



# LABOUR LAW MONTHLY UPDATE

**FEBRUARY 2024**



## **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  
and  
Ordinance

Quiz

Did  
you  
know

LexPosh

Knowledge  
Corner

Circulars and  
Notifications

Across  
the  
Globe

Case  
Law

Compliance



# RETRENCHMENT COMPENSATION





**For the purposes of retrenchment compensation, salary to be divided by ?**

- a) 26    b) 29    c) 30    d) 31**



**Should Basic wages and Dearness Allowance alone be reckoned for retrenchment compensation or should allowances also be reckoned ???**



# AMENDMENTS AND ORDINANCE



# **The Rights of Persons with Disabilities (Amendment) Rules, 2024**



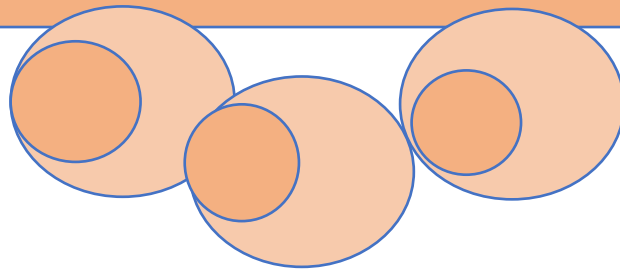
# The Rights of Persons with Disabilities (Amendment) Rules, 2024

- Department of Empowerment of Persons with Disabilities has vide its notification dated 15th February 2024 amended Rule 15 of the Right of Persons with Disabilities Rules, 2017.
- Rule 15 deals with Rules for Accessibility which mandates every establishment to follow the standards relating environment, technology etc.

**"Port Sector"**



# Circulars and Notifications





# **Assam Shops and Establishment Act, 1971**

## **Circular Dated: 07.02.2024**



**How many days of holidays is provided for under Assam Shops and Establishments Act 1971?**



# Suspension of the Operation of Provisions

Sl. No.	Name of the Festivals	Days of week	Availing date of Gregorian Calendar	Total days
1	2	3	4	5
1	New Year Eve	Saturday to Monday	30-12-2023 to 01-01-2024	3 days
2	Magh Bihu	Wednesday to Tuesday	10-01-2024 to 16-01-2024	7 days
3	Me-Dum-Me-Phi	Tuesday to Wednesday	30-01-2024 to 31-01-2024	2 days
4	Bohag Bihu	Thursday to Friday	04-04-2024 to 19-04-2024	16 days
5	Id-UI-Fitre	Wednesday to Thursday	10-04-2024 to 11-04-2024	2 days
6	Id-Uz-Zuha	Saturday to Monday	15-06-2023 to 17-06-2024	3 days
7	Karam Puja	Friday to Saturday	13-09-2024 to 14-09-2024	2 days
8	Durga Puja	Tuesday to Saturday	24-09-2024 to 12-10-2024	19 days
9	Lakshmi Puja	Wednesday to Thursday	16-10-2024 to 17-10-2024	2 days
10	Kali Puja	Friday to Thursday	25-10-2024 to 31-10-2024	7 days
11	Chhat Puja	Wednesday to Thursday	06-11-2024 to 07-11-2024	2 days
12	Christmas day	Saturday to Wednesday	21-12-2024 to 25-12-2024	5 days

Total = 68 days



# Suspension of the Operation of Provisions

- The Labour and Welfare Department of Assam, vide its Gazette notification has directed to suspend the Operation of section 6,9,10 and 11 which deals with weekly hours of work, opening and closing hours of establishment, closing of shops and grant of weekly holidays for religious purpose of the Assam Shop Act, 1971 for a period of 70 days owing to the festivals.
- The shops will remain open for all 70 days. However, if the employees who are asked to work beyond the working hours and employees who work on weekly off days needs to be paid overtime.



# **Uploading of Defaulting Employers Data-ESIC**

## **Circular Dated: 09.02.2024**



# Uploading of Defaulting Employers Data - ESIC

- The Permanent Disability Benefit and Disability benefits were revised from 01.08.22 for accident that happened before 31.12.21.
- Accordingly, benefit should have been revised and arrears also ought to have been paid.
- However, the revised benefit has not been paid to many beneficiaries. The ESIC has directed field offices to ensure the revision is done and benefit is passed on to beneficiaries.



**Issue of E-Pehchaan card Insured persons/  
ESIC employees  
Circular Dated: 05.02.2024**



# Issue of E-Pehchaan card to Insured persons/ ESIC employees

- The Employees' State Insurance Corporation, vide its circular dated 5th February 2024 has directed all its regional offices to issue suitable directions to employers to download e-Pehchaan cards from the ESI portal and hand them over to their respective employees/ Insured Persons immediately after registration under the ESI scheme.
- The e-Pehchaan card must also be given to the existing IPs by the employers.



**Employees State Insurance Corporation –  
Enhancement of Permanent Disability Benefit  
Notification dated: 12.02.2024**



# Enhancement of Permanent Disability Benefit

- The State insurance corporation in its 192nd meeting held on 15.02.2023 approved the enhancement rate of Permanent Disability Benefit with effect from 01.08.2022.
- This benefit can be availed by persons who have suffered disablement or death during the employment on or before 31.12.2021.
- In a recent survey, it has been observed that there are branches which has failed to updated the enhanced amount and is continuing to pay the benefit based on the old rates.
- Offices has been issued notice to ensure that the rates applicable from 01.08.2018 and a certificate issued to the Regional office confirming that there are no records left out without updation.
- If no certificate is received from the offices, it shall be presumed that rates have been updated in respect of all PDB beneficiaries and no further requests will be entertained.



# **EPFO – Restriction to settle EPF Dues in Paytm Bank**



# Restriction to settle EPF payments in Paytm

- The Reserve Bank of India has directed Paytm Payments Bank to stop all forms of banking services including accepting deposits and processing of payments with effect from February 29, 2024. Following this, the Employees' Provident Fund Organisation (EPFO) has put restrictions on deposits and credit transactions of subscribers EPF accounts held in Paytm Payments Bank accounts.
- In the circular dated 8th February 2024, the EPFO advised all its Field Offices to refrain from accepting claims associated with Paytm Bank.



QUIZ!



**Can interest for belated payment of Gratuity exceed the Gratuity payable under the Payment of Gratuity Act 1972 ?**

- **YES**
- **NO**



ACROSS THE GLOBE



# Australia Introduces Workers 'Right to Disconnect' Law

- Australia has introduced a law that will grant employees the right to ignore post-work related calls and emails from their supervisors. It also proposes potential fines for Employers for reaching out to workers after their working hours.
- The 'Right to Disconnect' is part of changes made to the Industrial Relations Laws proposed by the Federal Government of Australia under a parliamentary bill which enables to safeguard workers' rights and promote work-life balance.
- France, Spain, and other European Union nations already have laws granting their employees the Right to turn off their devices.





# Germany increases Compensatory Levy for Non-employment of Severely Disabled Employees

- Companies with more than 20 employees are required to employ severely disabled individuals.
- Under the Act to Promote an Inclusive Job Market, Employers that do not fill any or enough jobs with severely disabled employees despite being obliged to do so must pay a levy.
- The said Act increased the maximum monthly rate from €360 to €720 and applies to jobs that are vacant from the beginning of the year. Special regulations continue to apply for employers with fewer than 40-60 employees.
- This Law aims to bring more disabled or health-impaired people into regular gainful employment and intends to provide for a more targeted support of severely disabled persons and require companies to employ more disabled people in future.







- India has entered into Social Security Agreement with Republic of Brazil with effect from 01.01.2023.
- Employees who are deputed to work through the concerned employer, can now apply for certificate of coverage.





M/s MATHOSRI MANIKBAI KOTHARI COLLEGE OF VISUAL ARTS  
VS  
THE ASSISTANT PROVIDENT FUND COMMISSIONER  
2023 SCC OnLine SC 1326



# M/s MATHOSRI MANIKBAI KOTHARI COLLEGE OF VISUAL VS THE ASSISTANT PROVIDENT FUND COMMISSIONER



- The Appellant, an educational institution run by a Society, challenged the extension of the EPF Act and assessing contributions dues under Section 7A .
- The Appellant, contested the application of the EPF Act, on the ground that two independent institutions were being clubbed for coverage. .
- The EPFO argued that management was common and there was financial intergrality between the two institutions.
- The Hon'ble Supreme court held that there was indeed financial integrity between the Society and the institutions it operated, and that the institutions functioned in the same premises and thus dismissed the appeal, upholding the coverage of the EPF Act to the appellant's institutions.
- **2023 SCC OnLine SC 1326**



DINESH PRASAD SINGH (OCCUPIER) VS.  
STATE OF TAMIL NADU REP BY ITS JOINT DIRECTOR II, (INDUSTRIAL  
INSPECTOR) CrI.O.P.No.30272 of 2022



## DINESH PRASAD SINGH (OCCUPIER) VS. STATE OF TAMIL NADU REP BY ITS JOINT DIRECTOR II, (INDUSTRIAL INSPECTOR) CrI.O.P.No.30272 of 2022

- The Petitioner was prosecuted under the Factories Act 1984 and Tamil Nadu Industries Rules 1950.
- The Petitioner contended that the Trial Court did not apply proper scrutiny before taking cognizance of the case, as evidenced by a lack of subjective satisfaction and the use of a rubber stamp for the cognizance process and they are not involved in handling hazardous materials, but rather in the treatment and disposal of industrial wastes, making the prosecution against them unwarranted and illegal.



## Continuation...

- The court found the complaint to be deficient and concluded that proper procedure had not been followed in initiating prosecution. The Hon'ble High Court of Madras relied on the Apex Court judgment in Sunil Bharti Mittal v. Central Bureau of Investigation reported in (2015) 4 SCC 609 which held as deprecated the practice of taking cognizance through “**Rubber Stamp**” orders. It was very clear that taking cognizance is a judicial act that requires application of mind. The order is liable to be set aside if no reason is given therein while concluding that there is a prima facie case against accused persons. Of course, the order need not contain detailed reasons.
- The Hon'ble High court of Madras held that the complaints lacking essential details were deemed insufficient and quashed the proceedings against the petitioner.

Crl.O.P.No.30272 of 2022



LexPOSH



LexPOSH

**The Sexual Harassment of  
Women at Workplace  
(Prevention, Prohibition  
and Redressal)  
Amendment Bill, 2024**



# The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Amendment Bill, 2024

- The Private Member Bill was introduced in Rajya Sabha on February 02, 2024.
- The Bill proposes to amend the following provisions under the POSH Act, 2013
  - Extension of Limitation period :- Section 9 of the POSH Act provides for a limitation period of 3 months for filing compliant. The Bill seeks to amend the period of limitation from **3 months to 1 year**.
  - Condone Delay:- The limitation to file compliant can be further extended to 3 months if the Internal Committee is satisfied with the reasons for delay in filing compliant. The Bill seeks to grant **unlimited discretion to extend the timeline**.
  - Omission of Conciliation process:- Section 10 of the POSH Act, 2013 provides for conciliation process at the request of the aggrieved woman. The Bill seeks to **remove the conciliation process**.



# RETRENCHMENT COMPENSATION AND QUANTUM OF RETRENCHMENT COMPENSATION



RECAP



# WHEN AND HOW DID RETRENCHMENT COME INTO EFFECT

1947

Originally, no provision provided under the ID Act for retrenchment compensation

1953

Huge stock accumulated in textile industries. Employees sent off causing labour unrest. To circumvent the said situation, Chapter V-A introduced wherein Sections 25F, 25 G, and 25H brought into force.

1976

Chapter V- B introduced wherein provisions to be complied with by industries employing not less than 100 workmen



# RETRENCHMENT COMPENSATION



# **ELIGIBILITY TO RECEIVE RETRENCHMENT COMPENSATION**

An Employee shall receive the Retrenchment Compensation on satisfying the following conditions:

- The employee must be a workman.
- The employee must have offered continuous service for a period of 240 days in the previous 12 months, which will be calculated as a year of continuous service.

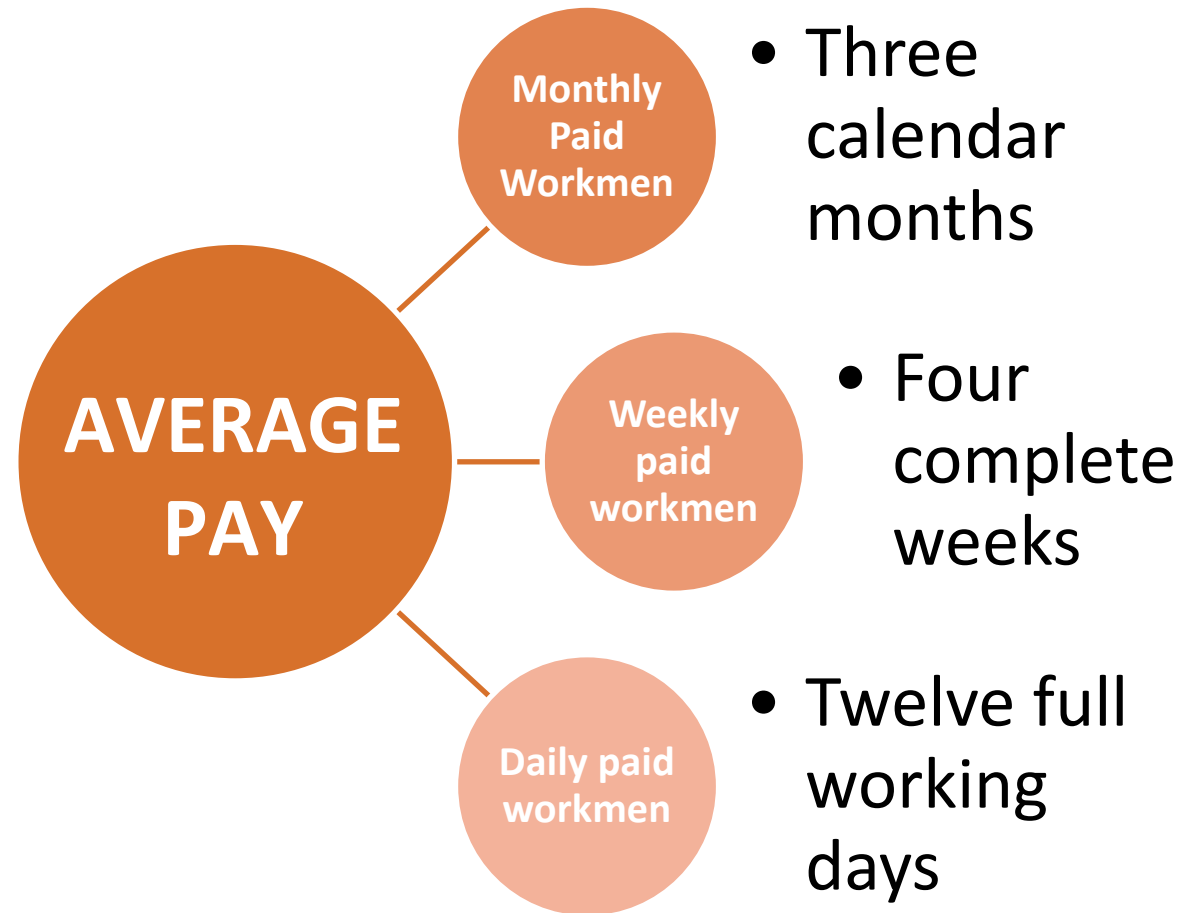


# RETRENCHMENT COMPENSATION

Equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months.



# AVERAGE PAY





**Should Basic and Dearness Allowance alone be reckoned for retrenchment compensation or should allowances also be reckoned ???**



**Should overtime wages be taken for calculation of retrenchment compensation ??**



**For the purposes of retrenchment compensation, salary to be divided by?**

- a) 26    b) 29    c) 30    d) 31**



# How to calculate retrenchment compensation for a daily wager??



# COMPONENTS OF RETRENCHMENT COMPENSATION



# COMPONENTS OF RETRENCHMENT COMPENSATION

- Basic wages
- Dearness allowance
- House rent allowance
- Medical Attendance Allowance
- Travelling allowance
- Commission payable for promotion of sales or business



## WHEN SHOULD I PAY THE COMPENSATION ?





# **PRAMOD JHA & ORS VS STATE OF BIHAR & ORS**

## **Appeal (Civil) 4157 of 2000**

- 55 Employees working on daily wages were retrenched by the State Government due to resource crunch in finance, etc.
- Notice served on the employees on 30.06.1995 informing that their services are to terminated with effect from 01.08.1995.
- The employees approached the High Court and obtained interim protection by way of status quo resulting in the halt of retrenchment proceedings.
- During the proceedings however, it was brought to the notice of the Hon'ble Court that amount due and payable to each one of them calculated as per Section 25F of ID Act was available to be delivered to them by way of banker's cheques and each one of them should positively collect the amount on 31.7.1995 from the Divisional Office.



## **PRAMOD JHA & ORS VS STATE OF BIHAR & ORS**

### **Appeal (Civil) 4157 of 2000**

- Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination, or he should be paid wages for the notice period.
- Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment.



## **PRAMOD JHA & ORS VS STATE OF BIHAR & ORS**

### **Appeal (Civil) 4157 of 2000**

- Section 25F nowhere speaks of the retrenchment compensation being paid or tendered to the worker along with one month's notice; on the contrary clause (b) expressly provides for the payment of compensation being made at the time of retrenchment and by implication it would be permissible to pay the same before retrenchment.
- The Apex Court concluded that the employees were not interested in receiving the amounts despite being presented. Notices were also served on them in terms with the Section and hence, retrenchment held valid.



# District Rural Development Agency Vs. Mukeshkumar Gandadal Jadav

## 2024 LLR 1

- The workmen alleging termination without adherence to Sections 25F, 25G, and 25H of the ID Act raised a dispute before the Labour Court seeking relief of reinstatement. Labour Court decided the case in favour of the workman granting all the attendant benefits.
- Upon appeal, the High Court as well confirmed the decision of the Labour Court.
- The Management, challenged the verdicts of the High Court and Labour Court granting reliefs to the workman.
- The Apex Court, while dealing with the substantial question of law involved and observed that, even if there is apparent non-compliance of Section 25F of the ID Act, mere want of notice by itself will not ensure to the benefit of the workman to claim reinstatement with back-wages.
- Appeal was allowed by setting aside the orders however with a grant of compensation of Rs.5 lakhs to the employee.



QUIZ!



**Can interest for belated payment of Gratuity exceed the Gratuity payable under the Payment of Gratuity Act 1972 ?**

- YES
- NO





**REPORTING PERIOD – March 2024**

Act	State	Due Date	Activity
<b>Employees Provident Fund &amp; Miscellaneous Provisions Act</b>	Pan India	15-Mar	PF Remittance
<b>Employees Provident Fund &amp; Miscellaneous Provisions Act</b>	Pan India	15-Mar	IW Returns
<b>Employees Provident Fund &amp; Miscellaneous Provisions Act</b>	Pan India	25-Mar	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF))
<b>Employees State Insurance Corporation Act</b>	Pan India	15-Mar	ESIC Remittance
<b>Professional Tax Act</b>	Andhra Pradesh	10-Mar	Professional Tax Remittance cum Return
	Telangana	10-Mar	Professional Tax Remittance cum Return
	Tamil Nadu	31-Mar	Professional Tax Remittance
	Madhya Pradesh	10-Mar	Professional Tax Remittance
	Gujarat	15-Mar	Professional Tax Remittance
	Karnataka	20-Mar	Professional Tax Remittance cum Return
	West Bengal	21-Mar	Professional Tax Remittance
	Maharashtra	31-Mar	Professional Tax Remittance cum Return
	Odisha	31-Mar	Professional Tax Remittance cum Return
	Assam	31-Mar	Professional Tax Remittance cum Return
	Nagaland	31-Mar	Professional Tax Remittance
	Meghalaya	31-Mar	Professional Tax Remittance
	Mizoram	31-Mar	Professional Tax Remittance
	Sikkim	31-Mar	Professional Tax Remittance
	Manipur	31-Mar	Professional Tax Remittance
	Tripura	31-Mar	Professional Tax Remittance
<b>Kerala Shops &amp; Commercialized Establishments Workers Welfare Fund Act</b>	Kerala	05-Mar	WWF Remittance
<b>Kerala Shops &amp; Commercialized Establishments Workers Welfare Fund Act</b>	Kerala	15-Mar	WWF Return



**Let's Connect again at  
On  
4PM on 30<sup>th</sup> March, 2024**



*Thank  
you*



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