

### 3.4 PAYMENT OF WAGES ACT, 1936

#### Extent of the Act

The Act extends to the whole of India [Sec. 1 (2)]. It was extended to Jammu and Kashmir by the Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970.

#### Application of the Act

- The Act applies to the payment of wages to persons employed in any factory, to persons employed (otherwise than in a factory) upon any railway by a railway administration and to an industrial or other establishment specified in Clauses (a) to (g) of Sec. 2 (ii) (which defines industrial or other establishment).
- The persons employed upon a railway by a railway administration may have been employed either directly or through a sub-contractor by a person fulfilling a contract with a railway administration [Sec. 1 (4)].
- The State Government may after giving 3 months' notice extend the provisions of the Act to the payment of wages to any class of persons employed in any industrial establishment or class of establishments specified by the Central Government or a State Government under Clause (h) of Sec. 2 (ii) [Sec. 1 (5)].
- In case of industrial establishments owned by the Central government, such notification can be issued with the concurrence of the Central Government [Proviso to Sec. 1 (5)].

In various States the Act has been extended to shops and establishments also.

The Act does not apply to persons whose wages exceed Rs. 6,500 per month [Sec. 1 (6)]. This limit was raised from Rs. 1,600 to Rs. 6,500 by the Payment of Wages (Amendment) Act, 2005.

**Reference to Sections in this Chapter.** Reference to Sections in this Chapter, unless otherwise indicated, is to the Payment of Wages Act, 1936.

**Industrial or other establishment** [Sec. 2 (ii)]. It means any—

- (a) Tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;
  - (aa) air transport service other than such service belonging to or exclusively employed in the military, naval or air force of the Union or the Civil Aviation Department of the Government of India;
- (b) dock, wharf or jetty;
- (c) inland vessel, mechanically propelled;
- (d) mine, quarry or oilfield;
- (e) plantation;
- (f) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale;
- (g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or supply of water or relating to the transmission or distribution of electricity or any other form of power is being carried on;

**Wages** [Sec. 2 (vi)].

“Wages” means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. Simply stated, ‘wages’ means all remuneration due to any

worker or employee if the terms of contract of employment are fulfilled.

**The definition of expression ‘wages’ is made sufficiently wide by including within the expression:**

- (a) any remuneration payable under any award or settlement between the parties or order of a Court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force.

**The expression ‘wages’ does not include:**

- (1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
- (2) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;
- (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession;
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; and
- (6) any gratuity payable on the termination of employment in cases other than those specified in Clause (d) above.

**The definition of the expression ‘wages’ comprises 3 parts:**

**The first part** declares that ‘wages’ means all remunerations which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed, in respect of his employment. This clause presents no difficulty whatsoever for it declares in an unambiguous language that an employee is entitled to receive wages in accordance with the terms of his contract.

**The second part** says that the expression ‘wages’ shall include any bonus or other remuneration of the nature aforesaid which would be so payable, i.e., payable in accordance with the terms of the contract.

**The third part** declares that the expression ‘wages’ shall include ‘any sum’ payable to such person by reason of the termination of his employment. The language of this clause is wide enough to embrace not only a sum payable to an employee under the terms of a contract but also a sum payable to him under the provisions of any law.

**Fixation of wage-periods (Sec. 4)**

Every person responsible for the payment of wages under Sec. 3 shall fix periods, known as wage-periods, in respect of which such wages shall be payable [Sec. 4 (1)]. A wage-period shall not exceed one month [Sec. 4 (2)].

**Time of payments of wages (Sec. 5)**

The rules relating to time of payment of wages are as follows:

**Wages to be paid before 7<sup>th</sup> or 10<sup>th</sup> day.**

- The wages of every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than 1,000 persons are employed, shall be paid before the expiry of 7<sup>th</sup> day of the following wage-period.
- In case the number of workers exceeds 1,000, the wages shall be paid before the expiry of the 10<sup>th</sup> day of the following wage-period [Sec. 5 (1)].
- In the case of persons employed on a clock, wharf or jetty or in a mine, the balance of wages due on completion of the final tonnage account of the ship or wagons loaded or unloaded, as the case may be, shall be paid before the expiry of the 7<sup>th</sup> day from the day of such completion [Proviso to Sec. 5 (1)].

**Deductions which may be made from wages (Sec. 7)****Kinds of deductions**

1. **Deductions for fines** [Secs. 7 (2) (a) and 8]
2. **Deductions for absence from duty** [Secs. 7 (2) (b) and 9]
3. **Deductions for damage or loss** [Secs. 7 (2) (c), (m), (n) and (o) and 10]
4. **Deductions for services** [Secs. 7 (2) (d), (e) and 11]
5. **Deductions for recovery of advances** [Secs. 7 (2) (f) and 12]
6. **Deductions for recovery of loans** [Secs. 7 (2) (ff) and 12-A]
7. **Deductions for payments to co-operative societies and insurance schemes** [Secs. 7 (2) (i) and (k) and 13]

**Other deductions**

Deductions made, with the written authorization of the employed person, for contribution to the Prime Minister's National Relief Fund or to such other Fund as may be specified by the appropriate Government [Sec. 7 (2) (p)]. [This Clause was added by the Payment of Wages (Amendment) Act, 1976]; and

**Limit on deductions [Sec. 7 (3)]**

- The total amount of deductions which may be made under the above heads [Sec. 7 (2)] in a wage-period from the wages of any employed person shall not exceed 75 per cent of such wages in cases where such deductions are wholly or partly made for payments to co-operative societies under Sec. 7 (2) (i).
- In any other case, they shall not exceed 50 per cent of such wages [Sec. 7 (3)].
- Where the total deductions authorised under Sec. 7 (2) exceed 75 per cent, or as the case may be, 50 per cent of the wages, the excess may be recovered in such manner as may be prescribed [Proviso to Sec. 7 (3)].

**MAINTENANCE OF REGISTERS AND RECORDS**

**Who may file application?** An application for claims arising under the Act may be filed by—

- (a) the person employed himself, or
- (b) any legal practitioner, or
- (c) any official of a registered trade union authorised in writing to act on his behalf, or
- (d) any Inspector under the Act, or
- (e) any other person acting with the permission of the Authority appointed under Sec. 15 (1) [Sec. 15 (2)].

**Application to be filed within 12 months.**

- Every application for claims under the Act shall be presented within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to is made [Proviso 1 to Sec. 15 (2)].
- An application may also be admitted after 12 months if the applicant satisfies the Authority that there was a sufficient cause for not making the application within 12 months [Proviso 2 to Sec. 15 (2)].

**Procedure.**

- When any application for claims under the Act is entertained, the Authority shall hear the applicant and the employer or other persons responsible for the payment of wages under Sec. 3, or give them an opportunity of being heard.
- The Authority shall make such further inquiry as may be necessary. It may direct the refund to be made to the employed person of the amount deducted or the payment of the delayed wages, together with such compensation as it may think fit.
- The compensation shall not exceed 10 times the amount improperly deducted, and not exceeding Rs. 3,000 but not less than Rs. 1,500 in case of delayed wages.
- Even where the deducted or delayed wages are paid before the disposal of the application, the Authority may direct the payment of such compensation as it may think fit.
- This amount of compensation shall however not exceeds Rs. 2,000 [Sec. 15 (3)].

**Appeal (Sec. 17)**

An appeal may be preferred in a Presidency-town before the Court of Small Causes and elsewhere before the District Court against—

- (i) an order dismissing either wholly or in part an application made under Sec. 15 (2), or
- (ii) a direction made under Sec. 15 (3) by the Authority to refund to the employed person the amount deducted from wages or under Sec. 15 (4) by the Authority for payment of penalty to the employer.

The appeal may be preferred within 30 days of the date on which the order or direction was made [Sec. 17 (1)].

The Court may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision [Sec. 17 (4)].