**Bonus Act**

**R**ecently, the government approved amendments to the Bonus Act, 1965 raising the limit for calculations of bonuses. More so, it has also made this act applicable from April 1st, 2014. This implies a “retrospective effect”, which is an added liability for employers. Establishments will now have to pay the unpaid bonus for the previous 2 financial years as well.

The amendments have been made with the intention to bring more employees under the eligibility of the Bonus Act.  While this will certainly be cheered by employees, this also creates a financial liability for employers.  For HR folks, this also means a little head scratching in figuring out what their company’s statutory liability is.  [As India’s leading payroll platform and payroll outsourcing company](http://quikchex.in/), we thought we’d simplify this process for everyone.

We came up with 10 questions that would clear all doubts and help you tackle the increase in statutory bonuses head on.  Here are the answers to all the questions that you may have:

**1) What is Statutory Bonus?**

A bonus is an additional payment given to employees with the intention to motivate them.  The Statutory Bonus came into existence with the approval of the Payment of Bonus Act in 1965 by the Government.  According to this act, certain establishments had to pay an amount to their employees based on their profitability each year.  This amount was to be over and above their basic salaries.

The purpose of the act was to enable employees to partake in the profits of their respective companies.   The bonus, when applicable, also gives employees an opportunity to earn more than the minimum wages.

**2) What has changed with the payment of the Bonus Act?**

The government has approved amendments that have not only increased the amount paid out but also the number of people who are eligible. Here are the recent changes to the act:

**1. Wage limit increased from Rs. 10,000 to Rs. 21,000**

Earlier this act only covered employees that were earning up to Rs. 10,000 per month and lower.  However, the amendment has raised this ceiling to Rs. 21,000.  This has been done with the intention of bringing more employees under the eligibility of the Bonus Act. This also means that employers will have to pay employees that fall between the Rs. 10,000 and Rs. 21,000 the pending Bonus amounts since April 1, 2014.

**2. Maximum bonus limit increased to 20% of Rs. 7000**

Earlier, the maximum statutory bonus that could be paid out was 20% of Rs. 3500.  However, this has been **changed to 20% of Rs. 7,000 (or minimum wages, whichever is higher)**.  This gives companies a chance to allot a greater portion of employees’ CTCs towards bonuses.

**3. Minimum Bonus increased to 8.33% of Rs 7,000**

Before the amendment, the minimum that could be paid to employee under the bonus act was Rs. 292 (8.33% of 3,500).  However, this **amount has been doubled to become Rs. 583 (or 8.33% of the minimum wages, whichever is higher) .** Since, companies are expected to pay all arrears since 2014, this particular change seems to be causing the highest discomfort for employers.  In states where the minimum wage is higher than Rs 7,000, the statutory arrears liability becomes even higher.

**3) Who is the Bonus Act applicable to?**

The Bonus Act 1965, is only applicable when **all** of the following conditions are met:

1. The company is at least 5 years old
2. The company has at least 20 employees
3. The company has made a profit in that year
4. The employee’s wages are not more than 21,000 every month

**3) What is wage defined as?**

For the purpose of this Act, wages are defined as the total of the Basic salary + DA (Dearness Allowance).

**5) Do you have to pay past employees?**

Yes, employees that have left the organization are still eligible for their arrears.  Employers will have to pay the outstanding bonus of past employees as well.

**6) How do you make the payment?**

The payment of Bonus for a financial year has to be made within 8 months of its completion.  Since the financial year in India ends in March, payments have to be made by the end of October of the next financial year.

Although the bill for the amendment of the Bonus Act has been sanctioned by the government, there has been no formal date that has been declared for the payment of the arrears.  It can be assumed that these arrears should be paid out before the due date of the current financial year. However, this hasn’t been officially decided and announced.

Companies can make the payment to current employees using the same medium that they use to transfer salaries.  Since most companies directly transfer salaries to employees’ bank accounts, this would be the most convenient method to pay the arrears as well.  On the other hand, past employees can be paid by issuing individual cheques.

**7) How can the payment be claimed?**

As a current employee, you can simply expect this amount to be transferred to you along with your salary.  Past employees will have to enquire with their companies on how they can make their collection.  Companies should prepare and organize cheques for all previous employees to make the payout a smooth process.

**8) How do I calculate my liability as an employer?**

Your liability depends on a number of factors like:

1. The minimum wages applicable in your state
2. The number of employees with salaries less than Rs. 10,000
3. The number of employees with salaries between Rs. 10,000 – Rs. 21,000
4. The amount of Bonus already paid

We understand that calculating the liability can be a little tricky and we wanted to simplify this process for you.  Hence we’ve created an easy to use calculator that be downloaded by clicking on the link below.

**9) How do I restructure salaries in the future without impacting the total CTC or employee costs?**

In order to keep employees at the same CTC with the increased bonus, it’s best to deduct the respective amount from special allowances or other allowances.  Changing the mandatory components of salaries like Basic salary or HRA will only make things more complicated. Hence, it’s best to stick to other allowances for this purpose.

**10) What is the current status of the Amendment Act?**

The amendments to the Bonus Act and its retrospective impact puts labour based companies in an unfavourable position.  This is why planters in Kerala decided to file a petition with the Kerala High court, challenging the retrospective effect of the act.  The High Court, in response, has issued an interim order staying the retrospective implementation of the Bonus Act.  In the coming months and weeks, other states may also join Kerala in challenging the amendments of the Bonus Act.

**Download the free Bonus Liability Calculator**

The changes in the Bonus Act has left a lot to be done on the calculation front. We know there’s a lot of head scratching that needs to be done in order to accurately estimate the liability for your company. Hence, we’ve added a handy calculator that will automate this process for you.  Just put in a few quick details and the tool will do the rest for you.

# India: Retrospective Effect From FY 2014-15 Of Payment Of Bonus (Amendment) Act, 2015 Stayed By Various High Courts

### Brief Background

The Payment of Bonus Act, 1965 provides for the payment of statutory bonus to eligible employees. The bonus payable is to be determined on the basis of profits or on the basis of production or productivity of the establishment. The Act is applicable to factories and establishments employing at least 20 persons, although in some Indian states, the Government has extended the applicability of the law by reducing the threshold to factories and establishments employing at least 10 persons. The Act requires an employer to pay to an eligible employee a minimum bonus at the rate of 8.33% of the salary earned by the employee during the accounting year or INR 100 (USD 1.5), whichever is higher. As per law, the maximum statutory bonus can be limited to 20% of the employee's salary.

In or about February 2013, the country faced nationwide general strikes by trade unions for removal of all ceilings under the Payment of Bonus Act, 1965. On September 2, 2015, 10 central trade unions were reported to have gone on a one-day strike demanding an increase in the wage ceiling and bonus calculation ceiling. Pursuant to these strikes, the Central Government gave assurances to the public regarding the sought amendment, also in light of the fact that the last revision of the two ceilings were made a long time ago in 2007. The Payment of Bonus (Amendment) Bill, 2015 was introduced in the Lok Sabha (House of People) of the Indian Parliament on December 7, 2015. The amendment was proposed to be made effective from April 1, 2015. However, Indian Prime Minister Mr. Narenda Modi signed off a last moment direction that the benefits should accrue from April 1, 2014, and on December 23, 2015, the Rajya Sabha (House of Ministers) of the Indian Parliament passed the bill, being effective from April 1, 2014, with a voice vote. The bill sought to amend the Payment of Bonus Act, 1965 as existing. The President of India gave his assent on the Bill on December 31, 2015 thus, making it an Act. The Payment of Bonus (Amendment) Act, 2015 as passed was published on the E-Gazette website on January 1, 2016 for notice upon the general public.

### Key amendments brought about by the Payment of Bonus (Amendment) Act, 2015:

1. **Eligibility Wage Ceiling increased** - under the provisions of the previous Act, an employee who had worked for at least 30 days (in an accounting year) and drew a salary of INR 10,000 (Approx. USD 150) per month, was eligible to receiving statutory bonus. The amendment increases this eligibility limit to a salary threshold of INR 21,000 (Approx. USD 325) per month.
2. **Ceiling for Bonus Calculation increased** - under the previous Act, if an eligible employee's salary were more than INR 3,500 (Approx. USD 55) per month, for the purposes of calculation of bonus, the salary would be assumed to be limited to INR 3,500 per month. The amendment raises this wage ceiling to INR 7,000 (Approx. USD 110) per month or the minimum wage notified for the employment under the Minimum Wages Act, 1948, whichever is higher.
3. **Retrospective amendment** - the amendment has been given effect from **April 1, 2014**.

In the year 2007, through the Payment of Bonus (Amendment) Act, 2007, the salary threshold for eligibility for for payment of bonus was increased from INR 3,500 (Approx. USD 55) to INR 10,000 (Approx. USD 150). Further, through the same amendment, the wage ceiling for computation of bonus was enhanced from INR 2,500 (Approx. USD 39) to INR 3,500 (Approx. USD 55).

### Reactions from various Associations on the Retrospective Effect from FY 2014-15

Many were of the view that the retrospective nature of the amendments should have been avoided and employers should have been given adequate time to plan for such increase in their salary costs. The main concern was that employers would not have budgeted for this expense in the previous financial year (2014-2015) for which the books of accounts were already closed and taxes also paid. Such retrospective application from April 2014 would lead to financial stress, especially on the manufacturing sector where the number of workers is high.

As per media reports by The Hindu, an Indian daily, the Confederation of Indian Industries (CII) had written to the Labour Ministry on January 8, 2016 seeking a clarification to be given to allow industries to give bonus installments over the next two financial years to ease off the burden. It also demanded that the excess bonus received by employees, besides the minimum bonus, be adjusted in the next two financial years so as to "accommodate the newer workforce using the same or reduced allocable surplus." In another report, a FICCI representative had reportedly stated that the industry had urged the government to amend the law prospectively from 2016-17 rather than give it a retrospective effect. The Micro, Small and Medium Enterprises (MSME) chamber, Indian Industries Association (IIA) in the Indian state of Uttar Pradesh is also known to have strongly opposed the retrospective implementation of the amendment, stating that MSMEs have no means to pay such bonus in arrears, while the Government by way of collecting taxes can pay the bonus. Even NASSCOM reportedly made representations on the retrospective applicability, financial impact, administrative challenges and the ambiguities in the revised Act to the concerned ministries.

### Stay on Retrospective Effect from April 1, 2014

Upon representations from various industry bodies by way of writ petitions in various State High Courts challenging the retrospective effect from FY 2014-15, several high courts have stayed the retrospective operation temporarily.

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| **S. No.** | **Court/ Office Concerned** | **Case Title & No.** | **Date of Passing Interim Stay Order** |
| 1. | Kerala High Court | The United Planters' Association of Southern India & Anr. V. Union of India  W.P. (C) No. 3025/ 2016 (C) | January 27, 2016 |
| 2. | Karnataka High Court | Karnataka Employees Association V. Union of India  W.P. 5272/ 2016 | February 2, 2016 |
| 3. | Madhya Pradesh Labour Office | Following the orders given by the Kerala and Karnataka High Courts | February 4, 2016 |
| 4. | Allahabad High Court (Uttar Pradesh) | Benara Udyog Ltd. V. Union of India & 3 Ors.  WRIT (C) No. 6098/ 2016 | February 12, 2016 |
| 5. | Gujarat High Court | Federation of Gujarat Industries V. Union of India & Anr.  Special Civil Application No. 5207/ 2016 | April 5, 2016 |
| 6. | Punjab & Haryana High Court | Faridabad Industries Association & Anr. V. Union of India C.W.P. No. 2859/ 2016 AND Gurgaon Industries Association & Anr. V. Union of India C.W.P. No. 2999/ 2016. | April 8, 2016 |

For all of the above stay orders, it is clarified that the amendment would take effect from the **financial year 2015-16 onwards**, and not 2014-15 as earlier stipulated.

Thus, within a period of two to four months, six states in India have already obtained a stay on the retrospective operation of the amendment from FY 2014-15. It seems it is only a matter of time till all states follow suit. Meanwhile, the Indian Government's continuing focus on labour law reforms calls for attention to a few important proposed changes to the Indian labour laws including the Labour Code on Wages Bill, 2015 which seeks to consolidate, simplify and rationalise various labour laws in India pertaining to wages, namely, the Payment of Bonus Act, 1965, Minimum Wages Act, 1948, Payment of Wages Act, 1936 and the Equal Remuneration Act, 1976.With the financial management of even private companies at stake, this area of law is surely one to watch out for.