to the daily average of his wages earned during the preceding three months exclusive of any earning in respect of overtime.

Provisions Relating to Wages (Sections 29-41)

Every employer is responsible :

- (i) for the *payment of wages* to persons employed by him;
- (ii) to *fix wage period*; no wage period shall exceed one month;
- (iii) to *pay overtime payments* in respect of overtime work at a rate twice the ordinary rate of wages;
- (iv) to *pay wages before the expiry of the seventh day* after the last day of the wage-period.
- (v) where the *employment of a person is terminated* by or on behalf of the employer, wages earned by such persons should be paid *before the expiry of the second working day* from the day on which his employment is terminated;
- (vi) to *pay wages on a working day*;
- (vii) to pay all *wages in current coins or current notes or both*;
- (viii) to *pay the wages without deduction of any kind* except those authorised by or under this Act.

Authorised Deductions

Authorised deductions are deduction for:

- (a) fines,
- (b) absence from duty,
- (c) damage or loss of goods/money directly attributable to his neglect or default,
- (d) house accommodation supplied by the employer,
- (e) amenities and services supplied by the employer,
- (f) recovery of advances or adjustment of overpayment of wages,
- (g) income tax payable by the employed person,
- (h) by order of court or other competent authority,
- (i) any recognised provident fund or repayment of advances for such provident fund,
- (j) payment to cooperative societies approved or to a scheme of insurance.

Claims Arising Out of Deductions from Wages or Delayed Payment

In case any unauthorised deduction has been made from the wages of an employee, or any payment of wages has been delayed, or any sum is otherwise due from the employer, the employee or any legal practitioner or any authorised agent or any office-bearer of a registered trade union or an Inspecting Officer may make an application to the prescribed authority for a direction. The prescribed authority is required to hear the application and he may direct the refund of the amount deducted or payment of the delayed wages or any other sum to the employee together with the payment of compensation not exceeding ten times the amount of unauthorised deduction from wages, and not exceeding Rs. 10 in other cases. No direction for compensation is, however, to be made

in the case of delayed wages if the authority is satisfied that the delay was due to : (i) a bona fide error or bona fide dispute as to the amount payable to the employee; or (ii) occurrence of an emergency or existence of exceptional circumstances, on account of which, the person responsible for the payment of wages was unable, though exercising reasonable diligence to make prompt payment; or (iii) failure of the employed person to apply for or accept payment. If the authority is satisfied that it was either malicious or vexatious, he may direct that a penalty not exceeding Rs. 25 be paid to the employer or other person responsible for the payment of wages by the person presenting the application. The authority may deal with any numbers of separate pending applications as a single application.

An appeal against the order of the authority or a direction given by him may be preferred to the prescribed appellate authority, whose decision will be final.

The authorities have the power of a civil court under the Code of Civil Procedure for the purpose of taking evidence, enforcing the attendance of witnesses and compelling the production of documents. They are also deemed to be a civil for the purposes of the Code of Criminal Procedure. [Sec. 28].

A legal practitioner may appear plead or act on behalf of any party in proceedings under the Act subject to prescribed conditions. [Sec. 28].

Dismissal, discharge and termination of employment from Service

The services of a person employed continuously for a period of not less than six months shall not be dispensed with by an employer except for a reasonable cause and without giving such person at least one *month notice or wages in lieu* of such notice. However, such a notice is not necessary where the services of such a person are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held for the purpose. The person, however, has a right of appeal to such authority and within such time prescribed. The decision of the appellate authority is final and binding on both the employer and the person employed.

An employee, who has been in continuous employment for a year or more and whose services are dispensed with otherwise than on a charge of misconduct, is also to be paid compensation equivalent to 15 days' average wages for every completed year of service and any of its part in excess of 6 months before his discharge, in addition to the notice or pay in lieu of the notice.

An employee aggrieved by his dismissal, discharge or termination of service may make a written complaint to the prescribed authority within 90 days of the receipt of the order. The authority may condone the delay in filing the complaint if it is satisfied that there was sufficient cause for not making the application within the prescribed time. On the receipt of the complaint, the authority is required to serve a notice on the employer, record briefly the evidence furnished by the parties, hear them and after making necessary enquiry, pass his orders. The authority is empowered to give relief to the employee by way of reinstatement or money compensation or both. The order of the authority is final and binding on the employer and employee [Sec.26].

Inspecting Officers

The state government is empowered to appoint a Chief Inspecting Officer and Inspecting Officers for the purposes of the Act. The Chief Inspecting Officer, in addition to exercising the powers prescribed for him, is to exercise the powers of an Inspecting Officer throughout the state. The District Magistrate and Subdivisional Magistrate are also Inspecting Officers within the limits

of their respective jurisdictions. The state government may also appoint other public servants as Additional Inspecting Officers.

Subject to the Rules made by the state government, an Inspecting Officer is empowered to:

1. enter, during prescribed hours and with necessary assistance, an establishment
2. inspect, take extracts from any prescribed registers, records and notices required to be maintained under the Act or the Rules and seize them if he considers relevant in respect of an offence which he thinks to have been committed;
3. take the statement of any person which he considers necessary for carrying out the purposes of the Act; but no person is to be compelled to answer any question or give any evidence tending to incriminate himself; and
4. exercise other prescribed powers.

The Inspecting Officer has the same powers as vested in a civil court regarding summoning, and enforcing the attendance of, witnesses and compelling the production of documents for the purposes of an inquiry under the Act. He is also a public servant within the meaning of the Indian Penal Code. Sec 30-31].

Penalties and Cognizance of Offences

1. An employer who contravenes any provisions of the Act or any rule or order made under it, if no other penalty is provided for the offence, is punishable with fine which may extend to Rs. 250 for the first offence and to Rs. 500 for every subsequent offence after the first conviction [Sec. 34].

2. Any person, who voluntarily obstructs an Inspecting Officer in exercise of the powers conferred on him or any person lawfully assisting him or who fails to comply with any lawful direction made by the Inspecting Officer is punishable with imprisonment which may extend to 6 months or with fine which may extend to Rs. 250 or with both [Sec. 32].

3. The person, who gives a malicious or vexatious application to the prescribed authority relating to deduction from wages or delayed payment, may be directed to pay penalty not exceeding Rs. 25 to the employer or other person responsible for the payment of wages [Sec. 28(30)]

If the person contravening the provision of the Act or a rule or order made under it is a company or partnership firm, every director, partner, manager or secretary is to be deemed to be guilty of the contravention, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention [Sec. 35].

No court is to take cognizance of an offence punishable under the Act, rule or order except on a written complaint made by Inspecting Officer or any person authorised by the state government within months of the date on which the offence is alleged to have been committed. In certain cases such as annual leave with wages [Sec 16], other kinds of leave [Sec. 16A], notice of dismissal or discharge [Sec. 26] and claims arising out of deductions from wages or delay in payment [Sec. 28], the court may take cognizance of the offence even after 6 months if it is satisfied that the complainant was prevented by sufficient cause from filing the complaint within this period. No court inferior to that of a magistrate of the first class is authorised to take cognizance or try an offence punishable under the Act [Sec.36].

No suit, prosecution or other legal proceeding is to lie against any person for anything done in good faith. [Sec.37].

Other Provisions**Maintenance of Registers and Display of Notices, and others**

Employers of industrial establishments are required to maintain prescribed records and registers and display notices in the prescribed manner. They are also required to produce them for inspection of Inspecting Officer when demanded [Sec. 33].

Obligations of Employers

Important obligations of employers under this Act are :

1. Get their establishment registered with the Chief Inspector or the Area Inspector, and intimate to him any changes in the particulars supplied to him, or if the establishment is closed.
2. Observe the opening and closing hours, the closed day, and religious and national holidays notified by the Government.
3. Comply with the provisions regarding daily and weekly working hours, rest intervals, weekly rest, employment of children, young persons and women, leave with wages, health and safety, overtime payment, notice for termination of service, and issue of appointment letters to employees.
4. Comply with the provisions of the Payment of Wages Act, 1936, Workmen's Compensation Act, 1923, and Maternity Benefit Act, 1961 as made applicable by this Act to persons employed in establishments.
5. Maintain all registers and records, and submit such annual and other returns and statements as may be required by the Government, or as provided in the rules framed under this Act.
6. Co-operate with Inspectors in inspecting the premises, and produce all registers, and documents that they might like to inspect to ensure compliance with the provisions of the Act.

Right of Employees

Most of the obligations of the employers are the rights of employees. The latter have the right to claim benefits and privileges regarding hours of working, extra wages for overtime, rest interval, weekly holiday, leave with wages, maternity benefit, protection against excessive fines and deductions as provided under the Payment of Wages Act, compensation for employment injury under the Workmen's Compensation Act, gratuity and provident fund if provided under this Act, letter of appointment, and one month's notice or shorter notice as provided under the Act, for termination of service for reasons other than that of misconduct.

General Remarks

This legislation is meant largely to improve the working and employment conditions of white collar employees working in shops, commercial and other establishments. Although it is a State legislation, it is operated throughout the Country, as practically all States have enacted such a legislation. This legislation is benefiting about 5.5 million persons, of whom about 2.75 are employed in shop. 1.75 million in commercial establishment and nearly one million in hotels, restaurants, theatres, and other places of public entertainment.