

## **A broad overview of the applicable legislative provisions relating to health, safety and welfare.**

The purpose of this presentation is to give a very broad view of the applicable legislative provisions relating to health, safety and welfare. I will later briefly give my observations thereon.

### **The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996**

*{An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measure and for other matter connected therewith or incidental thereto.}*

**Section 1.** Short title extent commencement and application.

...

(4) It applies to every establishment which employs, or had employed on any day of the preceding twelve months, **ten or more building workers in any building or other construction work.**

*Explanation.-* For the purposes of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

### **Section 2**

(b) "beneficiary" means a building worker **registered under section 12;**

(d) "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads,

railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification **but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply;**

(e) **“establishment”**- means any establishment belonging to, or under the control of, Government, anybody corporate or firm, an individual or association or other body of individuals which or **who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs;**

**Section. 7- Registration of establishments.-** (1) Every employer shall,-

(a) in relation to an establishment to which this Act applies on its commencement, within a period of sixty days from such commencement; and

(b) in relation to any other establishment to which this Act may be applicable at any time after such commencement, within a period of sixty days from the date on which this Act becomes applicable to such establishment, **make an application to the registering officer for the registration of such establishment:**

Provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2) Every application under sub-section (1) shall be in such form and shall contain such particular and shall be accompanied by such fees as may be prescribed.

(3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.

(4) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

**Section 12.** Registration of building workers as beneficiaries.

Registration of building workers as beneficiaries. (1) Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Act:

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final:

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed.

**Section 13** deals with the issue of identity cards to building workers.

**Section 44- Responsibility of employers.-** An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Act relating to safety and for taking all practical steps necessary to prevent accidents.

### **Hours Of Work, Welfare Measures And Other Conditions Of Service Of Building Workers**

**Section 28. - Fixing hours for normal working day, etc.-** (1) The appropriate Government may, by rules.-

(a) fix the number of hours of work which shall constitute normal working day for a building worker, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;

(c) provide for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29.

(2) The provisions of sub-section (1) shall, in relation to the following classes of building workers, apply only to such extent, and subject to such conditions, as may be prescribed, namely:-

(a) persons engaged on **urgent work, or in any emergency which could not have been foreseen or prevented;**

(b) persons engaged in a work in the nature of preparatory or complementary work **which must necessarily be carried on outside the normal hours of work** laid down in the rules;

(c) persons engaged in any **work which for technical reasons has to be completed before the day is over:**

(d) persons engaged in a **work which could not be carried on except at times dependant on the irregular action of natural forces.**

**Section 31- Prohibition of employment of certain persons in certain building or other construction work.**- No person about whom the employer knows or has reason to believe that he is a **deaf or he has a defective vision or he has a tendency to giddiness** shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

**Section 32- Drinking water.** (1) The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed there in, a **sufficient supply of wholesome drinking water.**

(2) All Such points shall be legible marked "Drinking Water" in a language understood by a majority of the person employed in such place and no such point shall be situated within six meters of any washing place, Urinal or latrine.

**Section 33 - Latrines and urinals.**- In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Provided that it shall not be necessary to provide separate urinals in my place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.

**Section 34- Accommodation.**- (1) The employer shall provide, free of charges and within the work site or as near to it as may be possible temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

(2) The temporary accommodation provided under sub-section (1) shall have separate cooking place bathing, washing and lavatory facilities

(3) As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of the temporary structures erected by him for the purpose of providing living accommodation cooking place or other facilities to the building workers as required under sub-section (1), and restore the ground in good level and clean condition.

(4) In case an employer is given, any land by a Municipal Board or, by other local authority for the purposes of providing temporary, accommodation for the building workers under this section, he shall as soon as may be, after the construction work is over, return the possession of such land in the same condition in which he received the same.

**Section 35- Creches-** (1) In every place where in more than fifty female building workers are ordinarily employed, there shall be provided and maintained, a suitable room or rooms for the use of children under the age of six years of such female workers.

(2) Such rooms shall-

(a) provide adequate accommodation:

(b) be adequately lighted and ventilated;

(c) be maintained in a clean and sanitary condition;

(d) be under the charge of women trained in the care of children and infants.

**Section 36- First-aid.-** Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

**Section 37- Canteens, etc.-** The appropriate Government may, by rules require the employer-

(a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed, a canteen for the use of the workers;

(b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

## **Factories Act, 1948**

### **Section 2**

(m) "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon **twenty or more workers** are working, or were working on any day of the preceding twelve months, and **in any part of which a manufacturing process is being carried on without the aid of power**, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Explanation I--For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;

Explanation II--For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;

(n) **"occupier"** of a factory means **the person who has ultimate control** over the affairs of the factory.

Provided that-

(i) in the case of a firm or other association of individuals, **any one of the individual partners** or members thereof shall be deemed to be the occupier;

(ii) in the case of a company, **any one of the directors** shall be deemed to be the occupier;

(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, **the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority**, as the case may be, shall be deemed to be the occupier:

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire.....



(k) "manufacturing process" means any process for-

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, 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
- (ii) pumping oil, water, sewage or any other substance; or
- (iii) generating, transforming or transmitting power; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage;

**Section 7A. General duties of the occupier.** (1) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

(2) Without prejudice to the generality of the provisions of subsection (1), the matters to which such duty extends, shall include-

- (a) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- (b) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
- (d) the maintenance of all places of work in the factory in a condition that is safe without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;

(e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

(3) Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

**Chapter IV is exclusively on safety and Chapter IVA is on hazardous processes.** They prescribe how machinery is to be fenced, work on or near machinery in motion, employment of young persons, women and children on dangerous machines or near certain operations, how explosive or inflammable materials are to be handled, maintenance of buildings.

**Chapter V is on welfare.** Some of the matters are along the lines prescribed under other Acts.

## **The Inter-state Migrant Workmen (regulation Of Employment And Conditions Of Service) Act, 1979**

**16. Other facilities.**—It shall be the duty of every contractor employing inter-State migrant workmen in connection with the work of an establishment to which this Act applies,—

- (a) to ensure regular payment of wages to such workmen;
- (b) to ensure equal pay for equal work irrespective of sex;
- (c) to ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State;
- (d) to provide and maintain suitable residential accommodation to such workmen during the period of their employment;
- (e) to provide the prescribed medical facilities to the workmen, free of charge;
- (f) to provide such protective clothing to the workmen as may be prescribed; and
- (g) in case of fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the States and also the next of kin of the workman.

## **EMPLOYEE'S COMPENSATION ACT, 1923.**

- (e) “employer” includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of an *employee* are temporarily lent or let on hire to another person by the person with whom the *employee* has entered into a contract of service or apprenticeship, means such other person while the *employee* is working for him;

### **Employer's liability for compensation.**

3. (1) If personal injury is caused to an *employee* by accident arising out of and in

the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

**Provided** that the employer shall not be so liable—

- (a) in respect of any injury which does not result in the total or partial disablement of the *employee* for a period exceeding three days;
- (b) in respect of any injury, **not resulting in death or permanent total disablement**, caused by an accident which is directly attributable to—
  - (i) the *employee* having been at the time thereof under the influence of drink or drugs, or
  - (ii) **the wilful disobedience of the *employee* to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of *employees*, or**
  - (iii) **the wilful removal or disregard by the *employee* of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of *employees*,**

(2) If an *employee* employed in any employment specified in Part A of Schedule III **contracts any disease specified therein as an occupational disease peculiar to that employment**, or if an *employee*, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if an *employee* whilst in the service of one or more employers in any employment specified in Part C of Schedule III, for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, **the contracting of the disease shall be deemed to be an injury by accident** within the meaning of this section and, **unless the contrary is proved**, the accident shall be deemed to have arisen out of, and in the course of,

the employment:

Provided that if it is proved,—

(a) that an *employee* whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment, and

(b) that the disease has arisen out of and in the course of the employment;

the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section :

**Provided further** that if it is proved that an *employee* who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If an *employee* employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and **such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion** as the Commissioner may, in the circumstances, deem just.

(3) .....