



# Monthly Labour Law Update

November 2021



# Disclaimer

- This Presentation is meant for informational purpose only and do not purport to be advice or opinion, legal or otherwise, whatsoever.
- This is not intended to advertise services or solicit work through this monthly update.



# Let's take a tour

Amendments  
& Ordinance

Circulars &  
Notifications

Across the  
Globe

Knowledge  
Corner

Know Your  
Codes

Did you Know

Case Law

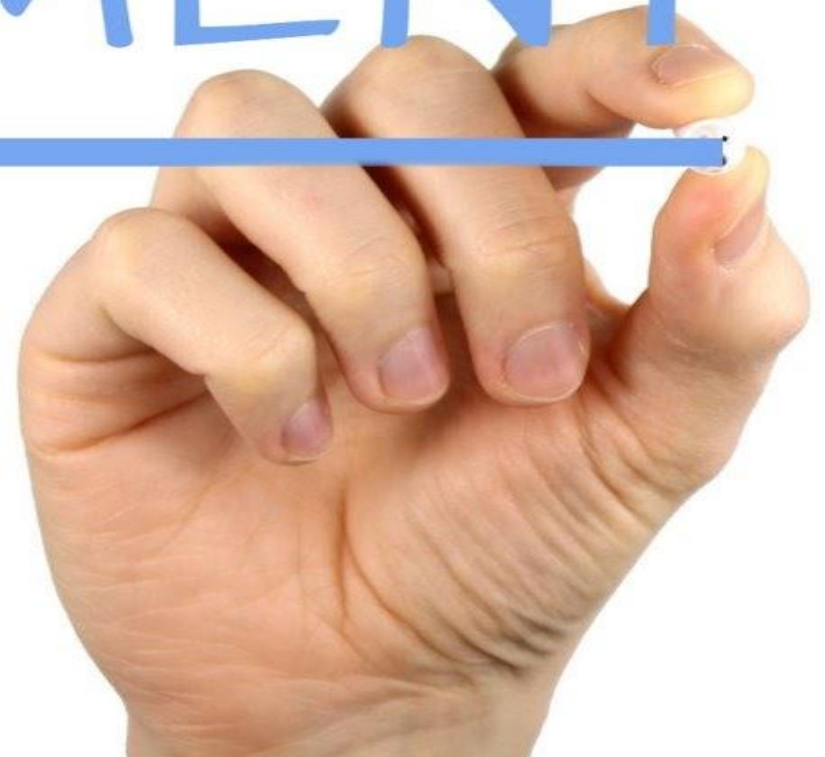
Compliance



AMENDMENT



ORDINANCE





# The Delhi Shops And Establishments (Amendment) Rules, 2021

**Date: 15.11.2021**

**No. 15(52)/Lab/2021/4506**



# The Delhi Shops And Establishments (Amendment) Rules, 2021

The Government of Delhi has notified the following amendment of the Delhi Shops and Establishment Rules:

- Rule 3- **Online Registration** within 90 days from commencement of work
- Rule 4- **Online Registration Certificate** will be available under form 'C' of the Delhi Shops And Establishments Portal and deletion of Schedule I,II and Forms 'H' & 'I';
- Rule 6- Any change in the details shall be notified within 30 days from the date of submission of the form by the occupier;



# Circular & Notification





# **Employees State Insurance Corporation**

**Dated:27.10.2021**

**S.O.4476(E)**





# Employees State Insurance Corporation

- The Central Government has notified the implementation of ESI Act to Ahmednagar, Jalna and Yavatmal districts of the State of Maharashtra.
- Enforcement of these provisions would ensure that the workmen in the factory are insured and covered under the ESI Act;
- Contributions shall be paid within time, failing which the ESIC can recover the same along with damages from the employer.
- The workmen shall be entitled to all benefits under the ESI Act, 1948 including the redressal mechanism applicable for the aggrieved.



# Employees State Insurance Corporation

**Dated:08.11.2021**

**No. T-11/13/56/02/2020**



# Employees State Insurance Corporation

- The ESIC has directed its authorities to strictly comply with the judgement of the Hon'ble Supreme court in SLP No. 811/2021, "ESIC v. M/s. Texmo Industries", whereby it was held that conveyance allowance is same as Travelling allowance and such allowance is to be excluded from the definition of Wages under Section 2(22) of the ESI Act, 1948.
- Therefore, conveyance allowance, if any paid to an employee has to be excluded while computing wages for the purposes of the ESI Act.



# ESI AFTER TEXMO INDUSTRIES JUDGEMENT

Component	Scenario-I (In Rupees)	Scenario-II (In Rupees)
Basic Wages and DA	12,000	12,000
HRA	4,000	6,000
Conveyance	2,000	4,000
Washing	2,000	2,000
Total Gross (Before judgement)	18,000	24,000
Total Gross (After Judgement)	16,000 (COVERED)	18,000 (COVERED)



# Employees State Insurance Corporation

**Dated:16.11.2021**

**No.P-11/12/Misc./1/2019**



## Employees State Insurance Corporation

- The ESIC has extended the deadline for filing returns and depositing ESI contribution due to the system breakdowns faced in the past month by the ESIC.
- Accordingly, ESI contribution for the month of October can be remitted before 30.11.2021 instead of 15.11.2021.
- Return of Contribution for the periods April to September 2021 can be filed by 15.12.2021 instead of 11.11.2021 .



# Haryana State Employment of Local Candidates Act, 2020

**Dated:06.11.2021**  
**Lab no.25476/2021**



# Haryana State Employment of Local Candidates Act, 2020-

- Haryana State Employment of Local Candidates Act, 2020 was enacted to provide seventy-five percent employment for local candidates by employers in the State of Haryana;
- The Government has now notified that, every employer is to register such employees receiving gross monthly salary or wages less than **Rs.30,000/-** from 15.01.2022
- Employer not permitted to engage or employ any person till the completion of the registration.





QUIZ!



# QUIZ!

**Q. What is the limitation period for filing of a claim by an employee under the Code on Wages, 2019?**

- (a) 90 Days
- (b) 6 Months
- (c) 1 Year
- (d) 3 Years



ACROSS THE GLOBE



ACROSS THE GLOBE

- **Law on Regulation of Labour Relations** – A new Federal Decree issued in UAE.
- Fresh Employment Contracts to be drafted by February 1, 2023.
- Employment Contracts to be time-barred (shall be for a fixed period of time; no unlimited contracts).
- Mourning leave- 5 days in event of death of Husband or Wife; 3 days for other close relatives.



## ACROSS THE GLOBE

- Parental leave- 5 days in event of birth of child (can be availed within 6 months from birth)
- Study leave of 10 days in case of exams- should have worked for 2 years with the employer to avail
- Principle of equal opportunities, equal access to jobs and also prohibits all forms of discrimination, bullying, violence, harassment, coercion, and threats in the work environment.



ACROSS THE GLOBE

- Equal pay for equal work for men and women apart from provisions prohibiting discrimination based on race, colour, sex, religion, national origin or social origin;
- Enables employers to engage part-time, temporary and flexible work force to enhance efficiency and reduce production costs;





# Engagement of Adolescents and Children in India





# Legislations regulating Child and Adolescent labour in India

- **The Child Labour (Prohibition and Regulation) Act, 1986-** Absolute prohibition of children in all occupation- penalties under the Act.
- **The Factories Act, 1948-** Prohibition on employing Children below 14 years in factories and regulates working conditions of Adolescents.
- **The Mines Act, 1952-** prohibits the employment of children below the age of 18 years in excavations where the purpose of work is searching and obtaining minerals;
- **The Juvenile Justice (Care and Protection) of Children Act, 2000-** Prohibits employment of juvenile/child for begging and this act provides punishment to those who act in contravention to it with imprisonment and fine.
- **The Children ( Pledging of Labour ) Act, 1933-** Imposes penalty for those who makes agreement to pledge the labour of the children.



CHILD



Aged below 14 years

Defined u/s.2(ii) of Child Labour (Prohibition and Regulation) Act, 1986

Absolute ban on employment of Children- Article 24

ADOLESCENT



Aged more than 14 but below 18 years

Defined u/s.2(b) of Factories Act, 1948

Can be employed with partial restrictions



# CHILD

- Child Labour is work performed by a child that is likely to interfere with his or her right to education or to be harmful to their health or physical, mental or social development.
- Employment of child below the age of 14 years is strictly prohibited in India [under the Constitution of India, Right to Education Act and the Child Labour (Prohibition and Regulation) Act] unless it is a family enterprise.
- Section 10 of the Child Labour (Prohibition and Regulation) Act requires the officer in charge to seek advice from the prescribed Medical Authority in cases where the Child's age is disputed.
- Article 21(a) states Right to Education is compulsory until the child is 14 years old.



# ADOLESCENT

Section 7 of the Child Labour (Prohibition and Regulation) Act, 1986 states that:

- If an Adolescent or Child is employed to work, they are allowed to work only for 6 hours a day which includes at least one hour of Interval after 3 hours of work.
- No Adolescent or Child should be required or permitted to work after 7pm & before 8 am.
- No Adolescent or Child should be required or permitted to work overtime.
- No Adolescent or Child is permitted to be employed in another establishment if he or she is already been employed in an establishment.



# Employment under Factories Act, 1948

- Section 67 of the Act prohibits employment of young children who is under 14 years of age in any factory.
- Section 68 states that Adolescent shall not be allowed to work in any factory unless he obtains a certificate of fitness and carries a token while at work which gives a reference to fitness certificate.
- Section 70 states that adolescents below the age of 17, who carry the token referring to fitness certificate should not be permitted or required to work after 7 PM and before 6 AM.
- Section 71 permits adolescents to work only for four and a half hours in a day.
- Section 73 makes it compulsory for the employer to maintain register of all adolescent workers.



# HAZARDOUS PROCESS

- Section 67 of the Factories Act, 1948 prohibits employment of young children below the age of 14 years in any factory.
- Defined under section 2(cb) of the Factories Act, 1948:
  - Any process or activity in relation to the raw materials or intermediate or finished goods or by products, waste or effluents which*
    - (a) Cause material impairment to the health of the persons engaged.*
    - (b) Result in the pollution of the general environment.*



# PENALTY

CHILD LABOUR ( PROHIBITION AND REGULATION ACT )	OFFENCES	PENALTIES
SECTION 14	<p>(1)Employs any child or permits any child to work in contravention of the provisions of sec.3 (Prohibition of employment of children in certain occupations).</p> <p>(2) Continue to commit the same offence afterwards.</p> <p>Fails to comply with the provisions of the Act</p>	<p>Imprisonment not less than 3 months to 1 year or fine minimum of 10,000 which may extend up to 20,000 or both.</p> <p>Imprisonment -6 months to 2 years.</p> <p>Imprisonment up to 1 month or fine up to 10,000 or both.</p>
SECTION 15	<p>Any person who is found guilty under Sec.67 (Prohibition of employment of young children )of the Factories Act, Sec.40 ( employment below 18 years) of the Mines Act, Sec.109 ( Prohibition of employment of persons below 16 years)of the Merchant Shipping Act, Sec.21 (Prohibition of employment of children)of the Motor Transport Workers Act.</p>	<p>Shall be liable to penalties under Sub Sec (1) &amp; (2) of sec.14 of the act</p>



THE MINES ACT,1952	OFFENCES	PENALTIES
SECTION 68	Penalty for employment of persons below eighteen years of age	Employment of person in contravention of section 40 (Employment of person below 18 years) , the manager or agent or supervisor of such mine shall be punishable with fine up to five hundred rupees.
THE FACTORIES ACT, 1948	OFFENCES	PENALTIES
SECTION 99	Penalty for permitting double employment of child	Fine up to thousand rupees.





THE CHILDREN ( PLEDGING OF LABOUR ) ACT, 1933	OFFENCES	PENALTY
SECTION 4	Parents or Guardian making agreement to pledge the labour of a child	Fine up to fifty rupees.
SECTION 5	Making with a parent or guardian an agreement to pledge the labour of the child	Fine up to two hundred rupees.
SECTION 6	Employing a child whose labour has been pledged	Fine up to two hundred rupees.



JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015	OFFENCES	PENALTY
SECTION 79	Exploitation of Child employee (whoever ostensibly procures a juvenile or the child in any employment for his own purposes )	Imprisonment up to 5 years and fine up to 1 lakh



# **CASE STUDIES ON ENGAGEMENT OF ADOLESCENTS AND CHILDREN IN INDIA**



# M.C. Mehta Vs. State of Tamil Nadu

AIR 1997 SC 699

It was held that employers illegally employing children must pay Rs. 20,000 into the “Child Labour Rehabilitation-cum-Welfare Fund” to be used only for the benefit of that child.

The court also ordered the government to either

- (a) provide employment for an adult member of every family with a child who is employed in a factory or mine or other hazardous work or, if not possible to provide an adult family member with a job.
- (b) contribute Rs. 5,000 to the Child Labour Rehabilitation-cum-Welfare Fund for each child employed in a factory or mine or other hazardous employment. Adults who are offered jobs in this way would also have a duty to ensure that their children entered full-time education and did not continue to work.



# Peoples Union for Democratic Rights v. Union of India(“Asian Workers Case” )

1983 AIR 1473

The Supreme Court held that the construction activity is plainly a dangerous work and it is definitely important that the employment of all young person below the age of 18 years shall be restricted in every kind of construction task.



# State Of Gujarat. vs Bhupendrakumar Jagjivandas

2001 II LLJ 1517 GUJ

- The Gujarat High Court held that the sentence imposed by the Trial Court shall stand modified as it is ordered that the accused shall pay a fine of Rs. 10,000/- for violation of provisions of Section 67 of the Factories Act, 1948.
- In default thereof, the accused shall undergo simple imprisonment of three months. It is clarified that the amount of fine that may have already been paid shall be deducted and only the balance amount shall be payable by the accused.



**KNOW YOUR CODES**



**KNOW YOUR  
CODES**

The Code on Social Security, 2020 provides for voluntary coverage of establishments under the provisions of Employees Provident Fund (EPF) and Employees State Insurance (ESI).

The code also enables such establishments to opt out of voluntary coverage at any time with the consent of the employees and authorities.



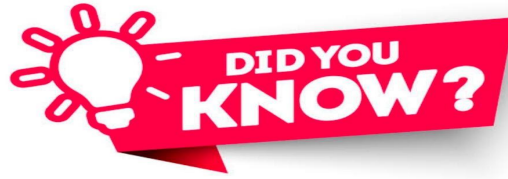


## KNOW YOUR CODES

### What is Floor Wage under the Code on Wages 2019?

The code empowers the Central Government to fix a floor wage after taking into account minimum living standards of workers. This can differ for each state. The state government under no circumstance can fix a minimum wage rate which is lower than the floor wage fixed by the Central Government.





- Despite the COVID-19 Pandemic, the hiring activity in India is on a rise with the year-on-year growth of 89% in August with the Country's premier index trending at 2,673 as compared to last year;





**Ravindranatha Bajpe**  
**Vs.**  
**Mangalore Special Economic Zone Ltd & Ors**

**(Criminal Appeal No. 1047-1058/2021)**

**Supreme Court**

**2021 SCC OnLine SC 806**



# Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd & 12 Ors

## Directors Liability

- The Appellant owned an immovable property which was surrounded by stone wall boundary. The immovable property was situated next to Mangalore Bajpe Old Airport road and the respondent is a corporate entity and other 12 respondents are employed in the entity.
- The Petitioner's case was that the Respondents conspired to lay a pipeline beneath the petitioner's property without any lawful authority and demolished the stone wall using heavy machineries.
- It was contented that the respondents' intention is to lay water by the side of Mangalore Bajpe Old Airport and also contends that necessary permissions were obtained from the Public Works Department, Mangalore.





# Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd & Ors

- The Managing Director, Company Secretary and the directors were impleaded as Respondents 1 to 8 and were subjected to prosecution.
- The Supreme Court held that the individual role played by the officials in their respective capacities is *sin quo non* for initiating criminal proceedings against them and they cannot be held vicariously liable.
- In view of the above reason, the court dismissed the appeal. The learned magistrate was directed to proceed with the complaint against original accused no. 9 to 13 on its own merits, in accordance with the law.



**Urban Co-Operative Bank Ltd.,  
Vs.  
Employees Provident Fund Organisation and  
Anr.  
2021 LLR 1023  
Orissa High Court**

**Dated: 26.10.2021**





## Urban Co-Operative Bank Ltd., Vs. EPFO

- The EPFO passed an order calling for depositing of EPF contribution with regard to Daily Deposit Collection Agents by considering them as 'Employees' for the purposes of the EPF Act.
- The order lacked actual identification of beneficiaries to whom the contribution shall be made;
- The Management challenged the order u/s.7B which was rejected subsequently;
- The same was challenged by a Writ Petition, whereby the matter was remanded back to the authority for fresh consideration on condition to deposit 25% of the assessed amount in Fixed Deposit;



## Urban Co-Operative Bank Ltd., Vs. EPFO

- The same was challenged in a Writ Appeal where it was concluded that the Act does not provide for such deposits and imposing condition to deposit a certain percentage is not proper;
- The Division Bench categorically observed that determination of the EFP contributions without identification of the actual beneficiaries i.e., persons with their names, period of engagement and wages they have drawn is not justified and sustainable.



**COMPLIANCE**



**REPORTING PERIOD -NOVEMBER -2021**

<b>Act</b>	<b>State</b>	<b>Due Date</b>	<b>Activity</b>
<b>Employees Provident Fund &amp; Miscellaneous Provisions Act</b>	Pan India	15-Dec	PF Remittance
<b>Employees Provident Fund &amp; Miscellaneous Provisions Act</b>	Pan India	15-Dec	IW Returns
<b>Employees Provident Fund &amp; Miscellaneous Provisions Act</b>	Pan India	25-Dec	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF))
<b>Employees State Insurance Corporation Act</b>	Pan India	15-Dec	ESIC Remittance
<b>Professional Tax Act</b>	Andhra Pradesh	10-Dec	Professional Tax Remittance cum Return
	Telangana	10-Dec	Professional Tax Remittance cum Return
	Madhya Pradesh	10-Dec	Professional Tax Remittance
	Gujarat	15-Dec	Professional Tax Remittance
	Karnataka	20-Dec	Professional Tax Remittance cum Return



	West Bengal	21-Dec	Professional Tax Remittance
	Maharashtra	31-Dec	Professional Tax Remittance cum Return
	Odisha	31-Dec	Professional Tax Remittance cum Return
	Assam	31-Dec	Professional Tax Remittance cum Return
	Nagaland	31-Dec	Professional Tax Remittance
	Meghalaya	31-Dec	Professional Tax Remittance
	Mizoram	31-Dec	Professional Tax Remittance
	Sikkim	31-Dec	Professional Tax Remittance
	Manipur	31-Dec	Professional Tax Remittance
	Tripura	31-Dec	Professional Tax Remittance
<b>Kerala Shops &amp; Commercialized Establishments Workers Welfare Fund Act</b>	Kerala	05-Dec	WWF Remittance
<b>Kerala Shops &amp; Commercialized Establishments Workers Welfare Fund Act</b>	Kerala	15-Dec	WWF Return



QUIZ!



# QUIZ!

**Q. What is the limitation period for filing of a claim by an employee under the Code on Wages, 2019?**

- (a) 90 Days
- (b) 6 Months
- (c) 1 Years
  
- (d) 3 Years**



**Let's Connect again at 4PM  
on  
25<sup>th</sup> December, 2021**



*Thank  
you*

T.S.GOPALAN & CO

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