

TopLad

CMA INTER GROUP-1

VOLUME-2

INDUSTRIAL LAWS

BY

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FACTORIES ACT, 1948

Factories Act, 1948

Introduction.

1. Every manufacturing process cannot be process.
2. Manufacturing process will become Factory only if all Compulsory Conditions are fulfilled.
3. It is not necessary that there exist ~~for~~ boundary walls.
4. If the manufacturing process is carried out in the open land, it can also be a factory.
5. It means the act applies on all factories, whether small or large, owned or rented or private or Govt.
6. The basic objective of the act is to make sure that:-
 - (i) workers work in safe environment.
 - (ii) Health of worker is maintain.
 - (iii) Welfare ^{measure} must be adopted.
 - (iv) Special provisions are made for women and young workers.

4. Applicability of the act

- 1) It applies on all factories.
- 2) It applies to whole of India including J&K.
- 3) It applies on all workshops if they fulfill conditions of factory by whatever name called.
- 4) It also means if an organisation, names itself as a factory but it does not fulfill conditions of being factory, it will not be a factory and Factories act 1948 will not apply.

Meaning of Factory

- (1) Factory means any place or premises where manufacturing process is carried out by 10 or more workers in case of working with power and by 20 or more workers if working without power.
- (2) It means only manufacturing process cannot make it a factory, there must also be specified no. of workers.
- (3) If factories act once applicable, shall remain applicable forever.
- (4) Mines, Mobile unit of armed forces, hotel, messes and eating place and Railway running shed are not factory

5. Data processing unit of any work place such as Central process center of Income tax dept or ministry of corporate affairs will not be factory.
6. If a particular organisation is factory, all its component which are within the factory premises shall also be considered factory even when they are not doing any manufacturing process.

For example: A clinic is established inside the factory premises, it will also be considered as factory even when clinic is not factory.

7. Similarly, if a particular place or premises is not factory and some manufacturing is carried out inside such premises, it will also not be a factory.

Manufacturing

Meaning of Factory Places

- (i) Basically manufacturing is processing of inputs to create outputs

- ③ However law has defined manufacturing places in a different manner and it has included maximum process which do not seem to be manufacturing but still they are taken as manufacturing.

- (3) The benefit of this rule is that maximum no. of activities are covered in the Factories Act 1948 and they will get all the welfare schemes provided by the Act.
- (4) Complete list of activities covered under manufacturing process in Pg. 201.

Meaning of Competent Person

1. Competent person means either a single person or team of persons, appointed by Chief Inspector of Factories.
2. Such person shall be authorised to carry out examination, test, inspection in the factories.
3. Qualification and experience of such person shall be determined by state govt.
4. Any qualification criteria is not prescribed by factories act 1948.

Meaning of Hazardous Process.

1. Hazardous process means any process or activity which is specified in Schedule I.
2. It means it is the power of govt. to include or exclude any activity from the schedule.

3. Following two factors must be considered before it is considered before including any activity in Schedule I.

(a) It can cause material impairment to the health of workers.

(b) It can cause pollution in the general environment

Meaning of Worker

1. Worker means worker employed by factory.
2. Such employment may be direct or indirect.
3. Worker may be contractual or confirmed.
4. Nature of work can be of any kind.
5. Work of worker may be manufacturing and or non manufacturing.
6. Possession Position of worker may be high or low.
7. Worker may or may not be in knowledge of employer.
8. Worker does not include Army, Navy and Air force.

- 9. Worker Includes construction worker.

Meaning of Occupier

1. Any one who has ultimate control over the affairs of factory shall be occupier.
2. Occupier can be owner or any other person.
3. In case of proprietorship, proprietor or any authorised person will be occupier.
4. In case of Partnership, any partner can be occupier.
5. In case of company, only Director can be occupier.
6. In case of Govt. Factories, any authorised person can be occupier.

Notice by Occupier

1. Notice means information given ~~by~~ to Chief Inspector of Factories ~~by~~ ⁵ occupier.
2. Notice is given in following two situations :
 - (a) 15 day advance notice is given before establishment of the Factory.

(b) whenever a new occupier is appointed, notice is given within 7 days.

* Duties of Occupier

1. Occupier should provide consistent efforts to protect the workers.
2. He must take care about the health, safety and welfare of workers.
3. His responsibility stretches only within the factory, he is not responsible for anything happening outside.
4. If the worker was sent outside factory for employer work, responsibility of occupier will continue.

* Health of Workers

(i) Cleanliness : (i) Dry dust must be removed daily.

(ii) Wet cleaning should be done once in a week with disinfectant

(iii) White wash or colour wash should be done once in 14 months.

(iv) Varnishing must be done once in every 5 years.

(iv) If paint is washable, washing must be done once in 6 month.

(v) Date of cleaning and painting must be recorded in a separate registered (Before processing)

(2) Disposal of waste and effluents \rightarrow after processing.

(i) Effective arrangement must be done for proper treatment.

(ii) If there is not possible, they must be disposed off

jet

(3) Dust and Fume

et

(i) Dust and Fume should not be injurious.

(ii) Dust should not be accumulated.

(iii) Exhaust applying appliance should be as near as possible to the point of origin.

(iv) Inhalation of dust must be prevented.

(4) Ventilation and temperature

- (1) There must be circulation of fresh air.
- (2) Temperature must be maintained at reasonable level.
- (3) Environment must be comfortable.
- (4) In case of heavy temperature of machine insulated.

(5) Artificial Humidification

- (1) Reasonable level of humidity should be maintained
- (2) State govt should provide rules for artificial humidification.

(6) Over crowding

- (1) There must be no over crowding in any room.
- (2) Over crowding is prevented so that accident can be avoided.
- (3) Each worker must get a minimum space of 14.2 cubic meter.
- (4) Maximum no. of persons or worker must be displayed on the wall.

(7) Lighting

- (1) Sufficient lighting must be done in all work areas and passages.
- (2) All ~~pto~~ glazed window must be cleaned from both Inside and Outside.
- (3) lighting should be free from obstruction.
- (4) Fluorescent light should be avoided.

(8) Drinking water

- (1) Drinking Water must be wholesome.
- (2) Water point must be located at convenient places.
- (3) Water point must be atleast 6meter away from the washing area.
- (4) If more than 250 workers are their, cooking arrangement must be done during summer season.

(9) Latrines and Urinals

- (1) Separate arrangement must be done for Male & Female Workers.

- (2) They must be available for all the time.
- (3) They must be properly lighted.
- (4) They must be properly ventilated.
- (5) They must be clean all times.
- (6) They must be clean with ~~disinfectant~~ disinfectant once in a week.
- (7) If ~~two~~ more than 250 workers are employed, from floor and ~~internal~~ internal walls must have tiles.

Separate sweepers must be appointed

- (10) Spittoons
- (1) There must be sufficient no. of spoons.
 - (2) They must be clean and hygenic.
 - (3) They must be conveniently located
 - (4) If spitting is done elsewhere, there will be a fine of 50 per spitting.

* Welfare of Workers

(1) Washing Facilities: (i) Separate washing facilities must be provided for female & male.

(ii) They should be clean & comfortable.

(2) Storing and Drying :

(1) There must be facility for drying and storing clothing.

(2) They need not to be separate.

(3) Sitting Facilities :

Some times worker perform his work in standing position so he should be provided with facility for sitting whenever he gets such opportunity.

(4) First Aid :

(1) There must be First Aid at the rate of 1 box for 150 workers.

(2) Such First aid box should be in the control of trained person.

(3) If there are more than 500 workers, Ambulance must be kept ready along with all facilities and welfare state.

(4) If there are more than 500 workers, separate sick room must be maintained.

(5) Canteen: (1) If no. of workers 250 or more, canteen must be provided.

(2) Canteen can be owned by Factory or Outsource.

(3) Manner of Maintenance of canteen is not provided by law.

(6) Shelters, lunch room and rest room:

(1) If more than 150 workers are there suitable arrangement should be done for taking rest and having lunch.

(2) Such place should have sufficient drinking water, sufficient lighting & proper ventilation.

7. Cradle

- (i) If 30 or more women workers are ready to bring their children with them in factory, cradle must be provided.
- (ii) Age of such child should not be more than 6 years.
- (iii) Cradle must be properly lighted & ventilated
- (iv) Person managing the cradle should be a trained women.

8. Welfare Officer

- (a) If factory has 500 or more workers, separate Officer must be appointed.
 - (b) He shall be responsible for all facilities to be provided in the factory.
 - (c) Such welfare officer will only take care the welfare but also health.
- not

9. III Safety

- 1. It is the responsibility of occupier to make sure that workers does not suffer from any injury because of unsafe working conditions.
- 2. There must be proper arrangement to fight with fire and any other accident ~~particulars~~ may take place.

3: If all arrangement have been done, occupier will be responsible for any mis happening.

IV Inspectors:

- 1) Inspector of factories.
- 2) Inspector are appointed by state govt.
- 3) State Govt. can prescribe qualification for Inspector.
- 4) Inspector has following powers:
 - (a) To enter into any place which is a factory or look like a Factory.
 - (b) Examination & cross examination of any person
 - (c) Examination of premises, plant, machinery, equipment or any other article.
 - (d) Perform investigation whenever accident take place.
 - (e) He can take photocopy of documents.
 - (f) He can take sample of any article.
 - (g) He can seize any article or document
 - (h) Any other power as may be specified by state govt.

I Power of Central Govt.

1. It can enquire into health ; safety and welfare of workers.
2. It can prescribe emergency standards.
- 3/ It can fix maximum permissible permissible limits of chemical usage & it can .
4. It can establish safety committee which will help employees to maintain safety .
5. It can provide standards for ~~hazard~~ dangerous disaster so that appropriate action can be taken .

Certifying Surgeon

1. They are basically doctors specially authorised to issue certificate under this act.

2. They are appointed by state govt.

3. They have following three ~~two~~ duties.

(a) Examination & certification of young persons.

(b) Examination of ~~process~~ person working in hazardous process.

(c) Performing medical supervision in following matters:

(i) Illness of workers due to factory work.

(ii) Nature of articles used in manufacturing process, which may be hazardous.

(iii) Injuries which may arise to the workers.

Responsibility of Occupier in relation to Hazardous process:

(1) Whenever hazardous process is carried out, approval of state govt should be taken.

(2) If the factory is once approved by state govt, approval from pollution control authorities is not required.

- (3) State govt will approve hazardous process only if it is verified by site appraisal committee.
- (4) this committee will give its recommendation to state govt within 90 days.
- (5) Occupier should prepare a detailed policy for health and safety of worker.
- (6) Occupier should disclose necessary information regarding hazardous process to workers.
- (7) Occupier should design plan for disaster management.
- (8) Occupier should develop measures for safe handling, transportation and usage of Hazardous substances.
- (9) Occupier must maintain record of health of all the workers.
- (10) Occupier must appoint an experience person to take care of HAZZ Hazardous process.

Attendance and leave Rules.

- (i) Daily working hours are 8, without break and 1 hour break is provided to make it 9 hours.
- (ii) At least $1/2$ hour break is compulsorily after 5 hours continuous work.
- (3) Remaining $1/2$ hour break can be given in any manner and in any time.
- (4) So daily working hours are 9 actually but weekly working hours are always 48 hours.
- (5) Maximum time a worker can spend in the factory is 10.5 hours per day.
- (6) There must be one weekly holiday which should ideally fall on the first day of the week i.e. Sunday.
- (7) If the worker is called to work on weekly holiday, he must be given holiday on the working day.
- (8) Such additional holiday should be given within next two months otherwise it will lapsed.
- (9) Shift duration cannot go beyond midnight for women workers.

10. Double employment is prohibited for both male & female workers.
11. There must be a register of all categories of workers separately.
12. Women can not called to work before 6 am and after 7 pm.
13. However stategovt can change such timings and after the change, 6 am can become 5 am and 7 pm can become 10 pm.
14. Young worker means a person who has completed 15 years of age but should not have completed 18 years of age.
15. ADOLESCENT means a person who has completed 14 years of age but should not have completed 18 years of age.
16. All the workers who are not adult must go under medical examination so that their fitness for work can be examined.
17. Such certificate for fitness shall be issued by certifying surgeon.
18. Such certificate shall be valid for 12 month period.
19. Female child, adolescent and young persons cannot work before 8 am and after 7 pm.

20. Adolescent can work for maximum 4.5 hours a day out of which $\frac{1}{2}$ hour shall be break.
21. There shall be provided one leave after 20 days of work in case of adult. adult.
22. In case of all other workers, one leave shall be provided after 15 days of work.
23. These leaves can be availed only if worker has worked for 240 days in the previous year.
24. These leaves can be availed as a matter of right after 240 days.
25. Leave must be applied at least 15 days in advance.
26. In case public utility service organization, leave must be applied atleast 30days in advance.
27. In case of adult worker, maximum leave carry forward is 30days beyond which it will be encashed.
28. In case of all other workers maximum leave carry forward is 40days.
29. If some leave was demanded but was not granted, can be carried forward without any limitation.
30. If a worker has been granted leave of 4days, he can take salary advance for the period of leave and in case of workers other than

than adult worker it will be 5 days.

Practice Question

1. Reference: Present problem has been taken from the concept of working hours of women under Factories Act 1948

statutory provision (1) Working hours of women must fall between 6 am to 7 p.m.

(2) However State Govt can alter this and revised working hours should fall between 5 am to 10 p.m.

(3) Working hours of women cannot stretch beyond midnight.

Conclusion: In this case time fixed by Factory manager is not permissible.

2. Reference: Present problem has been taken from the concept of meaning of Factory under Factories Act 1948.

Statutory Provision: (1) Factory must have manufacturing process carried on by minimum 10 workers in case of with power and 20 workers in case of without power.

(2) It is not necessary that factory should have a permanent structure, it is sufficient if manufacturing process and employer-employee relationship is present.

Choose the correct answer

1. Age of adolescent worker is

- (a) 10
- (b) 14
- (c) 18
- (d) 21

2. Certificate of fitness to be young worker is to be granted by

- (a) Occupier of the factory
- (b) Inspector of the factory;
- (c) Certifying surgeon
- (d) None of the above

3. White wash or color wash should be carried out atleast once in every period of

- (a) 14 months;
- (b) 24 months;
- (c) 48 months;
- (d) 60 months

4. Where more than _____ workers are employed provision shall be made for cool drinking water during hot weather.

- (a) 100

- (b) 250
- (c) 500
- (d) 1000

5. Shelter rooms with suitable lunch rooms are to be provided, if more than _____ workers are employed.

- (a) 100
- (b) 250
- (c) 500
- (d) 1000
- (e) none of the above.

6. No female child shall be allowed to work in any factory except between

- (a) 8 A.M., and 7 P.M.,;
- (b) 6 P.M., and 6 A.M.,
- (c) 6 A.M., and 7 P.M.,
- (d) 10 P.M. and 5 A.M.,

7. Compensatory holidays are to be availed within _____ month.

- (a) 1 month
- (b) 2 months
- (c) 6 months
- (d) 9 months

8. Which one of the following amounts to safety measure?

- (a) Artificial humidification;
- (b) Ventilation;
- (c) Fencing of factory;
- (d) First aid appliances

9. Identify from the following which is the power of Inspector of Factory.

- (a) Enter into any place of a factory;
- (b) Make inquiry into any accident;
- (c) Seize or take copies of any document;
- (d) All the above.

10. Weekly holiday shall be_____

- (a) First day of the week;
- (b) Last day of the week;
- (c) Third day of the week;
- (d) None of the above.

State whether TRUE or FALSE

1. The Occupier is bound to inform the changes taken place to the authorities by means of a notice.
2. Welfare Officer is required to be appointed if there are 100 or more workers are employed in a factory.
3. Double employment is allowed in factories act.
4. A dismissed employee is entitled to the wages in lieu of the quantum of leave at the time of his dismissal.
5. Government cannot inquire to the standards of health and safety observed in a factory.
6. A woman employee may be allowed to work between 6 p.m. and 6 a.m.
7. If the inspector is obstructed in a factory penalty is imposed on the concerned person.
8. Leave may be availed on oral request to the Supervisor.
9. Strike period is not counted as duty for the purposes of computation of the period of 240 days meant for calculation of leave entitlement.
10. Register of adult workers is to be maintained in a factor.

Questions

1. What are the responsibilities of an occupier in a factory?
2. Discuss the obligations and the right of the worker under the Factories Act.
3. Write a note on 'hazardous processes'.
4. What are the powers that can be exercised by an Inspector under this Act?
5. List the welfare measures to be taken by an Occupier in a factory.
6. What are the measures to be taken to keep the factory clean?
7. Define – Manufacturing Process and Factory.
8. Critically examine the duties of certified surgeon.
9. Briefly discuss the provisions in respect of first aid appliances.
10. Write notes on prohibition of employment of young persons under this Act.

Answers:

Fill in the blanks

1. 1000
2. 250
3. 9
4. Twice
5. 6 a.m. and 5 p.m.
6. A certificate of fitness
7. Crèche, 30
8. Ultimate control
9. 30, 40
10. Site Appraisal Committee

Choose the correct answer

1. B
2. C
3. A
4. B
5. E
6. A
7. B
8. C
9. D
10. C

State whether TRUE or FALSE

1. TRUE
2. FALSE
3. FALSE
4. TRUE

5. FALSE

6. FALSE

7. TRUE

8. FALSE

9. TRUE

10. TRUE

MTP Question

MTP June 2019

Question: 1 Write short notes

Cleanliness of factory:

Answer: Section 11 of the Act provides every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

- removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same;
- cleaning of the floor of every workroom – once in every week by washing with disinfectant or by some other effective method;
- providing effective drainage for removing water to the extent possible; to ensure that interior walls and roofs etc., are kept clean the following is to be complied with-
- white wash or color wash should be carried out at least once in every period of 14 months;
- where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months;
- where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
- all doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years; The dates on which such processes are carried out shall be entered in the prescribed register.

Question: 2 What are the responsibilities of an occupier in a factory?

Answer: Exemption of employer from liability in certain cases Section 10 provides that where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the

Court-

- that he has used due diligence to enforce the execution of this Act, and
- that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;

In seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor. If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer

Question: 3 Write short notes

Cleanliness of factory

Answer: Section 11 of the Act provides every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

- removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same;
- cleaning of the floor of every workroom – once in every week by washing with disinfectant or by some other effective method;
- providing effective drainage for removing water to the extent possible; to ensure that interior walls and roofs etc., are kept clean the following is to be complied with-
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- where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months;
- where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
- all doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years; The dates on which such processes are carried out shall be entered in the prescribed register

MTP Dec 18

Question:4 How is overtime Wages fixed as per Minimum Wages Act, 1948.

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages-

- in case of employment in agriculture - one and a half times the ordinary rate of wages;
- in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no overtime wage is paid for a particular month a NIL entry should be made.

Section 14(2) provides that this Act shall not prejudice the operation of the provisions of

Section 59 of the Factories Act in any case where those provisions are applicable.

In Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules.

MTP Jun 2018

Question 5 Discuss the Responsibility of the occupier in a factory.

Answer: Responsibility of the occupier

The occupier has to follow the procedure-

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.
- to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory

MTP June 18

Question: 6 What are the rules regarding granting of Annual Leave under Factories Act, 1948?

Answer: Section 79 of Factories Act, 1948 provides that every worker who has worked for a period 240 days or more in a factory during a calendar year shall be allowed leave with wages for a number days calculated at the rate of-

- if an adult, one day for every 20 days of work performed by him during the previous calendar year;
- if a child, one day for every 15 days of work performed by him during the previous calendar year.

The following shall be deemed to be days on which the worker has worked for the purpose of computation of the period of 240 days or more-

- any days of lay off, by agreement or contract or as permissible under the standing orders;
- in the case of a female worker, maternity leave for any number of days not exceeding 12 weeks; and
- the leave earned in the year prior to that in which the leave is enjoyed

but the above shall not be entitled for a worker to earn leave. The leave admissible shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

In calculating the leave fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

MTP Jun 2017

Question: 7 Describe the term, 'Manufacturing Process' as per Factories Act, 1948 and also cite an example.

Answer: Section 2(k) defines the expression manufacturing process as any process for –

- 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
- pumping oil, water, sewage or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage

In M/s Qazi Noorul Hasan Hamid Hussain Petrol Pump V. Deputy Director, Employees' State Insurance Corporation – 2003 LLR 476 it was held that the definition manufacturing process' does not depend upon and is not correlated with any end product being manufactured out of a manufacturing process. It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport, delivery or disposal. It cannot be restricted an activity which may result into manufacturing something or production of a commercially different article. The manufacturing process' cannot be interpreted in a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.

Suggested Question:

Suggested June 18

Question:8 Critically examine the duties of certified surgeon under the Factories Act, 1948.

Answer: Section 10 under Factories Act, 1948 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. The duties of certified surgeons are as follows-

- the examination and certification of young persons;
- the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;
- the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where –
 - cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
 - by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
- young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Suggested June 18 Write short notes

Question: 9 Manufacturing process under the Factories Act, 1948.

Answer: Manufacturing process

Under Section 2(k) of Factories Act 1948 define 'manufacturing process' as under any process for-

- 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

- pumping oil, water, sewage or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage.

In 'M/s Qazi Noorul Hasan Hamid Hussain Petrol Pump V. Deputy Director, Employees' State Insurance Corporation' - 2003 LLR 476 it was held that the definition 'manufacturing process' does not depend upon and is not correlated with any end product being manufactured out of a manufacturing process. It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport, delivery or disposal. It cannot be restricted an activity which may result into manufacturing something or production of a commercially different article. The 'manufacturing process' cannot be interpreted in a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.

Suggested Dec 17

Question:10 Write short notes

Cleanliness of factory

Answer: As per Section II of the Factories Act, 1948 every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular –

- Removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same,
- Cleaning of the floor of every workroom once in every week by washing with disinfectant or by some other effective method,
- Providing effective drainage for removing water to the extent possible,
- All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years,
- To ensure that interior walls and roofs etc. are kept clean the following is to be complied with –
 - White wash or color wash should be carried out at least once in every period of 14 months,
 - Where surface has been painted or varnished, repair or re-varnished should be carried out once in every 5 years, if washable then once in every period of 6 months,
 - Where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.

The dates on which such processes are carried out shall be entered in the prescribed register.

Suggested June 17

Question: 11 What are the responsibilities of an occupier in a factory?

Answer: Responsibility of the occupier The occupier has to follow the procedure-

- to lay down a detailed policy with respect to the health and safety of the workers;

- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factor.

Revisionary Question:

Revisionary Dec 2018

Question: 12 ABC Ltd. carrying manufacturing activities with aid of power and with eight workers for last two years ending on 31.03.2014. Three more workers were appointed on 01.04.2014, two workmen left the company on 30.04.2014. Thereafter no workman was employed nor any workmen left. Mr. Basant, one of the workman demanded that Factories Act, 1948 shall be applicable to this company but the management denied. Give your opinion.

Answer: According to Sec 2 (m) of the Factories Act, 1948, “factory” means any premises including the precincts thereof –

- (i) Wherein 10 or more workers are working or were working on any day of the preceding 12 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) Wherein 20 or more workers are working or were working on any day of the preceding 12 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.

In the given case, during the period 01.04.2014 to 30.04.2014, there were 11 workers carrying manufacturing activities with aid of power. So, the Factories Act, 1948 is applicable on ABC Ltd. Mr. Basant is correct.

Question: 13 Discuss the general duties of an „occupier“ under the Factories Act, 1948

Answer: General duties of an occupier are discussed in sec 7A of the Factories Act, 1948. These are as follows: 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. Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include –

- (i) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- (ii) 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;
- (iii) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety, of all workers at work;
- (iv) the maintenance of all places of work in the factory in a condition that is safe and 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;
- (v) 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.

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.

Question: 14 Responsibility of the occupier**Answer:** The occupier has to follow the procedure –

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.
- to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

Revisionary June 2018

Question: 15 ABC Ltd. carrying manufacturing activities with aid of power and with eight workers for last two years ending on 31.03.2014. Three more workers were appointed on 01.04.2014, two workmen left the company on 30.04.2014. Thereafter no workman was employed nor any workmen left. Mr. Basant, one of the workman demanded that Factories Act, 1948 shall be applicable to this company but the management denied. Give your opinion.

Answer: Please refer Revisionary Dec 2018 Q12B**Question: 16 Discuss the general duties of an 'occupier' under the Factories Act, 1948****Answer:** Please refer Revisionary Dec 2018 Q 14B**Question: 17 Penalty for contravention of the provisions relating to hazardous process**

Answer: Section 96A provides that whoever fails to comply with or contraventions any of the provisions of Section 41B, 41C or 41H or the rules made there under, shall, in respect of such failure or contravention, be punishable with imprisonment for a term which may extend to seven years and with fine which may extend to `2 lakhs and in case of the failure or contravention continues, with additional fine which may extend to `5000/- for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. If the failure or contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

Workbook Question**Question: 18 What is the purpose of Factories Act, 1948?**

Answer: Factories Act, 1948 is meant to provide protection to the workers, to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. It also provides for the improvement of working conditions within the factory premises. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc.

Question: 19 Define manufacturing process as per Factories Act, 1948.

Answer: Section 2(k) of Factories Act, 1948 defines 'manufacturing process' as any process for- 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 pumping oil, water, sewage or any other substance; or generating, transforming or transmitting power; or composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or preserving or storing any article in cold storage.

Question: 20 Define factory as per Factories Act, 1948.

Answer: Section 2(m) of Factories Act, 1948 defines the term 'factory' as any premises including the precincts thereof- 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

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 or mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Question: 21

Write short notes on

- (i) **Carry forward of leave**
- (ii) **Encashment of leave**

Answer: (i) If a worker does not in any calendar year take the whole of the leave allowed to him any leave not taken by him shall be carried over to the succeeding year. The total number of leave that may be carried forward shall not exceed 30 days in the case of an adult or 40 in the case of a child. A worker, who has applied for leave with wages but has not been granted, shall be entitled to carry forward the leave refused without any limit.

(ii) Section 79(3) provides that if a worker is discharged or dismissed from services or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, shall be entitled to the wages in lieu of the quantum of leave to which he was entitled immediately before such termination of his services. Such payment shall be made before the expiry of the second working day from the date of discharge, dismissal or quitting and where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.

Question: 22 What are the responsibilities of an occupier in a factory?

Answer: Section 7A prescribes the general duties of occupier. 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.

The occupier has to follow the procedure-

- (i) to lay down a detailed policy with respect to the health and safety of the workers;
- (ii) to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
- (iii) to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.

(iv) to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes.

Question: 23 Critically examine the duties of certified surgeon under the Factories Act, 1948.

Answer: The duties of certified surgeons are as follows-

1. the examination and certification of young person;
2. the examination of person engaged in factories in such dangerous occupations or processes;
3. the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where-
 - (a) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
 - (b) by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;
 - (c) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Scanner Question:

Question: 24 2010 - June Write short note :

Working hours for children

(4 marks)

Answer:

Working Hours for Children : No child shall be employed or permitted :

- (i) to work in any factory for more than four and half hours in any day;
- (ii) during the night; (iii) not more than two shifts and shifts should be 5 hours apart; (iv) no child shall be allowed to work in any factory on any day on which he has already been working in any other factory; (v) no female child shall be allowed to work in any factory except between 8 am to 7 pm.

Question: 25 2010 - Dec

'Overcrowding' (Factories Act)

(4 marks)

Answer:

Overcrowding as per Factories Act:

- (i) No room in any factory shall be overcrowded to become injurious to health.
- (ii) Space for worker: (i) 9.9 cubic meter for every worker for factories existing before application of Act and (ii) 14.2 Cubic meter for every worker for factories built after the commencement of the Factories Act.
- (iii) If the chief inspector requires, a notice specifying the maximum number of workers who may be employed in the room shall be posted in each workroom.
- (iv) The Chief inspector may grant exemptions to above conditions if he is satisfied that such conditions are unnecessary.

Question: 26 2011 - June Write short note on.

Duties of occupier

(4 marks)

Answer:

Duties of Occupier:

- (i) He should ensure safety, health and welfare of all workers who are working in his factory.
- (ii) He should maintain plant and machinery of the factory so that they are safe and without risk.
- (iii) Handling, storage, transport of all materials should be safe and without risk.
- (iv) He should provide, maintain and monitor the working environment in the factory without risk and hazard to workers and adequate in facilities.

(v) The occupier should prepare, revise appropriately and display his general policy regarding the safety, security and health of the workers working in his factory.

Question: 27 2011 - Dec Write short note.

Safety Officers (Factories Act)

(4 marks)

Answer:

If State Govt, requires every factory will have a safety officer if it has one thousand or more workers ordinarily. The duties, qualifications and conditions of appointment and service will be decided by the State Govt. The occupier is required to appoint the specified number of safety officers (as given the order of State Govt.) if (i) one thousand or more workers are ordinarily employed; Or (ii) State Govt, is of the opinion that the manufacturing process in the factory may cause risk of body injury, poisoning, disease, or any hazard to health.

Question: 28 2017- Dec [8] Write short note:

Cleanliness of factory

(5 marks)

Answer:

Section 11 of the Act provides every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

- removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same;
- cleaning of the floor of every workroom - once in every week by washing with disinfectant or by some other effective method;
- providing effective drainage for removing water to the extent possible;
- to ensure that interior walls and roofs etc., are kept clean the following is to be complied with-
- white wash or colour wash should be carried out at least once in every period of 14 months;
- where surface has been painted or varnished, repair or re-varnish should be carried out once in every five years, if washable then once in every, period of six months;
- where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
- all doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years;

The dates on which such processes are carried out shall be entered in the prescribed register. TM

Question: 29 2018- June Write short note

Manufacturing process under the Factories Act, 1948.

(5 Marks)

Answer:

Manufacturing process under the Factories Act, 1948 ^“Manufacturing Process” means Process for:

- (i) Making, altering, repairing, oiling, washing, cleaning, ornamenting, finishing, packing, breaking up, 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 the letter press, lithography, photographing, or other similar process or book binding, or
- (v) Constructing, re-constructing, repairing, refitting, or breaking up of ships or vessels ; or
- (vi) Preserving or Storing any articles in cold storage;

In this regard it becomes necessary to discuss some special circumstances that came up in some court cases:

- (1) Preparation of food with aid of various electrical appliances in kitchen of a hotel is a manufacturing process: As decided in the case of "Poona Industrial Hotel vs. I.C. Sarin, 1980, Lab I.C. 100.
- (2) Selling of petrol or diesel by a petrol dealer or repairing of motor vehicle will not come within the term "manufacturing process", as noted in the case of: "National Service Centre and Petrol Pump Vs. E.S.I Corporation, 1983 lab I.C. 412 (P. & H.).
- (3) The work of mere packing cannot be called as a manufacturing process; {ref. A.I.R. 1955 NUC 2710}.
- (4) The business of sale of diesel oil, motor spirit, lubricant, servicing of cars and lorries, repairing vehicles and charging batteries with the aid of power, by employing more than 20 workers / labourers amount to manufacturing process, as noted in the case of "Baranagar Service Station Vs. E.S.I Corporation (1987) 1 L.L.N 912 (Cal.) (Divisional Bench). & Lab I.C. 302.
- (5) Decorticating groundnuts in electric mill is a manufacturing process (A.I.R. 1959 Madras 30).
- (6) Breaking up of boulders is a manufacturing process - as decided in case of "Larsen & Toubro Vs. State of Orissa, 1992 Lab I.C. 1513 (Orissa Divisional Bench).
- (7) Transportation of goods on contract basis from one place to another by road with the assistance of transport carriers is not a manufacturing process-as decided in the case of Regional Director, E.S.I.C Vs. Jaihind Roadways, Bangalore (2001), 1 L.L.J 1187 (Karnataka).
- (8) Reading the definition of 'Manufacturing Process' in the light of Supreme Court in "Workmen", Delhi Electricity Supply Undertaking Vs. management", (1974) 3 S.C.C. 108, the word 'or' in Section 2(k) (iii) must be read as 'and'.

Question: 30 2008- Dec

Personnel Manager told to Director that at least one canteen shall be provided in every factory. Do you agree?

(2 marks)

Answer:

False : According to Factories Act, 1948, a canteen is required to be provided in any specified factory if the number of workers working in it is more than 250. Hence, it is not mandatory for every factory to provide canteen.

Question: 31 2009- June

Occupier of a factory in relation to the company means factory Manager of the factory, Answer based on legal provision.

(2 marks)

Answer:

False : Occupier has been defined in the Factories Act in **Section 2(n)** as the person who has ultimate control over the affairs of the factory. It is also stated further that in case of firm or other association of individuals, any one of the partners or members thereof shall be deemed to be the 'occupier'. The **Section 2** further states that in case of a company, any of the directors shall be deemed to be the 'occupier'.

Question: 32 2009- June

As per provision of Factories Act, every factory is to appoint at least one welfare Officer-Do you agree? Answer citing rules.

(2 marks)

Answer:

False : In every factory wherein 500 or more workers are ordinarily employed, the occupier shall employ such number of welfare officer as may be prescribed.

Question: 33 2009 - Dec

- (1) A factory owner can close a place of employment of his own. (2 marks)**
(2) Creches are compulsory in a factory where women employees are employed. (2 marks)

Answer:

(1) Prior permission of government is required for closure of a place of employment if the industrial establishment employs 100 or more workmen.
(2) Creches are required to be provided when in a factory, more than 30 women are employed.

Question: 34 2010- June

Factories Act provides certain precaution measures in case of fire, give details. ' (4 marks)

Answer:

The precautions required in case of fire as per Factories Act, are as follows:

- (i) All precautions and measures should be taken to prevent the occurrence of fire inside and outside the factory.
- (ii) Fire escape should be provided. This should be adequate for all the employees.
- (iii) All necessary equipments and facilities should be provided to fight and put out the fire.
- (iv) All workers must be trained regarding what they should do in case of fire. All must know where the escape is.
- (v) The state govt, has powers to give directions in this regard.
- (vi) The Chief Inspector has all the powers, if in his opinion, the measures and precautions taken by factory to deal with fire, are inadequate, he may direct the factory to provide more facilities, equipments and arrangements in the factory. He may also frame a time schedule for this.

Question: 35 2010- June

(i) Manager of the factory fixed the working hours of women from 6 p.m. to 1 a.m. during the period from Monday to Friday of first week of May 2010. Whether it is permissible, cite with Rule position. (2 marks)

(ii) As per Factories Act 'First Aid Boxes' shall be provided and maintained not less than one for every 200 workers ordinarily engaged. (2 marks)

Answer:

(i) As per the provisions of Factories Act, the working hours for women are between 6.00 am to 7.00 pm. No woman shall be allowed, to work from

7.00pm to 6.00 am.

The state government has powers to alter the above limits but in no case the women will be allowed to work in any factory between 10.00 pm to

6.00am. Hence, the manager's decision is incorrect in the eyes of law.

(ii) As per the Factories Act, " first aid boxes" shall be provided and maintained not less than one for every 150 (not 200 as given) workers ordinarily engaged.

Question: 36 2010 - Dec

As per Factories Act, Canteen is mandatory in all the factories. (2 marks)

Answer:

False. According to Factories Act, 1948, a canteen is required to be provided in any specialized factory if the number of workers working in it is 250 or more. Hence, it is not mandatory for every factory to provide canteen.

Question: 37 2010 - Dec

What is the normal time for payment of Wages (Factories Act).

(4 marks)

Answer:

(i) For Railway, factory or industrial or other establishment where less than 1,000 persons are working : Wages shall be paid before expiry of 7th day from date of wage becoming payable.

(ii) For Railway, factory or industrial or other establishment where 1,000 or more persons are working : Wages should be paid before expiry of 10th day from date of wage becoming payable.

(iii) For persons employed in Dock, Wharf (landing place), or Jetty: Wages shall be paid before expin/ of 7th day from date of wage becoming payable.

(iv) When the person is removed from service, his due wages shall be paid to him before the expiry of 2nd working day from the date of removal of service.

Question: 38 2011- June

Occupier of a Factory means the person who occupies and resides in the factory. Offer your views.

(2 marks)

Answer:

The statement is wrong. The Occupier of a factory means any person having ultimate control over the affairs of the factory.

Question: 39 2011- Dec

An young employee disagreed to work on dangerous machines in a factory.

(2 marks)

Answer:

A young employee cannot be allowed to work at any machine unless:

(i) he has been fully instructed to the dangers arising in connection with the machine and the precautions to be taken; and

(ii) he has received sufficient training in work at the machine, or

(iii) he has under adequate supervision by a person who has thorough knowledge and experience in the machine. **(Section 23 of Factories Act, 1948).**

(iv) State Government may prescribe / specify such machines which in its opinion are of such dangerous character that young persons ought not work on them unless foregoing requirements are complied with.

Question: 40 2012- June

Any child can be employed in a factory.

(2 marks)

Answer:

As per The Factories Act, 1948, Children below 14 years are not allowed to work in the factory. Child means a child who has not completed the age of 15 years. After attaining the age of 14, he or she can work in the factory provided he or she has a certificate of fitness given by a competent authority. **Space to write important points for revision**

Question: 41 2012- June

“Young person” means a person who has completed 18 years of age (Factories Act, 1948). Do you agree

Answer:

The statement is not correct. Young person means a person who is either a child or an adolescent. [Sec 2(d), The Factories Act, 1948]

A child means a person who has not completed his 15th year of age. [Sec 2(c), The Factories Act, 1948] An adolescent means a person who has completed his 15th year of age but not completed his 18th year. [Sec 2(b), The Factories Act, 1948]

Question: 42 2012 - Dec

Are there any provisions in the Factories Act for protection of eyes of Workmen?

(2 marks)

(i) Who is 'Occupier' (Factories Act)

(ii) State the Duty of the Occupier when a new manager is appointed in the factory.

(2 + 2 = 4 marks)

Answer :

(i) Yes, State Govt, by rules require that effective screens or suitable goggles shall be provided for the protection of eyes of persons employed on or in the immediate vicinity of manufacturing process which involves:

1. Risk of injury to the eyes from particles or fragments thrown off in the course of process or
2. Risk to the eyes by reason of exposure to excessive light. ,

(ii) Occupier has been defined in the Factories Act in Section 2(n) as the person who has ultimate control over the affairs of the factory. It is also stated further that in case of firm or other association of individuals, any one of the partners or members thereof shall be deemed to be the 'occupier'.

The Section 2 further states that in case of a company, any of the directors shall be deemed to be the 'occupier'. The Supreme Court resolved in *JK Industries vs Chief Inspector of Factories in 1997* that only a member of Board of Directors of the company can be a 'occupier' of the factory of the company. The ultimate control of the factory vests with the BOD of the company and not on anyone else. Any company which owns a factory cannot nominate its employee or its officer except the director of the company as the occupier of its factory.

(ii) When the new manager is appointed, it is the duty of the occupier to inform the inspector and chief inspector in writing regarding the appointment within seven days of the appointment.

Question: 42 2013- June

Factories Act, 1948 is applicable to all the factories wherein 50 or more workers are working.

(2 marks)

Answer:

Factories Act, 1948 is applicable to factory which is defined as: Factory : means any premises including its precincts (means zone, sector, ground, division, area. Precinct means any area enclosed by wall.) where (i) **ten or more** workers are working or were working in **any day** of the preceding

twelve months, in a manufacturing process which is carried on **with the help of power** Or (ii) **twenty or more** workers are working or were working in any day of the preceding twelve months, in a manufacturing process which is carried on **without the help of power**.

Question: 43 2013- June

As per Factories Act, adequate shelters, rest rooms and lunch rooms are mandatory in all the factories. Do you agree? Give correct answer.

(2 marks)

Answer:

The occupier is required to provide suitable shelters or rest rooms and a suitable lunch rooms with provision of drinking water, in his factory if more than one hundred and fifty workers are ordinarily employed in it.

Question: 44 2014- June

Does a laundry attached to the hospital (main Institution) used for washing linen used in the hospital is factory within the meaning of the Factories Act, 1948?

(3 marks)

Answer:

- When hospital is not a factory, it is obvious that any department of hospital cannot be treated as factory.
- **In Dr. PSS Sundar Rao, GS v Inspector of Factories Vellore 1984 II LLJ 237 Mad,** the question was whether a laundry attached to the Christian Medical College and Hospital, Vellore is Factory within the meaning of this Act.
- The Madras High Court held that the laundry run by the hospital cannot be separated from the main Institution. In order to ensure high degree of hygienic standard the Hospital is having its own laundry for washing the linen used in the hospital.
- Therefore, laundry is only subsidiary, minor or incidental establishment of the hospital which is not a factory.
- One department of the Hospital established for the efficient functioning of the Hospital cannot be therefore be disjoined from the main Institution and termed to be a factory.

- The paramount or the primary character of the main Institution alone has to be taken into consideration and when the main Institution is not a factory; a department thereof cannot become so, even though a manufacturing process is carried on there.

Question: 45 2015 - June

Explain the right of workers to warn about imminent danger under the Factories Act, 1948.

(3 marks)

Answer:

As per Section 41H of the Factories Act, 1948, it is the right of workers to warn about imminent danger

- (1) Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the safety committee and simultaneously bring the same to the notice of the Inspector.
- (2) It shall be the duty of such occupier, agent, manager or the person incharge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith the action taken to the nearest Inspector.
- (3) If the occupier, agent manager or the person in charge referred to in sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

Question: 46 2016 - Dec

Employees of an electricity generation station claimed that their unit is covered under the definition of 'factory' considering the process of transforming and transmission of electricity generated at the power station as a 'manufacturing process'. Will their claim succeed under Factories Act, 1948.

(6 marks)

Answer:

As per Section 2(k) of the Factories Act, 1948, 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;
- (v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
- (vi) Preserving or storing any article in cold storage;

Process undertaken at electricity generating station, Sub-station is transferring and transmitting electricity is not a manufacturing process and are not thus factory- *[Delhi Electricity Supply Undertaking vs. Management of DESU, AIR(1973)SCC 365]*.

Question: 47 2017 - June

What are the responsibilities of an occupier in a factory?

(5 marks)

Answer:

Responsibility of the occupier

The occupier has to follow the procedure;

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.
- to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

Question: 48 2018- June

Critically examine the duties of certified surgeon under the Factories Act, 1948.

(8 marks)

Answer:

Section 10 under the Factories Act, 1948 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. The duties of certified surgeons are as follows-

- the examination and certification of young persons;
- the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;
- the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where –

cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;

by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Question: 49 2015 - Dec

ABC Ltd. carrying manufacturing activities with aid of power and with eight workers for last two years ending on 31.03.2014. Three more workers were appointed on 01.04.2014, two workmen left the company on 30.04.2014. Thereafter no workman was employed nor any workmen left. Mr. Basant, one of the workman demanded that Factories Act, 1948 shall be applicable to this company but the management denied. Give your opinion.

(3 marks)

Answer:

According to Sec. 2 (m) of the Factories Act, 1948, 'factory' means any premises including the precincts thereof:

- Wherein 10 or more workers are working or were working on any day of the preceding 12 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
- Wherein 20 or more workers are working or were working on any day of the preceding 12 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.

In the given case, during the period 01.04.2014 to 30.04.2014, there were 11 workers carrying manufacturing activities with aid of power. So, the Factories Act, 1948 is applicable on ABC Ltd. Mr. Basant is correct.

PAYMENT OF GRATUITY

ACT, 1972

Changer Payment of Gratuity Act, 1972.

1. Gratuity is derived from Latin word 'gratuitous'.
2. Gratuitous means gift or something which without consideration.
3. This is the gift to be given by employer to employee for loyalty shown by him.
4. Loyalty means number of years of service which should be as more as possible.
5. Minimum service period required for eligibility of gratuity is 5 years.
6. However in case of Death or Disability only ~~use your service is sufficient.~~
7. There is rounding off rule in the last year of service period which means more than 6 months period should be rounded off to one year.
8. For Example.
9. 4 years 4 months = 4 years
10. 4 years 6 months = 5 years
11. 4 years 6 month 3 days = 5 years.
12. Gratuity is 'off the Job benefit' also called retirement benefit. It is because it is paid only after leaving the job.
13. There is no advance system from gratuity payment as was present in Provident Fund.
14. Gratuity Act was enacted on 16th Sep. 1972.
15. Gratuity = Last drawn salary \times No. of years of services \times $\frac{15}{26}$

Applicability of the Act.

1. The Act applies on whole of INDIA including J&K.
2. However it doesn't apply on plantation and port of J&K.
3. It applies on every factory and any establishment where 1000 or more workers are work.
4. It also applies on plantation, port, mine, Diffield, and Railways where ever may be the no. of workers and there is no salary limit for gratuity purpose.
5. There is no eligibility period of claiming the gratuity as an employee becomes eligible for gratuity on the date of joining the establishment but he can claim the same only at time of the leaving the establishment after minimum 5 years.
6. Calculation of Gratuity.
7. Gratuity is calculated differently for different types of workers.
8. Different types of workers are as follows:-
 - (a) Monthly Paid Employee who gets salary on monthly basis.
 - (b) Daily Paid Employee who gets salary per-day.
 - (c) Piece-rated-employee who gets salary on the basis of output.
9. Personal Employee means a worker who is not employed throughout the year.
10. Formula for calculating gratuity is as follows:-
 - (a) Monthly Rated

(b) Daily Rate

Irreducibility = Last 3 months average wages \times No. of Years of service \times 15

26

(c) Piece Rate of employee

Irreducibility = Last 3 months average wages \times No. of Years of service \times 15

26

(d) Seasonal worker

Irreducibility = $\frac{\text{Last 3 months average wages} \times 7 \times \text{No. of Years of service} \times 15}{\text{Last season days}}$

26

Explanation

1. Maximum Service period for computation is 33 Years.
2. Salary means basic salary and Dearness Allowance.
3. Salary should be taken without any deduction.
4. Any overtime allowance or any other kind of payment should not be added to the wages.
5. Service period should be continuous and without any break, however any uncontrollable break is allowed such as accident.
6. Each year of service should be continuous and complete. This means employee must be present for following number of days in each years of service.
 - For 5 days of week :- 190 days per year.
 - For 6 days of week :- 240 days per year.
 - (c) For seasonal employee :- 15% days in each season.

Date of Joining = 26. Nov. 1980.

Date of Superannuation = 31. 5. 2006.

Service Period :- Year = 25

Month = 26

Day = 6

Irreducibility = $24000 \times 26 \times \frac{15}{26}$

= 2360000. Avg.

Date of Joining :- 1. May. 1978.

Date of Superannuation = 30. Nov. 2008.

Service Period :- 4 = 30.

Month = 6 + 1 = 7

D = 7

Irreducibility = $26000 \times 31 \times \frac{15}{26}$

= 465000

Ans. 15. Reference - Present problem has been taken from the concept of irreducibility for seasonal worker under Payment of Wages Act, 1972

Statutory Provision.

Seasonal workers must be present for 75% days in each season. If he doesn't come for 75% days in a season, that season will be ignored for computation of irreducibility.

Conclusion.

In this case when employee came for 60 days it is less than 75% so he is not entitle for irreducibility when employee came for 100 days, it is more than 75% so he is entitled for irreducibility.

Ans. 87

	Not Allowed.	Allowed
Mrs. P.	All others.	President who can and who can not become nominee
Mg. P.		Widow Son = Mr. P & Daughter Mrs. P. die in a Car.
Allowed	Not Allowed.	President who can and who can not become nominee
Mrs. P.P.	Mr. P.P.	Widow Son = Mr. P & Daughter Mrs. P. die in a Car.
P ₁	P ₁	
P ₂	P ₂	
		1. It might happen that employees do not have much funds at retirement of employee.
		2. If employee purchases insurance policy for his liability, at last employee will be safe because he will surely get liability either from employer or from insurance company.
		3. Premium on such policy should be paid by employee only and can't be recovered from employee.
		4. This insurance is compulsory but if following two conditions are fulfilled insurance is not required i.e. (a) There must be 500 or more employees (b) There must be a separate gratuity fund maintained by every employer for every employee keeping the amount of all employee's gratuity.
		Page 48 of 216
		5. Nomination should be submitted in duplicate which because of 2 copies should be submitted by employee.
		6. If employee is illiterate, nomination form should be signed by 2 witness.
		Forfeiture of Gratuity.
		1. Gratuity should be liable to be forfeited if specified offence is committed.
		2. Forfeiture can be partial or total.

Notice of opening, change and closure:

Regd. No. 35
Date _____

- Gratuity doesn't apply on all organisations. It applies on factories, oilfield, plantation, port, mine & Railways company. It also applies on all organisations having 10 or more workers.
- Whenever applicability under employer must inform government authorities, also called 'controlling authority', also called 'Labour Commissioner' in Form-A within 30 days of applicability.
- Employer will also inform to 'controlling authority' when there is any change in the structure of organisation such as partnership to company or proprietorship to one person company etc. Relevant form is the Form-B to be filled within 30 days of any change.
- Whenever the employer wants to close the organisation he must inform to 'controlling authority' in Form-C 60 days in advance of the date of intended closure. In other words employee can close organisation only after 60 days of filing Form-C.

Determination of amount of gratuity.

- Employee must determine the gratuity himself without assistance for any claim from the employee.
- Payment must be made within 30 days of living the establishment.
- After 30 days late payment interest will apply @ 10% P.A.
- If the employee doesn't pay gratuity at all, Employee can claim the gratuity in the office of 'controlling authority' also called 'application for gratuity' also called 'Gratuity in Dispute'.

Demand and claim of gratuity.

Regd. No. 87
Date _____

- If employee can apply for gratuity to employer in Form I after 30 days, within 30 days or even before leaving the establishment. In case employee has died, nominee can claim gratuity in Form I within one year from Death.
- If nominee is unavailable, legal heir of employee can claim gratuity in Form K within one year of death of employee.
- Employee will answer to the employee, legal heir or nominee within 15 days of Form I in case he is ready to pay Form M. In case he is rejecting to pay.
- If employee doesn't pay and doesn't reply within 15 days, employee can apply to 'controlling authority' in Form P. Employee can file application to 'controlling authority' within 90 days from refusal by employer in Form M. 'controlling authority' will issue notice to employee and demand his explanation in the specified number of days. Form of notice is Form O.
- 'controlling authority' can issue [summons] to anyone to be present before authority to give explanation. summons of summons is in Form P.
- After giving an opportunity of being heard, to every one, 'controlling authority' gives final decision in Form R.

Mode of Payment.

1. Gratuity can be paid in cash and not in kind.

2. Cash means cash, cheque, Demand draft, Pay order,

- and direct fund transfer.

3. If the gratuity amount is less than one thousand, it can also be paid by postal money order.

4. If the employee has died, gratuity can be paid to nominee. However, if nominee is minor it should be converted into fixed deposit. The FD should be kept safe with the controlling authority.

- FD must be made in nationalised bank only. The FD should be handed over to nominee when he becomes

Power of Controlling Authority.

1. Controlling authority has all the powers of civil

- court.

2. following are such powers.

- (a) Demand attendance of anyone.

- (b) Demand statement on both Oath.

- (c) Demand document from anyone.

- (d) Demand evidences from anyone.

- (e) Issue commission (Team) for examination.

Appeal.

1. If a person is aggrieved by the orders of controlling authority, he can appeal to appropriate government within 60 days.

2. Appropriate government can either take appeal itself or it can further appoint some higher authority.

Exemption from Liabilities.

1. If the employer expires in good faith that he is not in a position to pay gratuity, State Govt. can provide partial or complete exemption from gratuity liability.

- Exemption should be avoided only on business.

Protection of Gratuity.

1. Gratuity shall remain protected from any attachment by anyone, gratuity is a personal property of employee and his creditor cannot claim money from gratuity.

Display of the Act.

1. Employer must display summary of Gratuity Act & rule for the protection by employee and employer.

2. This must be displayed in English as well as local language.

3. Format of this display is format

PRACTICE MANUAL**Fill in the blanks**

1. The gratuity is payable to an employee after he has rendered continuous service for not less than _____ years.
2. The maximum amount of gratuity payable is _____.
3. The employer shall arrange to pay gratuity within _____ from the date of its becoming payable to the eligible person.
4. Appeal, against the order of the Controlling Authority may be filed within _____ days from the date of receipt of the order.
5. If the gratuity is not paid in time the employer is liable to pay interest at _____ per annum.
6. Nomination is to be made by an employee in Form _____.
7. Gratuity is calculated for every completed year of service or part in excess of six months at the rate of _____ wages last drawn.
8. Section 4A may exempt the employer employing _____ or more persons who establishes an approved gratuity fund.
9. An employee, within _____ of acquiring a family shall submit a fresh nomination.

10. If there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the _____.

Choose the correct answer

1. Which does not amount to retirement?

- (a) Retrenchment;
- (b) Resignation;
- (c) Dismissal;
- (d) Superannuation.

2. Gratuity is payable to an employee

- (a) On his superannuation;
- (b) Retirement;
- (c) Retrenchment;
- (d) In all the above cases.

3. The gratuity is payable to an employee shall not exceed-

- (a) 12 months pay;
- (b) 16 months pay;
- (c) 20 months pay;
- (d) 24 months pay.

4. The employer shall display an abstract of the Act and the Rules in Form No

- (a) U
- (b) H
- (c) O
- (d) N

5. If sufficient cause is shown the appropriate Government may condone the delay in filing appeal against the order of the Controlling Authority, for

- (a) 30 days;
- (b) 60 days;
- (c) 90 days;
- (d) No time limit.

6. Nomination is to be made by an employee

- (a) Immediately on his appointment;
- (b) After completion of one year service;
- (c) After he is made permanent;
- (d) None of the above.

7. Which one of the following is to be included in the definition of 'wage'?

- (a) Dearness allowance;
- (b) Overtime allowance;
- (c) Commission;
- (d) House rent allowance.

8. If an employer intends to close the business he is to send notice to the Controlling Authority within _____ before the intended closure.

- (a) 10 days;
- (b) 30 days;
- (c) 60 days;
- (d) 90 days.

9. Nomination is to be filed in _____

- (a) Single form
- (b) Duplicate
- (c) Triplicate
- (d) Quadruplicate.

10. Which will not amount to service of notice under the rule?

- (a) Personal service;
- (b) By registered post;
- (c) By courier.

State whether TRUE or FALSE

1. A person holding a post under the Central Government is an employee under the Payment of Gratuity act.
2. The father-in-law of a female employee will come under the term 'family'.
3. The maternity leave granted for 90 days will be included for the calculation of continuous service.
4. An employee is not required to obtain insurance for liability for payment of gratuity.
5. An employee may give nomination to his friend to receive gratuity after his marriage.

6. No gratuity payable shall be liable to attachment in execution of any decree of court.
7. The Controlling Authority may pay the gratuity to a minor, a nominee to receive the gratuity after the death of an employee.
8. For the purpose of calculation of gratuity 26 days are taken as a month.
9. The employer can make agreement with the employer to pay gratuity below the amount fixed by the Act.
10. Gratuity is a lump sum payable on consideration of the past services rendered by the employee.

Model Questions

1. Define 'continuous service'. Elucidate the requirement of minimum no of days for continuous service in respect of regular employment and seasonal employment.
2. Discuss the grounds on which the gratuity may be forfeited.
3. Explain the provisions relating to 'nomination'.
4. What are the powers of the Controlling Authority in deciding an application for payment of gratuity?
5. What is the remedy available if the employer rejects the application of an employee for payment of gratuity?
6. Explain the procedure for an employer to determine the gratuity payable to the employee.
7. Describe the procedure for mode of payment of gratuity.
8. Explain the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity.
9. Discuss the penal provisions under this Act.
10. Write a short on approved gratuity fund.

Answers:

Fill in the blanks

1. 5
2. ` 10 lakhs;
3. 30 days;
4. 60 days;
5. 10%;
6. F;
7. 15 days;
8. 500;
9. 90 days;
10. Controlling Authority.

Choose the correct answer

1. D
2. D
3. C
4. A
5. B
6. B
7. A
8. C
9. B
10. C

State whether TRUE or FALSE

1. FALSE
2. TRUE
3. TRUE
4. FALSE
5. FALSE
6. TRUE
7. FALSE
8. TRUE
9. FALSE
10. TRUE

MTP Question:**MTP June 19**

Question: 1 Explain the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity.

Answer: Section 10 provides that where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court-

- that he has used due diligence to enforce the execution of this Act, and
- that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;

In seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor. If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

Question: 2 What are the responsibilities of an occupier in a factory?

Answer: Responsibility of the occupier

The occupier has to follow the procedure-

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.
- to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity. Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

MTP Jun 2018

**Question: 3 Write a note on:
Protection of Gratuity**

Answer: Section 13 provides that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Section 13A provides that notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act 2009 receives the assent of the president, the gratuity shall be payable to an employee in pursuance of this notification of the Government of India in the Ministry of Labor and Employment vide SO 1080 dated the 3rd day of April 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the payment of gratuity (Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly.

Nothing contained in this section shall extend or be construed to extend to affect any person with any punishment or penalty whatsoever by reason of the non-employment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.

Question: 4 Determination of amount of Gratuity

Answer: Section 7 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of

gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined. The notice shall be in Form L.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.

If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

MTP June 2017

Question:5 Determination of amount of Gratuity

Answer: Section 7 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined. The notice shall be in Form L.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.

If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

Question: 6 Aswani who was an employee of Sun Televisions Limited, retired on 1st January, 2013 after 30 years of continuous service. The company did not pay the amount of gratuity to Aswani till the end of December, 2013. Now, Aswani claims the amount of gratuity along with interest. Decide, under the Payment of Gratuity Act, 1972 whether Aswani will succeed in his claim?

Answer: If the employer fails to pay the gratuity within the prescribed time (i.e., within 30 days of termination of employment), the controlling authority is empowered to issue a certificate, known as the recovery certificate to the collector to recover the amount of gratuity. Before issue of such certificate, the controlling authority shall give the employer a reasonable opportunity of being heard.

The employer shall also be liable to pay compound interest at such rate as may be notified by CG from time to time. The interest shall be paid starting from the date of expiry of prescribed period for payment of gratuity and ending with the actual date of payment of gratuity. However, the interest payable shall not exceed the amount of gratuity payable. The gratuity shall be recovered by the collector in the same manner as if it were arrears of land revenue. The gratuity so recovered shall be paid to the person entitled to payment of gratuity.

Hence Aswani may follow the above rules for settlement of his claim.

Question: 7 Forfeiture of Gratuity

Answer: Forfeiture of Gratuity

Section 4(6) provides that notwithstanding anything contained in sub-section (1),-

- the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
- the gratuity payable to an employee may be wholly or partially forfeited,-
- if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Suggested Question:

Suggested Dec 2018

Question: 8 Mr. Gill, an employee of M/s Sonabheel Tea Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Mr. Gill. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

Answer: The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused.

The gratuity payable to an employee may be wholly or partially forfeited:

- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or
- (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Mr. Gill is entitled to receive the balance gratuity.

Suggested Dec 2017

Question: 9 Discuss the procedure for determination of the amount of gratuity as per section 7 of the Payment of Gratuity Act, 1972.

Answer: Section 7 of the Payment of Gratuity Act, 1972 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable the employer shall whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the controlling authority, specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within stipulated period the employer is liable to pay interest at the rate of 10 % per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable. If the claim for gratuity is not found admissible, issue a notice in form 'M' to the applicant employee nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

Revisionary Question:

Revisionary Dec 2018

Question: 10 Mr. Green, an employee of Yellow Ltd. becomes disabled due to a disease and is unable to do the same work. He was then re-employed on the reduced wage. How the gratuity of Mr. Green shall be, computed under the provisions of the Payment of Gratuity Act, 1972?

Answer: Computation of Gratuity of a disabled employee: According to Section 4(4) of the Payment of Gratuity Act, 1972, when an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in two parts:-

- For the period preceding the disablement: on the basis of wages last drawn by the employee at the time of his disablement.
- For the period subsequent to the disablement: On the basis of the reduced wages as drawn by him at the time of the termination of services.

In the case of Bharat Commerce and Industries Vs. Ram Prasad, it was decided that if for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are better than the Act, the employee is entitled for that benefit.

As per section 4(3), the maximum amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.

Question:11 Mr. Alexander was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. Alexander applied to the Appropriate Authority for the recovery of the amount of gratuity. Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Answer: Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act, 1972. Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Question:12 Mr. Alexander was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. Alexander applied to the Appropriate Authority for the recovery of the amount of gratuity. Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Answer: Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death

or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act, 1972. Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).

In the given case the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. Alexender is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. Alexender. On the refusal by the company, Mr. Alexender can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

**Question: 13 Write short notes on:
Protection of gratuity**

Answer: Section 13 provides that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Section 13A provides that notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act 2009 receives the assent of the president, the gratuity shall be payable to an employee in pursuance of this notification of the Government of India in the Ministry of Labor and Employment vide SO 1080 dated the 3rd day of April 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the payment of gratuity (Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly.

Nothing contained in this section shall extend or be construed to extend to affect any person with any punishment or penalty whatsoever by reason of the non-employment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.

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Question: 14 Ajit an employee of Supertech Copper Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Ajit. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972.

Answer: The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused. The gratuity payable to an employee may be wholly or partially forfeited:- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Ajit is entitled to receive the balance gratuity.

Question: 15 (a) How is the amount of Gratuity determined in case of the following employees:

- (i) A monthly rated employee
- (ii) A piece rated employee
- (iii) An employee of a seasonal establishment

Answer: Calculation of amount of gratuity:

(i) In case of monthly rated employee:

- The gratuity shall be payable @ 15 days wages for every completed year of service or part thereof in excess of 6 months.
- 'Wages' means last drawn wages.
- 'Month' means a period of 26 days.
- Thus, gratuity shall be computed as follows:
- Last drawn wages x 15/26 x Completed years of service (including a part of year in excess of 6 months).

(ii) In case of piece rated employee:

- Gratuity shall be computed as follows:
- Last drawn wages x 15/26 x Completed years of service (including a part of year in excess of 6 months).
- Last drawn wages shall be computed by taking average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment.

While computing daily wages, the total wages of last 3 months is to be divided by number of days the employee actually worked, and not by the number of days or the number of working days in the said period of 3 months.

- For the purpose of computation of last drawn wages, wages paid for overtime work shall not be included in 'wages'.

(iii) In the case of an employee of a seasonal establishment:

- Such an employee shall be paid gratuity at the rate of 7 days' wages for each season.

Question: 16 Dispute as to the amount of gratuity payable

Answer: Section 7(4) provides that if there is a dispute as to the amount of gratuity payable to the employee, the employer shall deposit the gratuity with the Controlling Authority. The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable to an employee. If as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, the controlling authority shall direct the employer to pay such amount as is in excess of the amount deposited by him.

Then the Controlling Authority shall pay the amount of the deposit-

- to the applicant where he is the employee; or
- where the applicant is not the employee, to the nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

Workbook:

Question: 17 Define family as per Payment of Gratuity Act, 1972

Answer: Section 2(h) of Payment of Gratuity Act, 1972 defines the term 'family' in relation to an employee, shall be deemed to consist of-

- (i) in case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any;
- (ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

Question: 18 What does it mean by the term Retirement?

Answer: Section 2(q) of Payment of Gratuity Act, 1972 defines the term 'retirement' as termination of the service of an employee otherwise than on superannuation.

Section 2(r) defines the term 'superannuation' as in relation to an employee, the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment.

Question: 19 Discuss the different means of payment of Gratuity.

Answer: Section 4(1) of Payment of Gratuity Act, 1972 provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

On his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease;

Section 4(2) provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. The maximum amount of gratuity allowed under the Act is 20 lakhs (with effect from March 2018). Formula for calculation of gratuity = Last wage drawn x 15/26 x completed years of service. In calculation of gratuity one month is taken as 26 days. No half year shall be counted. If an employee is employed for more than half year (even by one day) it will be taken as full year but he has worked for 5 months and 29 days, it will be ignored.

In the case of piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

In the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Section 4(3) provides that the amount of gratuity payable to an employee shall not exceed twenty months' wage.

Question: 20 Discuss the situations on which gratuity can be forfeited.

Answer: Section 4(6) provides that notwithstanding anything contained in sub-section (1),- the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

The gratuity payable to an employee may be wholly or partially forfeited,- If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Scanner Question:**Question: 21 2009 - June Write explanatory note on:****Recovery of Gratuity****(4 marks)****Answer:**

Recovery of Gratuity: If the amount of Gratuity payable under the act is not paid within the prescribed time i.e 30 days to the entitled thereto, the said employee may apply to the Controlling Authority for direction to pay the gratuity.

Controlling Authority may give a reasonable opportunity of showing cause. After hearing both the parties, the Controlling Authority, issues orders for payment of gratuity with interest specifying the last date for such payment.

If the employer fails to pay the gratuity within the prescribed time against the order of the controlling Authority, then the controlling Authority issues certificates for that amount to the collector who shall recover the same with compound

interest at such rate as the central Govt, may specify from the date of expiry of prescribed time as arrears of land revenue and pay the same to the employee entitled thereto.

Question: 22 2012- June Write short note on :

Protection of Gratuity;

(4 marks)

Answer:

No gratuity payable under the Payment of Gratuity Act, 1972 and no gratuity payable to an employee employed in any establishment, factory, mines, oil field, plantation, port, Railway company or shop exempted u/s 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court. [Sec. 13, The Payment of Gratuity Act, 1972]

Question: 23 2012 - Dec Write short note on :

Forfeiture of Gratuity.

(4 marks)

Answer:

Forfeiture of Gratuity:

- Gratuity can be forfeited for any employee whose services have been terminated for any act of violence, wilful omission or negligence causing damage or destruction to the property belonging to the employer.
- It can also be forfeited for any act which constitutes an offence involving moral turpitude.
- Where services have not been terminated on any of the above ground, the employer cannot withhold gratuity due to employee.
- Where the land of the employer is not vacated by the employee, gratuity cannot be withheld.

Question: 24 2013- June Write short notes on:

Forfeiture (Gratuity Act, 1972)

(4 marks)

Answer:

Please refer 2012 - Dec [4] (a) (ii) on page no. 270

Question: 25 2009- Dec Whether Mr. Sham who joined the company on 1.7.05 and died on 30.11.09 is entitled to Gratuity. Answer citing Rules. (2 marks)

Answer:

In accordance with the Payment of Gratuity Act, the gratuity is payable to the employee under following conditions :

- On death or disablement due to accident or disease.
- Due to resignation or retirement.
- On termination of his employment.
- Due to his superannuation.

Other requirements for payment of gratuity are as follows:

He is required to have rendered continuous period of service for not less than five years but compliance of this condition is not necessary in case of death or disablement. Sanctioned leave is counted in service period.

In case of death, the gratuity is payable to his nominee and in the absence of nominee to his legal heirs. If nominee and legal heirs are minor, the amount of gratuity is invested until they attain maturity.

Question: 26 2010- June

Gratuity can be attached in execution of a decree or order of any civil, revenue or criminal court.

(2 marks)

Answer:

False: This protection is specifically provided in the Payment of Gratuity Act, 1972 that the gratuity cannot be attached by an order of the Court.

Question: 27 2010 - June When and to whom gratuity is payable?

(4 marks)

Answer:

Gratuity is payable to employees who have rendered continuous service for minimum 5 years in following circumstances :

(i) On the superannuation (ii) on his/her retirement or resignation (iii) on his/her death or disablement. In case of death, gratuity is paid to the nominees or to his/her legal heirs, if there was no nominee. In case of death, the condition of continuous service of 5 years is not applicable.

Question: 28 2010- Dec

Payment of Gratuity Act, 1972 applies to all the factories.

(2 marks)

Answer:

Payment of Gratuity Act, 1972 applies to

- (i) Every factory, mine, oil fields, plantation, Port and Railway company;
- (ii) Every shop and establishment employing ten or more persons;
- (iii) Any other establishment employing ten or more person.

Question: 29 2011- June

Retirement and superannuation. (under Payment of Gratuity Act) are same.

(4 marks)

Answer :

False. As per payment of gratuity act the retirement means termination of service of an employee otherwise than superannuation. Superannuation is attainment of a prescribed age by the employee at which he is retired from job. Space to write important points for revision¹

Question: 30 2011 - June [4]

Nomination once made cannot be changed (Payment of Gratuity Act)

(2 marks)

Answer:

False : Nomination can be changed as per the will of the person receiving the gratuity. All provisions of applicable sections must be followed before such change of nomination.

Question: 31 2014- June

State the nature of dispute as to gratuity that may be decided by the Controlling Authority.

(3 marks)

Answer:

The Controlling Authority may decide the following disputes:

- (a) Dispute as to amount of gratuity payable to an employee under the Payment of Gratuity Act.
- (b) Dispute as to the admissibility of any claim of, or in relation to an employer for payment of gratuity.
- (c) Dispute as to the person entitled to receive gratuity [Sec. 7(4)(a)].

Question: 32 2016- June

Under what circumstances the gratuity payable to an employee be forfeited?

(8 marks)

Answer:

Forfeiture of Gratuity:

The legal provisions relating to the forfeiture of gratuity are contained in Section 4 (6) of the Payment of Gratuity Act, 1972 and may be summed up as under:

1. The gratuity payable to an employee shall be forfeited where the services of an employee have been terminated due to any act, willful ■ omission or negligence on the part of the employee and employee's such act etc. has caused:

- (a) damage or loss to the property belonging to the employer, or
- (b) destruction of the property belonging to the employer.

In this case, the gratuity payable to the employee shall be forfeited to the extent of the damage or loss caused to employer's property due to employees act, omission or negligence [Section 4(6)(a)]

2. The gratuity payable to an employee may be forfeited:

- (a) If the services of such employee have been terminated for his riotous or disorderly conduct or any other Act of violence on his part, or
- (b) If the services of such employee have been terminated for any Act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

' In the above stated cases, the gratuity payable to an employee may be forfeited wholly or partially. [Section 4(6)(b)]

Following judicial decisions are important to note in connection with the forfeiture of gratuity by the employer:

(i) The right of the employer to forfeit the amount of gratuity of an employee whose services were terminated due to any Act, wilful omission or negligence causing any damage to the employer's property is limited to the extent of damage and the proof of such damage.

[Permalis Wallance Ltd. Ite. State of M.P. (1996) IILLJ 515 (MP)].

(ii) The right of the employer to forfeit the gratuity is available only in the circumstances enumerated in Section 4(6), as stated in points (1) and

(2) above, and is not available in any other circumstances as employee's right to gratuity is the statutory right.

[K.C.Mathew Vs. Plantation Corp. of Kerala Ltd. (2001) LLR 123 (ker.)].

(iii) The refusal by the employees to surrender land belonging to the employer is not a ground for forfeiture of gratuity. *[Travancore Plywood Industries Ltd. Vs. Regional Joint Labour Commissioner, (1996) If LLJ 85 (ker.)].*

(iv) In case of termination of services on account of offence involving moral turpitude the gratuity may be wholly or partially forfeited. In this regard, the Karnataka High Court has held that when an offence of theft under law involves moral turpitude, gratuity stands wholly forfeited in view of Section 4 (6) of the Act.

[Bharat Gas Mines Ltd. Us. Regional Labour Commissioner. (Central) (1987) 70 FJR 11 (Karnataka)].

Question: 33 2016 - Dec [2]

Explain the manner in which the gratuity payable to employees in a seasonal establishments is calculated under the Payment of Gratuity Act, 1972. State also the maximum amount of gratuity payable under the Act. (5 marks)

Answer:

Seasonal Establishments:

In the case of seasonal establishment the employees can be classified into 2 groups.

- (a) Those who work throughout the year and
- (b) Those who work only during the season.

The former are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of 6 months. The latter, are entitled to receive gratuity at the rate of 7 days for each season. **Under Section 4(3)** provides that the amount of gratuity payable to an employee shall not exceed ` 20 lakhs.

Question: 34 2017- Dec

Discuss the procedure for determination of the amount of gratuity as per Section 7 of the Payment of Gratuity Act, 1972. (5 marks)

Answer:

Section 7 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable, the employer shall, whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined. The notice shall be in Form L.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.

If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why' the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

Question: 35 2018- Dec

Mr. Gill, an employee of M/s Sonabheel Tea Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Mr. Gill. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. (5 marks)

Answer:

The gratuity of an employee, whose services have been terminated for any Act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused.

The gratuity payable to an employee may be wholly or partially forfeited:

- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other Act of violence on his part or
- (ii) if the services of such employee have been terminated for any Act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground forfeiture of entire gratuity. In the above case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Mr. Gill is entitled to receive the balance gratuity.

Question: 36 2008 - Dec [2]

Calculate the amount of gratuity of Mr. X who joined the company on 1.5.78 and retired on 30.11.08 when his salary was ` 26,000/- per month. During November, 2008 he received overtime and incentive ` 5,000 (2 marks)

Answer:

Mr. X worked from 1.5.78 to 30.11.08. The period is 30 years 6 months and 29 days (30.11.08 is not included), for the purpose of computation of gratuity the period of service is taken as 31 years. Gratuity is $(31 \times 26,000 \times 15)/26 = ` 4,65,000$. Thus, he will be entitled for a gratuity payment of ` 4,65,000.

Question: 37 2009 - June [2]

Every employee, whose salary is not more than ` 3,500 per month is entitled to Gratuity as per Payment of Gratuity Act. State the legal provision if not correct. (2 marks)

Answer:

False : Now all the employees of the specified establishment excepting Apprentices are entitled to gratuity under the act.

Question: 38 2009 - Dec

Mr. Sham, who retired on 30.11.09 did not vacate office quarter which was provided by his employer. Employer withheld the Gratuity to force him to vacate the quarter. (2 marks)

Answer:

Gratuity can be withheld or forfeited only to the extent of damage, loss and destruction of property suffered by employer due to wilful act, negligence and omission of the employee and his services have been terminated on the grounds of such act, negligence or omission. The non-vacation of quarters is no reason to withhold gratuity.

Question: 39 2011- Dec

Mr. A. B. Roy a dissatisfied worker wilfully causing damage of a machine. Employer had to spend ` 10,000/- to get the machine rectified. Hence his gratuity was forfeited. Whether justified. (2 marks)

Answer:

Gratuity shall be forfeited under the following circumstances:

1. Where the services of the employee have been terminated due to wilful omission or negligence causing damage, loss or destruction of property of establishment. The forfeiture in this case will be limited to the amount of loss/damage.
2. Where the services of the employee have been terminated due to riotous or disorderly conduct or for any other act of violence by the employee. The forfeiture in this case may be entire amount or part thereof depending on the gravity of the offence.
3. Where the employee commits an offence involving moral turpitude while in the course of his employment.

In the current case, the employer cannot withhold or forfeit gratuity since the services were not terminated for the damages caused by the worker.

Question: 40 2011 - Dec [3]

Mr. Saxena on superannuation on 30.09.2011 submitted an application in prescribed form to his employer on 05.10.2011 for payment of gratuity of ` 15,00,000/-.

He has not received any payment till 10.12.2011 inspite of reminders. Advise the steps to be taken by him and the benefits which he may receive. (4 marks)

Answer:

The employer was to pay the amount of gratuity within 30 days from the date it becomes payable. Hence employer has failed. As per Payment of Gratuity Act, 1972 Maximum ceiling of gratuity is actual amount but not exceeding ` 20,00,000. Hence Mr. Saxena is entitled to maximum amount of ` 20,00,000 or the amount based on year of service and his wages whichever is less. Since Employer has failed to pay, Mr. Saxena shall submit appeal to the controlling authority for direction to pay

- (a) Principal amount of gratuity and
- (b) Interest for delayed period till the date of payment.

Question: 41 2012- Dec

Mr. S.K. Paul employed in seasonal establishment and was not employed throughout the year claimed gratuity at the rate of 15 tlays wages for each year of service. But Employer refused to pay any Gratuity to employees of seasonal establishment. (2 marks)

Answer:

Employer shall pay gratuity at the rate of seven days wages for each season to employees who are employed in a seasonal establishment and who are not so employed throughout the year. Wages will include Basic and D.A. Hence Mr. Paul is entitled to Gratuity.

Question: 42 2013- June

ABC Pvt. Ltd. incorporated on. 2nd January 1980 carrying on business from the date of incorporation employing 50 persons. Due to loss, the number of employees reduced to five w.e.f. 02.06.2011. Mr. 'A' who retired on 31.05.2013 was refused gratuity on the ground that the total number of employees is below 10 (ten). Whether employer was justified? (3 marks)

Answer:

The Payment of Gratuity Act, 1972 was enacted to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments who have rendered a minimum five years of continuous service with the establishment employing ten or more persons.

Every employee, other than apprentice irrespective of his wages is entitled to receive gratuity after he has rendered continuous service for five years or more. Gratuity is payable at the time of termination of his service either (i) on superannuation or (ii) on retirement or resignation or

(iii) on death or disablement due to accident or disease. Termination of services includes retrenchment.

However, the condition of five years' continuous service is not necessary if services are terminated due to death or disablement. In case of death of the employee, the gratuity payable to him is to be paid to his nominee, and if no nomination has been made, then to his heirs.

- If the Act has become applicable to any establishment, it will continue to be applicable even if the number of persons employed falls below ten or any number as specified by the Central Government.
 - All the employees irrespective of salary or status are entitled to the payment of gratuity on completion of 5 years of service, in case of death or disablement there is no minimum eligibility period.
- In the light of above the employer is not justified in refusing gratuity to A.

Question: 43 2013 - Dec [3]

Anurag was an employee of Coffee Estate Ltd. The whole undertaking of Coffee Estate Ltd. was taken over by a new company Asian Coffee Ltd. The Service of Anurag remained continuous in the new company. After serving for one year, Anurag met with an accident and became permanently disabled. Anurag applied to the new company for the payment of gratuity. The company Asian Estate Ltd. refused to pay gratuity on the ground that Anurag has served only for a year in the company. Examine the validity of refusal of the company in the light of the provisions of the Payment of Gratuity Act, 1972. (3 marks)

Answer:

According to the **Section 4(1) of the Payment of Gratuity Act, 1972**, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years or on his superannuation or, on his retirement or resignation or on his death or disablement due to accident or disease.

- The condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section.
- Disablement means such disablement as incapacities of an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.
- The given problem fulfills all the above requirements as stated.
- Therefore, Anurag is entitled to recover gratuity after becoming permanently disabled, and continuous service of five years is not required in this case.
- Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year.

Question: 44 2013 - Dec

Mr. Mahavir joined the company on 25.05.1987 and retired on 30.11.2012 when his salary was INR 70,000 per month. He also received conveyance allowance INR 20,000 per month and average overtime INR 1,000 per month, calculate the amount of gratuity. (3 marks)

Answer:

He superannuated on 30.11.2012 Joined on 25.05.1987

He is entitled for 25 years 6 months + 5 = 26 years

Amount of gratuity

$$= 15 \times 26 \times 70,000 / 26$$

$$= \text{INR } 10,50,000$$

Maximum ceiling being INR 20,00,000 His gratuity is INR 10,50,000

Question: 45 2014- June

Ram is employed in Sweet Sugar factory, a seasonal establishment. The factory was in operation for four months only during the financial years 2011-12. Ram was not in continuous service during this period. However, he has worked only 60-days. Referring to the provisions of The Payment of Gratuity Act, 1972, decide whether Ram is entitled to gratuity payable under the Act. Would your answer be the same in case Ram works for 100 days? (2 marks)

Answer:

- For entitlement of gratuity one must work for at least 75% of the days on which the establishment was open and in operation. The factory was in operation for 120 days.
- One must work for 75% of 120 i.e. 90 days to claim gratuity. Ram is not entitled to gratuity, since he has actually worked for less than 75% of the number of days on which the establishment was in operation during such period.
- If Ram had worked for 100 days, then he would have been entitled to gratuity since the number of days on which he would have worked, in that case, would have been 75% or more of the number of days on which the establishment was in operation.

Question: 46 2015- Dec

Ajit an employee of Supertech Copper Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Ajit. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. (3 marks)

Answer:

The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused. The gratuity payable to an employee may be wholly or partially forfeited:

- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or
- (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Ajit is entitled to receive the balance gratuity.

Employees Provident Fund and Miscellaneous Provisions Act, 1952

Employee Provident Fund and Misc. Provisions Act, 1952.

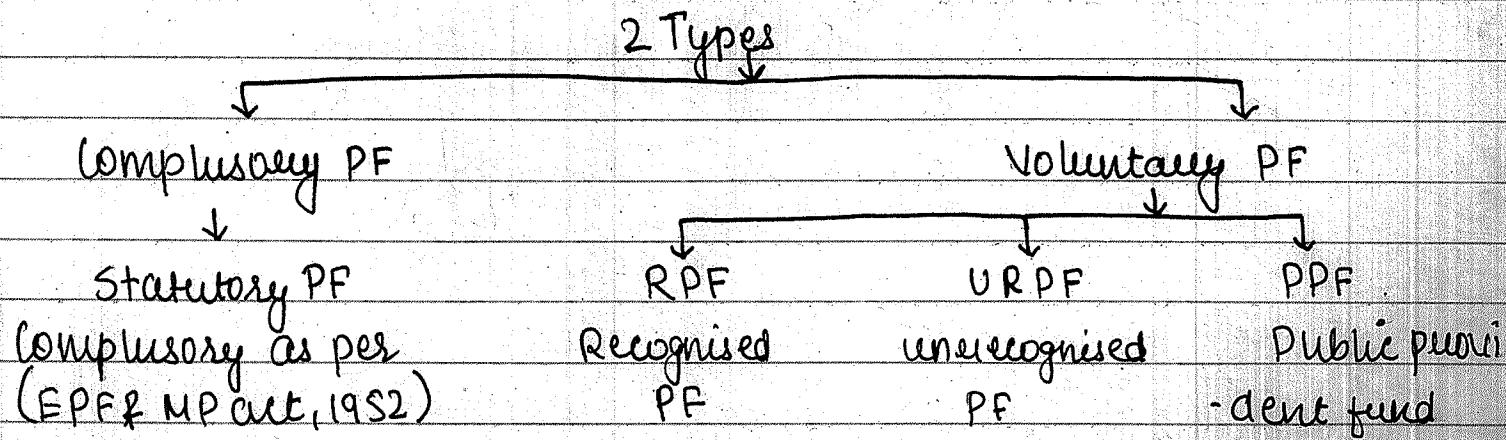
Introduction:

1. It is very difficult for an employee to create savings.
2. His income and consumable income do not match always.
3. It is impossible to expect a worker to create savings for near future because a major part and sometimes the complete salary goes into expenses.
4. So it is better to deduct a part of salary before payment so that savings get created automatically.
5. This money is deposited with a govt. organisation called Employee provident fund organisation.
6. Whenever employee changes his job, it does not affect any savings because the money save is not with the previous employer.
7. Salary which will deducted in the new employment will also get deposited in the same account with EPFO.

8. Such account no. remain same throughout his life and it is called Unique A/c No. (UAN)
9. Employee can check his deductions and depositories by using Unique A/c NO. on the website of EPFO.
10. Employee can withdraw this deposited amount at any point of time but generally people withdraw this money after retirement.
11. This deposited amount is called provident fund.
12. This is called provident fund because this Reserve created out of savings is invested in the open market which will give us benefits during uncertain future.

Types of provident Fund

There are two types of provident which are as follows:



Statutory Provident Fund:

This is a compulsory PF for specified employees and employee. There is no option to leave this PF. It is maintained by EPFO. This is the only PF which is subject matter of law.

Recognised Provident Fund:

This is a private PF Fund maintained by those employees who are not covered under the PF act. They create their own scheme and ^{take} approval from govt.

This is not a govt fund but still it is a secured fund. This money is monitored by govt so it is comparatively safer than URPF.

Unrecognised Provident Fund

It is also a private fund maintained by employee himself but the matter of concern is that no approval is taken from govt for this. It means there is no security and guarantee for the return of this money. It is running as a parallel economy without any govt control.

Public provident Fund :

This PF does not require employer-employee relationship. It is basically a kind of Bank account opened with specified banks and post office. Any individual can open this account as a monthly deposite and will withdraw it after specified period of time.

Schemes under the act :

When ever an employee joins provident fund scheme, he is automatically registered under two more scheme. They are family pension scheme and employee deposit linked Insurance. So there are total 3 schemes

which are as follow:

- (a) Provident Fund scheme launched in, 1952.
- (b) Pension scheme launched in, 1995.
- (c) Employee deposite linked Insurance scheme, 1976

Applicability of the Act

1. It applies to whole of India excluding J & K.
2. It applies on every Organisation registered as factory and any other Organisation having 20 or more workers.
3. Central govt. can apply this act on any other Organisation, subject to 2 month advance notice.
4. It also applies on cinema halls having 50 or more workers.
5. It is applicable if the workers wages is maximum ₹ 21000 (as per study material ₹ 15000)
6. This wages includes only basic salary, Dearness allowance, Retaining allowance.
7. If the act is once applicable, it shall remain applicable forever & even if no. of workers go below minimum.
8. It does not apply on following two types of establishment:
 - (a) GOVT. Organisation.
 - (b) Co-operative society working without power and having less than 50 workers.

Administration of Provident Fund :

1. EPFO is the governing body for PF.
2. It receives PF contributions from employer on behalf of employee and provides benefits to employees.
3. EPFO has separate department :
 - (a) Central board of trustees.
 - (b) Executive Committee.
4. Central board creates rules and regulation for administration of PF.
5. Executive Committee has a duty to make sure that such rules are implemented in Indian Industry and all employees are getting proper benefits.
6. Central boards has 43 people which are as follows:

(i) 1 Chairman	(ii) 1 Vicechairman
(iii) 5 Representative of Central govt.	(iv) 15 State ,
(v) 10 ,	(vi) Employers.
(vii) 10 ,	Fund Employees
(viii) Central provident Fund Commissioner (CPF)	

7. Executive Committee has 13 persons which are as follows:

- (i) 1 Chairman
- (ii) Central provident Fund commission
- (iii) Two representative of central govt.
- (IV) 3 , , , State , , ,
- (V) 3 , , , Employees.
- (VI) 3 , , , Employees.

Pension Fund Scheme :

- 1. Minimum PF rate is 10.1% of salary.
- 2. Central govt can increase this upto 12.1%.
- 3. Present rate of provident fund is 12.1% only.
- 4. However rate for following organisation is still 10.1%.
 - (i) Jute Industry.
 - (ii) Beedi Industry.
 - (iii) Bricks Industry.
 - (iv) Coir Industry.
 - (v) Gauz Gumi Industry.
 - (vi) Sick company. (as defined in 10. law)
- 5. Employee contributes 12.1% which goes directly to P.F. and he does not pay anything for pension and insurance.

6. Employee also contribute 12.1% of employee's salary from his own pocket but this money does not go completely to Provident fund.
7. It is distributed as follows.
 - (a) 8.33% goes to Pension
 - (b) 3.67% goes to Insurance.
8. It means total money going to Provident fund is not exact double of 12.1%, it is only 15.67%.
9. If the Provident fund is withdrawn there is no limitation period and it can be taken back at any point of time.
10. However pension amount comes only if continuous service is provided for 10 years with the same employee.
11. When an employee changes his job without completing 10 years such 15.67% also to the new employer but 8.33% of pension gets permitted. rest forfeited by CG.
12. PF generally comes back within 45 days ~~to~~ from the date of application.
13. If money does not come within 45 days additional 12.1% interest will also ~~apply~~ on the PF amount for the delay.

14. If 12% interest is paid for the period of delay, it shall be recovered from the salary of central provident fund commissioner.

15. Employee can also take advance money from EPFO without leaving the job for following purpose:

- (A) Illness
- (B) Education of childrens
- (C) Marriage.
- (D) Natural disaster.
- (E) Electricity cut by dept due to non-payment.
- (F) In case of Physical and mental disablement.

16. If there is no deposit and withdrawal in the PF account for three years, such account becomes a dead account and no interest will accrue after three years but the money is safe and can be withdrawn at any point of time.

Pension Scheme

1. Employee does not contribute anything for pension.
2. Employer pays 8.33% of wages of employee for the pension.
3. When the employee becomes 58 years of age, contribution stops.
4. Pension is paid in lumpsum.
5. 10 year service is compulsory that too, with a same employer.
6. If the employee changes or leaves his job, pension contribution lapses.
7. In case of death of employee, pension is given to legal heirs.
8. Pension can be given either along with the provident fund or as a separate payment.

EDLI Scheme

[Employee Deposit linked Insurance]

1. It is called linked because it is linked to PF.
2. Employee does not contribute anything in EDLI Scheme
3. Employer contributes 0.5% of wages of employee as EDLI premium. \downarrow
[per month]
4. EDLI gives benefit only in the nature of Insurance, which is life Insurance.
5. When an employee dies, the entire premium amount paid or ₹120000, whichever is higher is paid as cash benefit.
6. Determination of Money due

1. When ever there is a dispute regarding PF liability, final decision will be taken by EPFO.
2. If a person is dissatisfied with decision of EPFO, He can approach EPFAT (Employee provident fund Appellate Tribunal)
3. Appeal can be filed by employee without any fees.
4. However employer will have to deposit 75% of due amount, as calculated by EPFO, Before filing appeal.

5. This money will be refunded to employer if he wins the case.
6. EPA-EPFAT consist of single judge.]
7. This Single Judge is called Presiding officer.
permissible.
8. Maximum ~~permissible~~ of Presiding Officer is 62 years.
9. He is appointed by CG upon recommendation of Chief Justice of India
10. Presiding officer can be removed by Honourable by President.
11. Presiding officer can resig only after giving 3 month advance notice.
12. Presiding officer has all the powers of a civil court

Misc. Point

1. Provident fund money is always free from attachment
2. Employer can not reduce wages of employee just because he wants to pay less contribution
3. If an employee changes his job, his money in the PF account will be transferred to new employer without any loss of interest.
4. If an organisation is sold out or the ownership changes, the responsibility of old as well as new employer will be joint and several.
5. Tea factories of Assam are exempted from PF.

6. The wage limit contribution under the

7. The Central Government may give

8. Contribution to EPF is payable by

9. _____ is not covered un

10. Section 5AA provides for the in the performance of its functions.

Choose the correct answer

1. Which one of the following will not include in the definition of basic wages?

- (a) Dearness allowance;
- (b) Overtime;
- (c) Cash value for consideration;
- (d) All the above.

2. The contribution of employer to insurance fund is

- (a) 1%
- (b) 10%
- (c) 12%
- (d) None of the above.

3. Contribution of 10% to PF is applicable to

- (a) Any establishment in which less than 20 employees are employed;
- (b) Any establishment declared as sick industrial company;
- (c) Jute company;
- (d) All of the above.

4. The minimum administrative charge payable by the employer to the fund is

- (a) `75
- (b) `500/-
- (c) `1000
- (d) None of the above

5. The maximum penalty recoverable from the employer who makes the default in payment of any contribution to the fund is

- (a) 5%

- (b) 10%
- (c) 15%
- (d) 25%

6. Withdrawal from PF may be allowed for-

- (a) Marriage of the employer;
- (b) Post matriculation education of children;
- (c) For the purchase of a dwelling place;
- (d) For illness in certain cases

7. The Employees Pension Scheme provides for-

- (a) Superannuation pension;
- (b) Orphanage pension;
- (c) Both (a) and (b);
- (d) None of (a) or (b).

8. Contribution of the employer to employees' pension scheme is

- (a) 8.33%
- (b) 10%
- (c) 12%
- (d) None of the above.

9. The following cannot be nominated for the purposes of EPF Act

- (a) Wife;
- (b) Sons of a deceased sons who have attained majority;
- (c) Father in law;
- (d) Unmarried daughter.

10. While filing appeal to EPF Appellate Tribunal the employer has to deposit____ of the amount due from him.

- (a) 25%
- (b) 50%
- (c) 75%
- (d) None of the above.

State whether TRUE or FALSE

1. Once the EPF Act is covered to any establishment it shall continue to apply notwithstanding the number of persons employed shall at any time fall below 20.
2. The wage limit `15,000/- is applicable for the contribution to the Fund in respect of international workers.
3. The employer cannot reduce wages of the employee to avoid his liability under the Act.
4. If an employee is transferred from one employment to another, the balance at his credit in his PF Account cannot be transferred to the new establishment.
5. The Central Government may add to amend or vary either prospectively or retrospectively, the scheme, Pension Scheme or the Insurance Scheme.
6. Where the pay of an employee exceeds `15,000/- the contribution to insurance scheme is restricted to `15,000/-.
7. Contribution to pension scheme is recoverable when the employee crosses 58 years of age.
8. The employer shall in the first instance pay the contribution payable by himself and also on behalf of the member employed by him through a contractor.
9. The PF scheme is applicable to the tea factories in the State of Assam.
10. The EPF Act is applicable to any establishment registered under the Co-Operative Societies Act, 1912.

Model Questions

1. What are the schemes available in the EPF Act?
2. What are the consequences if an employer makes default in the payment of any contribution to the Fund?
3. Under what circumstances advances can be received by employer from the PF Fund?
4. Discuss the matters provided for the insurance fund under the Schedule.
5. How the money due from employers is determined in respect of PF, pension scheme or the insurance scheme?
6. Explain the provisions relating to EPF Appellate Tribunal.
7. Discuss the procedure involved in review of order of the officer passed under Section 7A of the Act.
8. Describe the procedure for the payment of assured benefits in case of no nomination is filed by the employee.
9. Narrate the features of Employees' Pension Scheme.
10. Define the term 'appropriate government' and 'employee'

Answers:**Fill in the blanks**

1. 20;
2. 10%;
3. Central Board;

4. 01.09.1976;
5. 15;
6. 01.09.2014;
7. Financial position;
8. Employer, employee;
9. Apprentice;
10. Executive Committee.

Choose the correct answer

1. D;
2. A
3. D
4. B
5. D
6. C
7. C;
8. A
9. B
10. C

State whether TRUE or FALSE

1. TRUE;
2. FALSE;
3. TRUE;
4. FALSE;
5. TRUE;
6. TRUE;
7. FALSE;
8. TRUE;
9. FALSE;
10. FALSE

MTP Question:

MTP June 2019**Question: 1 Under what circumstances advances and withdrawal made from the PF fund.****Answer:** Withdrawal from the fund is allowed for the following purposes-

- For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose;
- For repayment of loans in special cases;
- Withdrawal within one year before the retirement;
- Withdrawal upto 75% of the balance, if not employed from one month or more, subject to approval of P.F. Commissioner or any officer authorised by him. Such withdrawals are not required to be repaid.

Advances from the fund

Advances from the fund are paid for the following purposes-

- For illness in certain cases;
- For marriages or post matriculation education of children;
- In abnormal conditions such as calamity of exceptional nature such as flood, earthquakes or riots – (non-refundable)
- Granted to members affected by cut in the supply of electricity; (non-refundable)
- Grant of advance to members who are physically handicapped; (non-refundable)

MTP Dec 2018**Question: 2 Write a note on: Pension Funds****Answer: Pension funds [Section 23]**

(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds:

Provided that at least one of the pension funds shall be a Government company.

Explanation.- For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in Section 617 of the Companies Act, 1956.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

Question: 3 Write a note on 'Point of Presence' of Central Record-keeping agency, as per PFRDA Act, 2013.

Answer: If "Point of presence" means an intermediary registered with the Authority under subsection (3) of Section 27 as a point of presence and capable of electronic connectivity with the central recordkeeping agency for the purposes of receiving and transmitting funds and instructions and pay out of funds;

Rules of Point of Presence as per Section 22 of PFRDA Act, 2013 would be:

(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a point of presence for the purpose of receiving contributions and instructions, transmitting them to the Trustee Bank or the central recordkeeping agency, as the case may be, and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard.

(2) A point of presence shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

MTP Jun 2018

Question: 4 State the non-applicability of Employees Provident Fund and Miscellaneous Provisions Act, 1952.

Answer: Non applicability of the Act

Section 16(1) of the Act provides that this Act is not applicable to the following –

- To any establishment registered under the Co-operative Societies Act, 1912 or under any other law for time being in force in any State relating to co-operative Societies, employing less than 50 persons and working without the aid of the power; or
- To any other establishment belong to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
- To any other establishment set up under the Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

Question: 5 Pension Funds [Section 23 of PFRDA Act, 2013]

Answer: Pension funds [Section 23]

(1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

(2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds: Provided that at least one of the pension funds shall be a Government company.

EXPLANATION.— For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in Section 617 of the Companies Act, 1956.

(3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

(4) The pension fund shall manage the schemes in accordance with the regulations.

Question: 6 Write a note on Central Record Keeping Agency as per Section 21 of PFRDA Act, 2013.

Answer: Central Recordkeeping Agency [Section 21]

(1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central recordkeeping agency: Provided that the Authority may, in public interest, appoint more than one central recordkeeping agency.

(2) The central recordkeeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central record-keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central recordkeeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central recordkeeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Suggested Question:

Suggested Dec 2017

Question: 7 When can a member withdraw from his National Pension Funds account?

Answer: A Member of the National Pension Fund can withdraw following situation.

- (1) At any point in time before 60 years of Age (min. contribution for 10 years) Minimum 80% of the pension wealth to be utilised for purchasing a life annuity from the empanelled ASP. Remaining 20% of the pension wealth can be withdrawn as lump sum. If pension wealth is equal or less than ` 1 lakh, entire amount will be paid as lump sum.
- (2) On attaining the Age of 60 years and up to 70 years of age Purchasing a life annuity from the empanelled ASP, subject to maximum deferment of 3 years. Remaining 60% of the pension wealth can be withdrawn as lump sum or can be deferred and withdrawn anytime before 70 years. Subscriber can also contribute till withdrawal or 70. If pension wealth is equal or less than ` 2 lakhs, entire amount will be paid as lump sum.
- (3) Death due to any cause (all citizen) In such an unfortunate event, option will be available to the nominee to receive 100% of the NPS pension wealth in lump sum. However, if the nominee wishes to continue with the NPS, he/she shall have to subscribe to NPS individually after following due KYC procedure.

Revisionary Question:

Revisionary Dec 2018

Question: 8 Ritesh, a 57 years old district judge was appointed by the Central Government as Presiding Officer of the Employee's Provident Funds Appellate Tribunal for a period of five years. After three years, he (Ritesh) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the Government till that date. Examine the validity of Ritesh's action to cease work under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer: Section 7F (1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides that the Presiding Officer of a Employees' Provident Funds Appellate Tribunal may by notice in writing under his hand addressed to the Central Government, resign his office provided that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

Hence, Ritesh's action is invalid as per above provisions. He is supposed to continue for three months unless he is relieved earlier by the Central Government or his successor appointed by the Central Government has taken up the office, whichever is earlier.

Question: 9 Primitive Ltd., which is covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was adjudged insolvent and an order for winding up was made. State, in this connection, whether the Provident Fund is attachable and whether the payment of Provident Fund contribution be considered as priority over other Debts of the Company

Answer: Protection against attachment:

According to section 10 of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member or of any exempted employee in the Provident Fund shall not in any way be capable of, being assigned or charged and shall not be liable to attachments under any decrees order of any court in respect of any debt or liability, incurred by the member or the exempted employee. Neither the official assignee appointed under the Presidency town Insolvency Act, 1909 nor any Receiver appointed under the Provincial Insolvency Act 1920 shall be entitled to have any claim on any such amount. Such amount shall also not be liable to attachment under any decree or order of any court.

Priority of Payment of Contribution over other debts (Section 11): If the employer is adjudged an insolvent or if the employer is a company and an order for winding thereof has been made, the amount due from the employer whether in respect of the employee's contribution or the employer's contribution must be included among the debts which are to be paid in priority to all other debts under Section 49 of the Presidency - Towns Insolvency Act, Section 61 of the Provincial Insolvency Act, Section 327 of the Companies Act, 2013, in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be a preferential payment provided the liability therefor has accrued before this order of adjudication or winding up is made.

Revisionary June 2018

Question: 10 Sushil retired from the services of ABC Limited, on 31st March, 2014. He had a sum of ` 10 lakhs in his Provident Fund Account. It has become due for payment to Sushil on 30th April, 2014, but the company made the payment of the said amount after one year. Sushil claimed for the payment of interest on due amount at the rate of 15 per cent per annum for one year. Decide, whether the claim of Sushil is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer: According to Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

However, the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest charged by any scheduled bank. As per above provision, Sushil can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate Sushil can claim only 12 percent per annum interest on the due amount. Hence claim of Sushil for interest rate 15% is not tenable.

Question: 11 (a) Examine with reasons, the validity of the following nominations made under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952:

1. J nominated N (his son) as a nominee.
2. M nominated S (his wife) and K (a friend) as nominees.
3. R who does not have a family nominated A (a close relative) as a nominee.
4. G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to Z.

Answer: 1. Nomination by J in favour of N is valid, since N is a member of the family of J (since son is covered under the definition of 'family').

2. Nomination by M in favour of S is valid, since S is a member of the family of M (since wife is covered under the definition of 'family'); But in favour of K is void, since K is not a member of the family of M (since K is only a friend, and a friend is not covered under the definition of 'family').

3. Nomination by R in favour of A is valid although A is not covered under the definition of family; but if the employee does not have a family, then, nomination may be made in favour of any person.

4. Nomination by G in favour of N is valid but it becomes void immediately on marriage since a nomination made in favour of a person who is not a member of the family, becomes void immediately when the employee subsequently acquires a family.

Question: 12 Features of National Pension System

Answer: The National Pension System shall, on the commencement of this Act, have the following basic features, namely:—

- (a) every subscriber shall have an individual pension account under the National Pension System;
- (b) withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the conditions, such as purpose, frequency and limits, as may be specified by the regulations;
- (c) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;
- (d) there shall be a choice of multiple pension funds and multiple schemes: Provided that— (a) the subscriber shall have an option of investing up to hundred per cent of his funds in Government Securities; and (b) the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the Authority;
- (e) there shall be portability of individual pension accounts in case of change of employment;
- (f) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;
- (g) there shall not be any implicit or explicit assurance of benefits except market-based guarantee mechanism to be purchased by the subscriber;
- (h) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and
- (i) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

Workbook Question:

Question: 13 What does it mean by contributions towards the Employees Provident Fund?

Answer: As per Section 6 of Employees Provident Fund and Miscellaneous Provisions Act, 1952, the contribution shall be paid by the employer to the Fund shall be 10%, (12% in some class of Industries/establishments as notified by Govt.) the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the employees contribution shall be equal to the contribution payable by the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act.

Dearness allowance shall include the cash value of any food concession allowed to an employee. Retaining allowance is the allowance payable to an employee for retaining his services, when the establishment is not working.

Contribution is paid up to a maximum of 15,000 by employer and employee with effect from 01.09.2014. To pay a contribution on higher wages, a joint request from employee and employer is required.

Question: 14 In which situation withdrawal from the fund is allowed under Employees Provident Fund and Miscellaneous Provisions Act, 1952?

Answer:

Withdrawal from the fund is allowed for the following purposes- (i) For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose; (ii) For repayment of loans in special cases; (iii) Withdrawal within one year before the retirement;

Question: 15 When Advances can be received from the fund under Employees Provident Fund and Miscellaneous Provisions Act, 1952?

Answer:

Advances from the fund are paid for the following purposes-

- (a) For illness in certain cases;
- (b) For marriages or post matriculation education of children;
- (c) In abnormal conditions such as calamity of exceptional nature such as flood, earthquakes or riots – (non-refundable)
- (d) Granted to members affected by cut in the supply of electricity; (non-refundable)
- (e) Grant of advance to members who are physically handicapped; (non-refundable)

Question: 16 What are the schemes available in the EPF Act?

Answer:

The Act provides three types of schemes for the benefit of the employees as detailed below- Section 5 – Employees' Provident Fund Schemes; Section 6A – Employees' Pension Scheme; Section 6C – Employees' Deposit Linked Insurance Scheme. Section 7 gives powers to the Central Government to amend or vary, either prospectively or retrospectively, the Scheme, the Pension Scheme or the Insurance scheme, as the case may be.

Scanner Question:

Question: 17 2010 - Dec Write short note on:

Employees Deposit Linked Insurance.

(4 marks)

Answer:

Employees Deposit Linked-Insurance : This is the benefit provided to the employees who join the EPF scheme. In this scheme, the employer contributes some amount to the PF account of every employee on some rational basis. The factors like PF balance, salary drawn, length of service etc. may be considered for calculating the amount so payable. This is also called EDLI benefit. This benefit is not available to employee in his lifetime but is given to his nominee on the event of his death. The benefit shall not exceed ` 1,30,000.

Question: 18 2011 - June Write short note on :

Protection from attachment (EPF Act 1952)

(4 marks)

Answer :

Protection from attachment:

The provident fund of employee is for his security in old age. Hence, following protections are given to provident fund money which is to the credit of employee.

(a) The amount standing to the credit of any member in the Fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged.

(b) The amount shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or the exempted employee.

(c) The official assignee appointed under the Presidency-Towns Insolvency Act or any receiver appointed under the Provincial Insolvency Act is not entitled to have any claim on such amount [Section 10(1)].

The protection is applied to provident fund pension and insurance amounts receivable by employee under the scheme. 10(3).

Question: 19 2008 - Dec

When and under what circumstances a person can receive pension under Employees Provident Fund Scheme? (2 marks)

Answer:

The circumstances are as follows :

(i)	On Superannuation	Superannuation means reaching the retirement age with at least ten years of service.
(ID)	Before Superannuation	On attaining the age between 50 and retirement age and at least ten years of service
(iii)	Death	Death while in service or while not in service.
(iv)	Permanent Disablement	On becoming permanently unfit for employment which the person was doing at the time of such disablement.

Question: 20 2009- Dec

Mr. Sham joining on 1.11.09 as an accountant wanted to become member of PF from 1.11.09 but Personnel Manager disagreed. (2 marks)

Answer:

As per PF Act, the employee becomes member of Provident fund immediately on joining the duty. Hence Mr. Sham becomes member w.e.f. 1/11/ 2009 the date of joining. The personnel manager is wrong.

Question: 21 2010- Dec

Under what circumstances pension under E.P.F. can be applied for by an employee? (4 marks)

Answer:

Please refer 2008 - Dec [2] (h) on page no. 288

Question: 22 2011- June

Employees Provident Fund Scheme applies to Sick Industrial Undertaking with the same Rate of Contribution at par with others. Do you agree ? (2 marks)

Answer:

Partly true. The EPF scheme is applicable to all sick units within the meaning of SICA but the rate of contribution is not at par with others. The rate of contribution is 10% in case of sick units.

Question: 23 2013 - June

What are the benefits a member of an Employees Provident Fund & Misc. Provisions Act 1952 can get on retirement/death? (2 marks)

Answer:**Retirement benefits are:**

1. Accumulated Balance in PF A/C of the employee.
2. The employee pension on reaching 50/58 years of age or leaving/ retirement capital return of pension.
3. Widow pension, children pension, nominee pension or death of member.
4. Deposit linked insurance to family or to nominee.

Question: 24 2014 - June

Explain basic wages under The Employees Provident Fund Act, 1952. Enumerate the items which are not included in it. (3 marks)

Answer:

Basic Wages: As per Section 2(b) of the Employees Provident Funds and Miscellaneous Provision Act, 1952, the term “Basic Wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

- (i) the cash value of any food concessions;
- (ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment; or
- (iii) any presents made by the employer.

Question: 25 2014 - Dec

State the Salient features of Employees Deposit Linked Insurance as outlined in Employee's Provident Fund & Miscl. Provisions Act, 1952. (4 marks)

Answer:**Employees Deposit-linked Insurance Scheme:**

(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Deposit-linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies.

(2) There shall be established, as soon as may be after the framing of the Insurance Scheme', a Deposit linked Insurance Fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one percent of the aggregate of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Government may, by notification in the Official Gazette, specify.

Explanation: For the purposes of this sub-section', the expressions “dearness allowance” and “retaining allowance” have the same meanings as in **Section 6**.

(3) The employer shall pay into the Insurance Fund such further sums of money' not exceeding one fourth of the contribution which he is required to make under sub-section (2), as the Central Government may, from time to time, determine to meet all the expenses in connection with the

. administration of the Insurance Scheme other than that expenses towards the cost of any benefits provided by or under that scheme.

(4) The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme.

(5) The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

(6) The Insurance Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme.

Question: 26 2015- June

A person was declared insolvent and the Court ordered attachment of all his properties. State whether the accumulations in the Provident Fund Account of the person is attachable. (3 marks)

Answer:

- According to Sec. 10 of E.P.F. & M.P. Act, 1952 the amount standing to the credit of any member in the fund or of any exempted employee in a fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the member or order of any Court in respect of any debt or liability incurred by the member or exempted employee and neither the Official Assignee or any Receiver appointed under respective Acts shall be entitled to or have any claim on any such amount.
- The said treatment will also hold good in case of the death of the person and accumulated amount is payable to his nominee.

Question: 27 2016- June

Is the amount standing to the credit of a member of the Provident Fund attachable in the execution of decree or order of the Court Examine the law, on this point, laid down in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. (7 marks)

Answer:**Protection against attachment:**

- 'Statutory protection is provided to the amount of contribution to Provident Fund under Section 10 from attachment to any Court decree. Sub-section (1) of Section 10 provides that the amount standing to the credit of any member in the fund or any exempted employee in a provident fund shall not in any way, be capable of being assigned or charged and shall not be liable to attachment under any decree or order or any Court in respect of any debt or liability incurred by the member or the exempted employee and neither the official assignee appointed under the Presidency Towns Insolvency Act, 1909 nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to or have any claim on any such amount.
- The amounts standing to the credit of aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules, and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court.

Question: 28 2016 - Dec

Employees provident funds and Miscellaneous Provisions Act, 1952 Is not applicable to certain establishments. List out those establishments. (5 marks)

Answer:**The Employees Provident Fund and Miscellaneous Provisions Act, 1952**

does not apply to certain establishments as specified **under Section 16** of the said Act.

They are as follows:

- Any establishment registered under the **Co-operative Societies Act, 1912** or under any other law for the time being in force in any state relating to co-operative societies employing less than 50 persons and working without the aid of power or
- To any establishment belonging to or under the Control of the Central Government or a State Government and whose employees are entitled to the benefit of Contributory Provident Fund or old age pension. Or
- Any other establishment set up under any Central Provincial or State Act and whose employees are entitled to any Contributory provident fund or old age pension.
- Any newly setup establishment (less than 3 years).

Central Government having regard to the financial position of any class of establishment or other circumstances of the case may exempt that class of establishment from the operation of this Act for such period as specified in- the notification Issued for this purpose.

Question: 29 2017- Dec**When, can a member withdraw from his National Pension Funds account?****(5 marks)****Answer:**

Withdrawal from the National Pension Fund Account is allowed for the following purposes-

- For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose;
 - For repayment of loans in special cases;
 - Withdrawal within one year before the retirement;
- Such withdrawals are not required to be repaid.

Question: 30 2018 - June**Enumerate the Central Record Keeping Agency under Pension Fund Regulatory and Development Act 2013?****(7 marks)****Answer:**

Section 21 of the Pension Fund Regulatory and Development Act, 2013 deals with Central Record keeping Agency:

(1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central record keeping agency: Provided that the Authority may, in public interest, appoint more than one central record keeping agency.

(2) The central record keeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

(3) All the assets and properties owned, leased or developed by the central record keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central record keeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central record keeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Question: 31 2010- June

During 2001-02, the number of employees were 50 and subsequently reduced to 10 during 2009-10. Employer discontinued deduction as EPF not applicable due to reduction of Employees. **(2 marks)**

Answer:

EPF Act, 1952 provides that once the Act is applied to any establishment, it shall continue to be applied even when subsequently the number of employees has reduced. Employer action is wrong in the eyes of law. EPF scheme shall continue.

Question: 32 2010 - Dec

Mr. Suresh, a casual labour draws ` 5,000/- per month. His Employer does not include his name for the purpose of provident fund. Whether the Employer is justified? **(2 marks)**

Answer :

Yes, the employer is justified because Suresh is a casual labour. Casual labour is not entitled to be included in EPF scheme. As per EPF Act, all employees in factories or establishments including contract labour but excluding casual labour are covered under this act, if their monthly wages are up to ` 15,000 per month.

Exercise of the powers conferred by **Section 5** of the Employees Provident Funds and miscellaneous Provisions Act, 1952, the Central Government vide notification G.S.R. 610 (E) dated August, 2014 amended the Employees' Provident Funds Scheme, 1952 w.e.f 01st September, **Amendments are as follows:**

- The statutory wage ceiling under the Employees' Provident Funds Scheme has been increased from ₹ 6,500 to ₹ 15,000 per month.
- Employees drawing pay exceeding fifteen thousand rupees per month treated as excluded employees.

Question: 33 2011- Dec

An employee desirous to contribute 20% of salary as against 12% towards P.F. contributions (8% being voluntary) and demand that employer shall also contribute 20%. (2 marks)

Answer:

Here, the employee cannot demand for matching contribution because the employer does not have to make equal contribution over and above the statutory limit of 12% or 10% as the case may be. The employer is bound to contribute upto the statutory limit only and if an employee contributes more than statutory limit that does not mean the employer will also have to do the same.

Question: 34 2012- June

Mr. Malhotra aged 50 years joined the P.F. Scheme on 01.01.2003. He decided to leave the service w.e.f. 01.07.2012 provided he gets Pension under E.P.F. Scheme. Advise based on Rules. (2 marks)

Answer:

Pension is allowed when:

- (i) an employee attains the age of 50 Years or more and
- (ii) when he has completed a total service of 10 years or more and
- (iii) when he is not receiving any other EPF Pension from any other Employer, it is presumed he is not receiving any other EPF Pension.

He has attained the minimum age of 50 years but he has not completed minimum 10 years of service.

Hence, he will not be entitled to pension if he leaves w.e.f. 1.7.12. He will however, be entitled for pension if he leaves the Employment after 1.1.2013.

Question: 35 2012 - Dec

'A' on retirement withdrew the entire amount of his accumulation in the Provident Fund. Later on he was appointed for a fixed tenure. Employer disagreed to allow P.F. benefit in view of his retirement and withdrawal of entire amount. Offer your views based on Rule position. (2 marks)

Answer:

When any employee withdraws all his deposited amount from his provident fund account, his account is treated as closed and no further benefit can be given to the employee on this account. Hence employer was right..

Question: 36 2013 - Dec

An inspector appointed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 makes an inspection at 10 p.m. (five hours after factory timings) and seeks to take copies of the "shareholders Register". How far under the Act is his action reasonable? (3 marks)

Answer:

Under **Section 13(2) of the Employees Provident Funds and miscellaneous Provision Act,1952**, an inspector can inspect and make copies of, take extract from any book, register or other documents maintained in relation to the establishment and where he has reason to believe that any offence under this Act has been committed by an employer seize with assistance as he may think fit, such book, register or other documents or portions thereof as he may consider relevant in respect of that offence. The register of shareholders is not relevant in any offence mentioned in the Act. He is not justified in taking the copies of such register. Moreover he should take copies of documents during working hours. It is unreasonable on his part to take copies at 10.00 p.m.

In the present case, the inspector had sought to take copies of the shareholder's register which is irrelevant to the offence, after the working hours (10.00 pm) which is not reasonable.

Question: 37 2015- Dec

Sushil retired from the services of ABC Limited, on 31st March, 2014. He had a sum of ` 10 lakhs in his Provident Fund Account. It has become due for payment to Sushil on 30th April, 2014, but the company made the payment of the said amount after one year. Sushil claimed for the payment of interest on due amount at the rate of 15 percent per annum for one year. Decide, whether the claim of Sushil is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. (3 marks)

Answer:

According to **Section 7Q** of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

However, the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest charged by any scheduled bank. As per above provision, Sushil can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate Sushil can claim only 12 percent per annum interest on the due amount. Hence, claim of Sushil for interest rate 15% is not tenable.

Question: 38 2015- Dec

After serving 15 years, Mr. Anand died on 30.09.2015 when his last twelve months average monthly wages was ` 5,000. Calculate the amount to Employees Linked Deposit Insurance (ELDI) which can be paid to nominee of Anand. (3 marks)

Answer:

As per current amendment [The Employees Deposit Linked Insurance Scheme, 1976 as amended by the Employees Deposit Linked Insurance (Amendment) Scheme, 2011], higher of the below mentioned would be paid to the nominee of the deceased.

(A) Average monthly wages drawn (upto ` 6,500) during the twelve months preceding the month of death, multiplied by twenty. (Maximum amount payable is ` 1,30,000)

Or

(B) An amount equal to average balance in the accounts of the deceased in the fund where average balance exceeds ` 50,000, the amount payable shall be ` 50,000 plus 40% of the amount in excess of ` 50,000 (subject to maximum benefit of ` 1,00,000). [In this case it is assumed that the average Fund balance ` 1,00,000]

Hence,

Option A = $5,000 \times 20 = ` 1,00,000$ Option B = $50,000 + 40\% \text{ of } 50,000 = ` 70,000$ Therefore, amount to be paid to the nominee of Mr. Anand (Higher of A and B) is ` 1,00,000

EMPLOYEES STATE INSURANCE

ACT, 1948

14.7.18

ESI ACT, 1948

Introduction: Whenever an employee suffers from sickness, Maternity, Injury and any other medical difficulty, he suffers economic as well as social losses. This act provides dual benefit to the workers and their family. They get free medical treatment as well as they get wages even when they were absent due to medical difficulties.

This act provides various other benefits such as funeral expenses, Training and development of unemployed people and other welfare scheme.

Applicability of the act

the

- (1) It applies to whole of India including J&K.
- (2) It applies on all factories other than seasonal factories.
- (3) It also applies on following organisation only if there are 10 or more workers but in case of Chandigarh and Maharashtra there must be 20 workers
 - (a) Shops
 - (b) Hotels
 - (c) Restaurant

- (d) Cinema Hall
- (e) Preview theater
- (f) Road transport undertaking.
- (g) Newspaper
- (h) PVT medical Institution
- (i) PVT Educational Institution
- (j) sweet shop

(4) If the act is once applicable, it shall remain applicable forever.

Eligibility for EST scheme:

- (1) Any employee earning upto ₹ 21000 p.m is eligible
- (2) Employee may be own employee and contractual employee.
- (3) In case of own employee, there is just one employer but in case of contractual employee, there is one * immediate employer and one principal employer.
- (4) Principal employer means the employer from whom the employee was called.
- (5) Immediate employer means the employer at whose premises the work is carried out.
- (6) In case of own employee, employer is himself responsible for EST.

7) However in case of contractual employee, position is as follows:

(a) Principal employer is responsible for ESI registration, payment of premium and maintenance of records.

(b) Immediate employer will verify whether contractual employee is registered under ESI or not and will pay premium to principal employer.

(8) So it is clear that principal employer will pay premium to ESI Corporation and He will recover this premium from immediate employer.

(9) Following employees are also covered under ESI

(a) Canteen worker

(b) Showroom worker

(c) Salesman

(d) Bank worker who

(e) Casual worker who work regularly.

Meaning Of Seasonal ~~Worker~~ Factory

1. Any factory which is involved in following products shall be seasonal factory. even if it is working through out the year. →

- | | |
|-------------|------------------|
| (i) Cotton | (vi) Indigo |
| (ii) Coffee | (vii) Sugar |
| (iii) Tea | (viii) Groundnut |
| (iv) Rubber | (ix) Gur |
| (v) Jute | (x) Lac. |

2. Any other factory which works for maximum seven month in a year shall also be seasonal factory.

ESI Corporation

1. It is the governing body for ESI matters.
2. It was established on 1st Oct 1948
3. It is Headquarter in New Delhi
4. It has various regional & district offices.
5. As on 31/3/17, total no. of families covered under ESI is 3.99 crore and they are working 8.98 lac employer.

6. ESI Corporation is a body corporate just like a company.

7. ESI Corporation has one chairman, one vice-chairman, equals no. of representatives from employer and employee and person from medical profession.

Standing Committee

who

1. It is a team of people, administers affairs of ESI Corporation.
2. This Committee performs research and make recommendation to ESI Corporation.
3. Standing Committee has following members
 1. 3 Members from ESI Corporation
 2. 3 Representative of State Govt.
 3. 3 Representative of Employee
 4. " " " Employee
 5. 1 " " from Medical profession.
 6. 1 Member of Parliament.
 7. Director General who is Ex-officio of this Committee.
4. Term of Office of this Committee is 2 years.

Medical benefit Council

1. This council has following two duties:
 - (a) Giving recommendations regarding Medical benefits.
 - (b) Performing Investigation in medical matters.
2. Members of this council are appointed are for four years.
3. This council has following members:
 - (i) Director General of ESI Corporation.
 - (ii) Medical Commissioner.
 - (iii) Director General of Health Services.
 - (iv) One representative from each state.
 - (v) One representative from each union territory
 - (vi) Three representative of employees.
 - (vii) Three representative of employees.
 - (viii) Three " of Medical profession out of which one should be WOMEN

Registration under ESI

1. Registration shall be done by employer and it shall be his liability to do.
2. Registration process is absolutely only for which employee must provide complete details to employees.
3. Colour photo is required, of employee and his family.
4. Registration is required only once in the lifetime, even if he changes his employment.
5. Registration number allotted once will remain valid for the lifetime.

ESI Contribution

1. ESI premium is paid by both employer and employee.
2. Employee pays 1.75% of his wages.
3. Employer Pays 4.75% of Employee's wages.
4. If the daily wages of an employee is up to ₹ 137, he will not pay any premium.
5. Premium must be deposited on or before 21st of next month.

6. It can paid only or at the authorised bank branches.
7. If the premium is deducted from wages but not deposited with ESI corporation can be recovered as arrear of land Revenue.

Benefits under ESI

1. Sickness Benefit.
2. Maternity Benefit.
3. Disablement Benefit.
4. Dependent Benefit.
5. Free Medical treatment.
6. Funeral Expenses Of ₹ 10,000.
7. Rehabilitation Benefits for disabled person.
8. Vocational training.
9. Rajiv Gandhi Shaikuk & kalyan yojna.

ESI VS Employee Compensation

Employee Compensation and ESI Benefits are mutually exclusive. It means if one has been given, other can not be claim. An employee can choose which benefit he wants to adopt.

Assignment of Benefits

Employee cannot transfer benefits to be received by him to someone else.

Prohibited combinations

Following combination of benefits are prohibited:

- (a) Sickness Benefit and Maternity benefit.
- (b) Sickness Benefit and disablement benefit.
- (c) Maternity Benefit & disablement benefit.

No punishment during sickness

If the employee has received sickness benefits, which is still running, he cannot be terminated, his wages cannot be reduced, his working conditions cannot be made less & beneficial. Once joins back, such termination, decrease in wages and changing the working condition can be done.

Claims under ESI

1. There is no role of Civil Court under ESI.
2. All the disputes are taken to separate ESI Court
3. Appeal against ESI Court can be filed in High Court within 60 days.

ESI FUND

1. ESI Fund is established by central govt and administered by ESI Corporation.
2. This fund receives money from contributions paid by employee and employer and Govt Grants and donations.
3. ESI fund is utilised in following manner
 - (i) Payment for ESI Benefits.
 - (ii) Maintenance of hospital and dispensary.
 - (iii) Expense of ESI Corporation.
 - (iv) Creation of awareness among people.
 - (v) Maintenance of account and audit.
 - (vi) Litigation Expense.
 - (vii) Welfare of workers.
 - (viii) Any Other purpose as may be prescribed.

PRACTICE MANUAL**Fill in the blanks**

1. The two types of permanent establishment is _____ and _____.
2. The term of the members of Medical Benefit Council shall be _____.
3. The rate of contribution is _____ and _____ of worker's wages by employees and employers respectively.
4. The amount recoverable under this Act may be recovered as if it _____.
5. Standing Committee shall consist of _____ members of the Corporation;
6. _____ is the ex-officio member of Medical Benefit Council;
7. A member of the Corporation, the Standing Committee or the Medical Benefit Council may resign his office by notice in writing to _____.
8. The payment towards the expenditure on the funeral of the deceased insured person is payable to the _____.
9. Confinement is the labor resulting in the issue of living child or labor after _____ of pregnancy resulting in the issue of child, whether alive or dead.

10. Factory is defined as any premises including the precincts thereof whereon _____ or more persons are employed on any day of the preceding _____.

Choose the correct answer

1. The contribution shall be paid in a bank within _____ days of the last day of the calendar month in which the contribution fall due for any wage period.

- (a) 7
- (b) 14
- (c) 21
- (d) 30

2. An appeal shall lie to High Court from the orders of ESI within _____ days from the date of order of the ESI Court.

- (a) 30
- (b) 60
- (c) 90
- (d) None of the above

3. A member of the Corporation shall cease to be a member if he fails to attend _____ consecutive meeting.

- (a) 3
- (b) 5
- (c) 7
- (d) None of the above.

4. ESI Fund consists of

- (a) Contribution;
- (b) Grants from governments;
- (c) Donations;
- (d) All the above.

5. The Corporation may with the approval of _____ establish and maintain in a State, hospitals, dispensaries etc.,

- (a) Central Government;
- (b) State Government;
- (c) Local Authority;
- (d) None of the above.

6. Who will not the following be considered as an employee?

- (a) Canteen workers;
- (b) Casual workers;
- (c) Partners;
- (d) Part time employee.

7. Who, among the following, is not the Principal Employer?

- (a) Occupier of the factory;
- (b) Owner of the factory;
- (c) Legal representative of the owner;
- (d) Legal representative of the contractor.

8. Seasonal factory is the one which is engaged for a period not exceeding _____ in a year.

- (a) 7 months;
- (b) 6 months;
- (c) 3 months;
- (d) None of the above.

9. Which, among the following, will not be included in the definition of 'wages'?

- (a) Payment made on authorized leave;
- (b) Travelling allowance;
- (c) Payment made on lock out;
- (d) Payment made for lay off.

10. ESI Corporation is a

- (a) Partnership firm;
- (b) Limited Liability Partnership;
- (c) Body Corporate;
- (d) Hindu Undivided Family.

State whether TRUE or FALSE

1. The members of Indian Naval, military or air force is coming under the definition of 'employee' under ESI Act.
2. Wage does not include any gratuity payable on discharge.
3. Every employee is to register himself under the provisions of ESI Act.
4. An employee insured under the ESI Act can also claim compensation under the Workmen Compensation Act.
5. The benefits of medical benefits under this Act are assignable.
6. Civil Court has no jurisdiction to decide or deal with any dispute or to dispute on any liability to be decided by a medical board or tribunal or ESI Court.
7. Attachment of bank account of the defaulter can be undertaken for recovery of dues.
8. The Central Government cannot supersede the ESI Corporation.
9. Employees represent the Station Commission of ESI Corporation.
10. There shall be one woman among the members representing the medical profession in the Medical Benefit Council.

Model Questions

1. Define the terms 'immediate employer' and 'employee' under ESI Act.
2. Distinguish between the 'permanent partial disablement' and 'permanent total disablement'.
3. What are the various bodies constituted by the ESI Corporation and describe the functions of such bodies.
4. What is 'Employees' State Insurance Fund' and for what purposes the fund may be expended?
5. List the benefits that are entitled to the insured persons under this Act.
6. Discuss the method of recovery of contribution from the employer.
7. Whether an employee can be dismissed or punished during sickness? Substantiate your answer.
8. What are the disputes that can be settled by ESI Court?
9. What are the punishments described under Section 85 of the Act for failure to pay contribution etc.,
10. State the obligations of Principal Employer.

Answers:

Fill in the blanks

1. Permanent partial disablement, permanent total disablement;
2. 4 years;
3. 4.75%, 1.75%;
4. Were an arrear of land revenue;
5. Three;
6. Medical Commissioner of the Corporation;

7. Central Government;
8. Eldest surviving member of the family;
9. 26 weeks;
10. 10 months, 12 months

Choose the correct answer

1. C;
2. B;
3. A;
4. D;
5. B;
6. C;
7. D;
8. A;
9. B;
10. C.

State whether TRUE or FALSE

1. FALSE;
2. TRUE;
3. TRUE;
4. FALSE;
5. FALSE;
6. TRUE;
7. TRUE;
8. FALSE;
9. TRUE;
10. TRUE.

MTP Question:

MTP Dec 2018

Question:1 Write a note on: Medical Benefit Council

Answer:

- (i) Medical Benefit Council Section 10 of ESI Act provides for the constitution of Medical Benefit Council consisting of-
- the Director General of ESI, ex-officio – Chairman;
- the Director General, Health Services, ex-officio – Co-Chairman;
- the Medical Commissioner of the Corporation – ex-officio;
- one member each representing each state other than Union territories;
- three members representing employers;
- three members representing employees;
- three members representing the medical profession; among them one shall be a woman.

Term of office

The term of the office of the members of Medical Benefit Council (last three categories) shall be four years from the date on which the appointment is notified.

Duties of Medical Benefit Council

Section 22 provides the duties of the Medical Benefit Council as to-

- advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;
- have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with the medical treatment and attendance; and
- perform such other duties in connection with the medical treatment and attendance as may be specified in the regulations.

MTP Jun 2018

Question:2 State the purposes for which State Insurance Fund under Employees State Insurance Act, 1948 may be utilized.

Answer:**Responsibility of the occupier**

The occupier has to follow the procedure-

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;
- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.
- to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

MTP June 17

Question: 3 Write a note on:

Medical Benefit Council**Answer:**

Medical Benefit Council Section 10 of ESI Act provides for the constitution of Medical Benefit Council consisting of-

- the Director General of ESI, ex-officio – Chairman;
- the Director General, Health Services, ex-officio – Co-Chairman;
- the Medical Commissioner of the Corporation – ex-officio;
- one member each representing each state other than Union territories;
- three members representing employers;

|| three members representing employees; || three members representing the medical profession; among them one shall be a woman.

Term of office

The term of the office of the members of Medical Benefit Council (last three categories) shall be four years from the date on which the appointment is notified.

Duties of Medical Benefit Council

Section 22 provides the duties of the Medical Benefit Council as to-

- advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters;
- have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with the medical treatment and attendance; and
- perform such other duties in connection with the medical treatment and attendance as may be specified in the regulations.

Suggested Question:

Suggested Dec2018

Question: 18 Mention the benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948.

Answer:

Procedure for Fixing and revising Minimum Wages (Sec 5) In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(b) Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1) (b)].

After considering the advice of the committee or committees [under Sec. 5(1) (a)] or all representations received by it before the date specified in the notification [under Sec 5(1) (b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec 5(2)]. The power of the Government under Sec. 5(2) to issue notification revising minimum wages includes power to give retrospective effect to notification.

Suggested Jun2017

Question: 19 What are the different purposes for which employees' state insurance fund may be utilized by the central government?

Answer: The section 28 of the Employee's State Insurance Act, 1948 provides that the central government may utilize the state insurance fund only for the following purposes:

(i) Payments of benefits and provision of medical treatment and attendance to insured persons and where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provision of this Act and defraying the charges and costs in connection therewith

- (ii) Payment of fees and allowances to members of the corporation, the standing committee and the Medical Benefit Council, the Regional Board, Local Committees and Regional Local Medical Councils,
- (iii) Establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary service for the benefit of insured persons and where the medical benefit is extended to their families,
- (iv) Defraying the cost of auditing the accounts of the corporation and of the valuation of its assets and liabilities,
- (v) Defraying the cost of the Employees' Insurance Courts set up under this Act,
- (vi) Payment of any sums under any contract entered into for the purpose of this Act by the, corporation or the standing committee or any officer duly authorized by the corporation or the standing committee in that behalf,
- (vii) Payment of any sums under any decree, order or award of any court or tribunal against the corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceedings or claim instituted or made against the corporation
- (viii) Defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act,
- (ix) Defraying expenditure, within the limits prescribed on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured person who have been disabled or injured, and
- (x) Such other purposes as may be authorized by the corporation with the previous approval of the central government.
- (xi) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident fund and other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act.
- (xii) Payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to the insured person and where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation.

Revisionary Question:

Revisionary Dec 2018

Question: 20 Explain the composition of Medical benefit council, under Employees State Insurance Act, 1948.

Answer: As per section 10 of Employees State insurance Act, 1948, the Central Government shall constitute a Medical Benefit Council consisting of:

1. the Director General, Health Services, ex officio, as Chairman;
2. a Deputy Director General, Health Services, to be appointed by the Central Government;
3. the medical commissioner of the Corporation, ex officio;
4. one member each representing each of the States (other than Union Territories) in which this Act is in force to be appointed by the State Government concerned;
5. three members representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government;
6. three members representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and

7. Three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

Question: 21 Features of National Pension System

Answer: The National Pension System shall, on the commencement of this Act, have the following basic features, namely:—

- (a) every subscriber shall have an individual pension account under the National Pension System;
- (b) withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the conditions, such as purpose, frequency and limits, as may be specified by the regulations;
- (c) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;
- (d) there shall be a choice of multiple pension funds and multiple schemes: Provided that— (a) the subscriber shall have an option of investing up to hundred per cent of his funds in Government Securities; and
- (b) the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the Authority;
- (e) there shall be portability of individual pension accounts in case of change of employment;
- (f) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;
- (g) there shall not be any implicit or explicit assurance of benefits except market-based guarantee mechanism to be purchased by the subscriber;
- (h) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and
- (i) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

Question: 22 Explain the composition of Medical benefit council, under Employees State Insurance Act, 1948.

Answer: As per section 10 of Employees State insurance Act, 1948, the Central Government shall constitute a Medical Benefit Council consisting of:

1. the Director General, Health Services, ex officio, as Chairman;
2. a Deputy Director General, Health Services, to be appointed by the Central Government;
3. the medical commissioner of the Corporation, ex officio;
4. one member each representing each of the States (other than Union Territories) in which this Act is in force to be appointed by the State Government concerned;
5. three members representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government;
6. three members representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and

7. Three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

Workbook Question:

Question: 23 Define the terms 'family' and 'immediate employer' under ESI Act.

Answer: Family

Section 2(11) of ESI Act defines the term 'family' as all or any of the following relatives of an insured person- a spouse; a minor legitimate or adopted child dependent upon the insured person; a child who is wholly dependent on the earnings of the insured person and who is- receiving education, till he or she attains the age of 25 years; an unmarried daughter; a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues; dependent parents, whose income from all sources does not exceed such income as may be prescribed by the Central Government; in case the insured person is unmarried and his or her parents are not alive, a minor brother or sister wholly dependent upon the earnings of the insured person.

Immediate employer

Section 2(13) defines the terms 'immediate employer' in relation to employees employed by or through him, as a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent on hire to the principal employer and includes a contractor.

Question: 24 Write short notes on:

- (i) Permanent partial disablement
- (ii) Permanent total disablement
- (iii) Temporary disablement

Answer: (i) Section 2(15A) defines the expression 'permanent partial disablement' as such disablement of a permanent nature, as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the time of the accident resulting in the disablement. Every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement.

(ii) Section 2(15B) defines the expression 'permanent total disablement' as such disablement of a permanent nature as incapacitates an employee for all work which he was capable of performing at the time of the accident in such disablement. The permanent total disablement shall be deemed to result from every injury specified in Part I of the Second Schedule or from any combination of injuries specified in Part II thereof where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100% or more.

(iii) Section 2(21) defines the term 'temporary disablement' as a condition resulting from an employment which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of the injury.

Question: 25 What is the Registration procedure of the employees under Employees State Insurance Act, 1948?

Answer: Registration is the process of obtaining and recording information about his employment which is insurable employment for the purpose of his identification under the Act. This process also identifies to provide the benefits available under the Act that are related to the contributions paid by the employer on behalf of insured employees. The employee is required to give his details and his family details to his employer so that the employer can register the employee online. A family photo is also to be provided so that the employer can register the employee.

This exercise of registering an employee has to be a onetime exercise in life time of an employee. The insurance number generated on the first occasion of registration is to be used throughout his life time irrespective of change of employment including change of place.

Question: 26 Mention the benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948.

Answer: Section 46 provides that the insured persons, their dependents shall be entitled to the following benefits-

- (i) Periodical payments to any insured person in case of his sickness;
- (ii) Periodical payments to an insured woman in case of confinement or mis-carriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage;
- (iii) Periodical payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee;
- (iv) Periodical payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee;
- (v) Medical treatment for and attendance on insured persons;
- (vi) Payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.

The amount of such payment shall not exceed such amount as may be prescribed by the Central Government. The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.

Question: 27 What are the different purposes for which employees' state insurance fund may be utilized by the central government?

Answer: Section 28 of the Act provides the Central Government may utilize the State Insurance Fund only for the following purposes:

- payment of benefits and provision of medical treatment and attendance to insured persons
- payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;
- establishment and maintenance of hospitals, dispensaries and other institutions;
- payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons;
- defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
- defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;
- payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;

- payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;
- defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- such other purposes as may be authorized by the Corporation with the previous approval of the Central Government.

Scanner Question:

Question: 28 2008 - Dec [6] Write note of the following:

'Employment injury' under the Employees State Insurance Act, 1948.

(5 marks) [CSEM - II]

Answer:

Employment injury means an injury caused to an employee arising out of and in the course of his employment being an insurable employment, whether the accident occurs within or outside the territorial limits of India. For an employment injury there must be some nexus (means-relation) between the employment and the accident. Employment injury need not be confined to employer's premises only. It extends to time and place (theory of motional extension)

In the decided case, it was held that mere road accident of an employee while going for employment will not constitute employment injury.

Question: 29 2009 - June [6] Write note on the following:

'Dependent' under the Employees' State Insurance Act, 1948.

(5 marks) [CSEM - II]

Answer:

"Dependant" means any of the following relatives of a deceased insured person, namely,-

(i) a widow, a legitimate or adopted son who has not attained the age of twenty-five years, an unmarried legitimate or adopted daughter.

[i(a) a widowed mother],

(ii) if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of twenty five years and is infirm;

(iii) if wholly or in part dependent on the earnings of the fhsured person at* the time of his death,-

(a) parent other than a widowed mother,

(b) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor,

(c) a minor brother or an unmarried sister or a widcWed sisterliif a minor,

(d) a widowed daughter-in law,

(e) a minor child of a pre-deceased son,

(f) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(g) a paternal grand-parent if no parent of the insured person is alive.

Question: 30 2009 - Dec [6] Write note on the following:

'Benefits to which insured persons are entitled' under the Employees' State Insurance Act, 1948.

(5 marks) [CSEM - II]

Answer:

Section 46 of the Employees State Insurance Act, 1948 provides for the following benefits:-

- (a) periodical payments in case of sickness certified by medical practitioner.
- (b) periodical payment in case of disablement on account of employment injury.
- (c) periodical payment to dependents.
- (d) medical treatment related payment.
- (e) In case of death of insured, payment at rate of ` 1,500 in relation to funeral expenses.

Question: 31 2010 - June [6] Write note on the following:

Purposes for which ESI fund may be expended under the Employees' State Insurance Act, 1948

(5 marks) [CSEM - II]

Answer:

Various purposes for which ESI fund may be expended under the Employees State Insurance Act, 1948. are as follows:-

- Payment of benefits to the insured person or their families.
- Payment in relation to any contract entered for implementing the provisions of the Act.
Payment of salaries to the employees of Employee State Insurance Corporation.
- Payment of fees to members of standing committee.

Question: 32 2010 - Dec [6] Write note on the following:

Employees' Insurance Court constituted under the Employees' State Insurance Act, 1948. (5 marks) [CSEM - II]

Answer:

- Employees Insurance court (EIC) is constituted under **Section 74 of the employees State Insurance Act; 1948.**
- State Government is empowered to notify the EIC in the official Gazette.
- The judge of such Court should be either-
 - Judicial officer or
 - Legal practitioner for at least 5 years.
- EIC needs to perform the function of both adjudicating disputes as well as determining the claims.

Question: 33 2011 - Dec [6] Write note on the following:

'Employment injury' under the Employees' State Insurance Act, 1948.

(5 marks) [CSEM - II]

Answer: Please refer 2008 - Dec [6] (i) on page no. 305

Question: 34 2012 - June [6] Write note on the following:

Purposes for which ESI fund may be expended under the Employees' State Insurance Act, 1948.

(5 marks) [CSEM - II]

Answer:

Please refer 2010 - June [6] (ii) on page no.307 .

Question: 34 2012 - Dec [6] Write notes on the following:

Purposes for which Employees' State Insurance Fund may be expended under the Employees' State Insurance Act, 1948. (5 marks) [CSEM - II]

Answer:

Please refer 2010- June [6] (ii) on page no. 307

Question: 35 2008 - Dec [7] Distinguish between the following:

'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.

(5 marks) [CSEM - II]

Answer:

According to Section 2(17) of the Employees' State Insurance Act, 1948 principal employer means

Factory Occupier	Type of Organisation Under Control of Department of any Government Appointed Authority OR H.O.D.(if none is appointed)	Others Person responsible for control and supervision
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'Immediate employer' means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer.

Question: 36 2010- June [7] (a) Distinguish between the following:

'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.

(5 marks) [CSEM - II]

Answer:

Please refer 2008 - Dec [7] (a) (i) on page no. 308

Question: 37 2011- June [7] (a) Distinguish between the following:

'Sickness benefit' and 'medical benefit' under the Employees' State Insurance Act, 1948.

(5 marks) [CSEM - II]

Answer:

Sickness benefit and medical benefit under the **Employee's State Insurance Act, 1948.**

Sickness benefit	Sickness benefit is periodical payment to any insured person in case his sickness is certified by a duly appointed medical practitioner or by any person having such qualification and experience as may be specified by ESI Corporation.
Medical benefit Medical benefit is given to an insured person or a member of his family whose condition requires medical treatment and attendance.	
	Such medical treatment may be given either in the form of out patient treatment and attendance in a hospital or dispensary, clinic etc.

Question: 38 2012- June [7] (a) Distinguish between the following:

'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.

(5 marks) [CSEM - II]

Answer:

Please refer 2008 - Dec [7] (a) (i) on page no. 308

Question: 39 2017 - June [4] What are the different purposes for which employees' state insurance fund may be utilized by the central government? (10 marks)

Answer:

Purposes for which the fund may be expended

Section 28 of the Act provides the Central Government may utilize the State Insurance Fund only for the following purposes:

- payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;
- payment of fees and allowances to members of the corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;
- establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;
- payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
- defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
- defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;
- payment of any sums under any contract entered into for the purpose of this Act by the Corporation or the Standing Committee or by any officer duly authorized by the Corporation or the Standing Committee in that behalf;
- payment of any sums under any decree, order or award of any Court or tribunal against the corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceedings or claim instituted or made against the corporation;
- defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured person who have been disabled or injured; and
- such other purposes as may be authorized by the corporation with the previous approval of the Central Government.

Question: 40 2018 - Dec [4] Mention the benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948. (6 marks)

Answer:

According to **Section 46 of the Employees State Insurance Act, 1948**

states that the insured persons, their dependents shall be entitled to the following benefits

1. Annual payments to any insured person in case of his sickness
2. Annual payments to an insured woman in case of confinement or mis-carriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage
3. Annual payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee
4. Annual payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee
5. Medical treatment for and attendance on insured persons
6. Payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.

The amount of such payment shall not exceed such amount as may be prescribed by the Central Government.

The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.

Question: 41 2009- June [8] Attempt the following stating relevant legal provisions and decided case law, if any:

- (i) **Muskan Theatre is maintaining a canteen and a cycle stand through private contractors. Regional Director, ESI Corporation sent notices to the management of the theatre for contribution of the employees engaged in the canteen and cycle stand. The management contends that they are not employees but are the workmen of the contractor. Hence, the management is not liable. Will the management succeed in its contention?**
- (iv) **An employer failed to pay his contribution under the Employees' State Insurance Act, 1948. After 6 years, the ESI Corporation issued a demand notice for payment of arrears of contribution. The employer contended that the arrears of contribution beyond 5 years are not recoverable. Will the employer succeed?**

(4 marks each) [CSEM - II]

Answer:

- (i) No, the contention of the management of Muskan Theatre is not legally tenable.

The theatre owner is liable as principal employer for the payment of ESI contribution in respect of workers employed in canteen/ cycle stand. In case of **Royal Talkies Hyderabad V/s ESIC**, the Supreme Court held that the two operation namely keeping a cycle stand and running a Canteen are incidental or adjuncts to the primary purpose of the theatre and the workers engaged therein are covered under the definition of employees.

- (iv) In the above case, the employer contended that the arrears of contribution beyond 5 years are not recoverable. But the employer's contention is not tenable in law as limitation period of 5 years is not applicable in this case.

Question: 42 2010- June [8] Attempt the following stating relevant legal provisions and decided case law, if any:

- (vi) **An employee was on his way to the factory. He met with an accident one kilometre away from the place of his employment. He pleaded that the injury was caused by accident "arising out of and in the course of employment" and claimed employment injury benefits under the Employees' State Insurance Act, 1948. Will the employee succeed?**

(4 marks) [CSEM - II]

Answer:

The employee will not succeed.

In the case of **Regional Director ESI v. Francis de Costa, 1997 LLJ**

134 SC, the Court held that where an employee who is on his way to factory meets with an accident, one K.M. from the place of employment the injury cannot be said to be caused by accident arising out of and in the course of his

employment. Mere road accident on a public road while employee was on his way to place of employment cannot be said to have its origin in his employment in the factory.

Question: 43 2011- Dec [8] Attempt the following stating relevant legal provisions and decided case law.

(ii) XYZ Ltd., employing more than 50 workmen in its factory, failed to register itself and pay contributions under the **Employees' State Insurance Act, 1948**. The inspector of the ESI Corporation issued a notice to the company and directed it to register and pay contributions towards its employees. On failure to comply with the terms of notice, ESI Corporation determined the contributions payable by the company and demanded payment with interest and penalty. The company disputed its liability and asked the ESI Corporation to approach the ESI Court for adjudication of the claim. Is the company justified?

(4 marks) [CSEM - II]

Answer:

- In the above case, XYZ Ltd. employed more than 50 workmen in its factory.
- XYZ Ltd. (employer) denies the liability or applicability of the provisions of the Act.
- Employee's State Insurance Act, 1948 does not stipulate as to who has to approach the employees Insurance Court.
- In this case, employer is not justified as by general implication of law, employer should approach the Employees Insurance Court rather than the ESI corporation.

Question: 44 2012- June [8] Attempt the following stating relevant legal provisions and decided case law, if any:

(v) Visual Electronics Ltd. sells household consumer durables such as TV, washing machines, electric stoves, *etc.*, of various manufacturers in its sales outlet. While delivering these items to the homes of the customers, it deputes its employees to install and explain the salient features of these items. It pays its employees an additional amount of defray for the actual travelling expenses. The Employees' State Insurance Corporation demanded contribution on this additional payment including travelling expenses under the head 'wages'. Is the demand of Employees' State Insurance Corporation justified ?

(4 marks) [CSEM - II]

Answer:

In the above case, the employer is not liable to pay contribution on travelling allowance.

- Travelling allowance does not form part of wages as defined under **Section 2 (22)** of the ESI Act as held in 'S, Ganeshan v/s The Regional Director, ESI Corporation.'
- Demand of Employee's State Insurance Corporation is not justified.

Question: 45 2012 - Dec [8] Attempt the following stating relevant legal provisions and decided case law, if any:

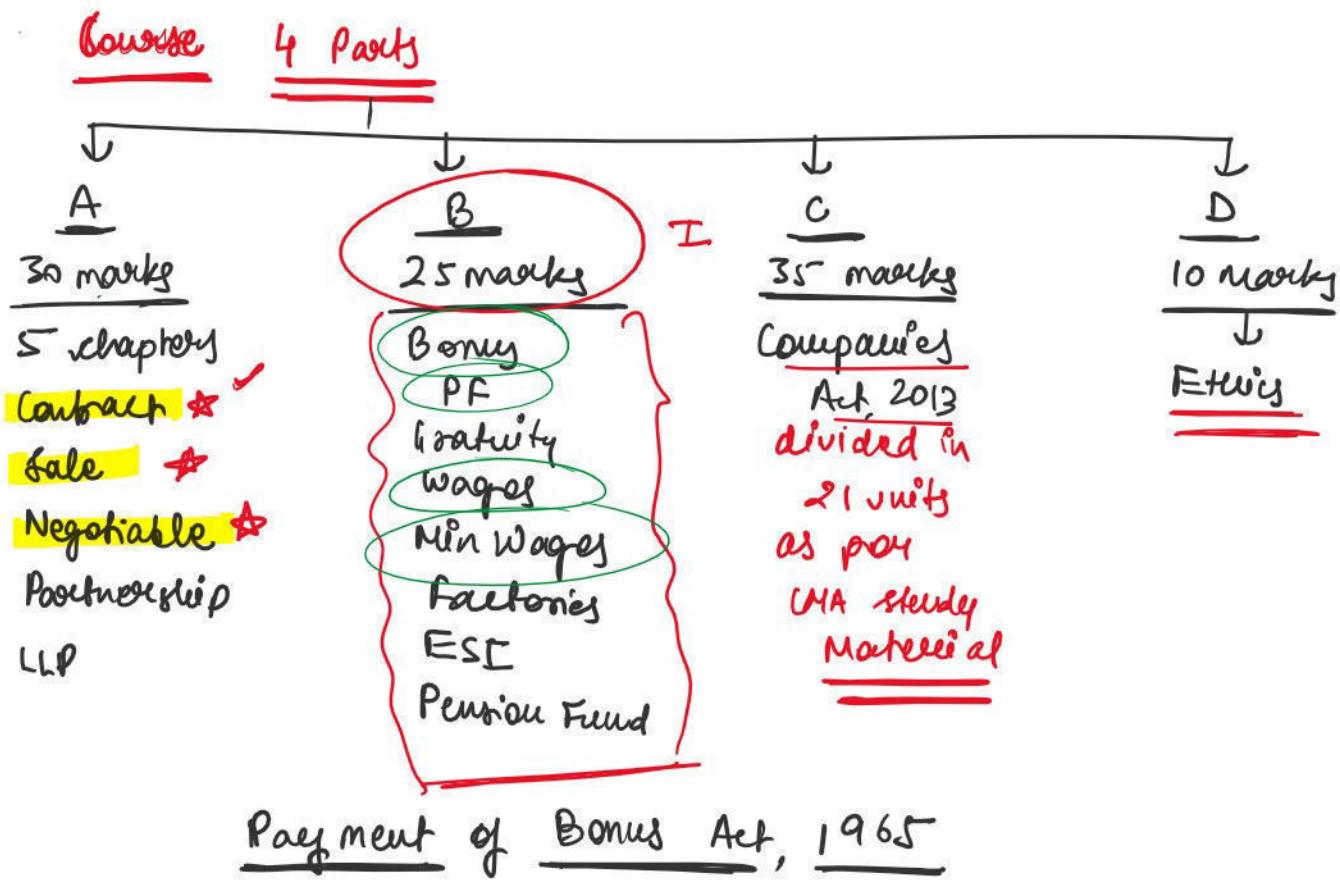
(iii) Lecktronics Ltd. is an establishment covered under the Employees' State Insurance Act, 1948. The salesmen of the company were paid a commission @ 10 % of the sales done by them every month. The ESI Inspector asked the employer to deposit contributions (the sum of money payable to the ESI Corporation by the principal employer in respect of an employee) in respect of the commission paid. Is he justified? Give reasons.

(4 marks) [CSEM - II]

Answer:

According to ESI Act, 1948 wages includes any remuneration paid at intervals not exceeding two months. The employee receives incentives/ commission in addition to wages. As the commission is paid every month, the ESI Inspector can ask the employer to deposit contributions.

PAYMENT OF BONUS ACT, 1965



Introduction

1. Bonus means an additional payment..
2. Bonus under Payment of Bonus Act means additional payment made by employer to employee.
3. Bonus can be salary based or productivity based.
4. However, Act prescribes only salary based Bonus which means 2 workers having same salary will get same Bonus even if their productivity levels are different.
5. Even if Employer implements productivity Bonus, Minimum Bonus prescribed by law which is calculated on the basis of salary, must be given irrespective of productivity.

Productivity

6. This act prescribes rules regarding Payment of Bonus and remedies in case of Non Payment.

Applicability of Bonus

W.r.t. Nation Section 1

1. Payment of Bonus Act, 1965 applies to the whole of India.
2. There is no exception to this rule.

W.r.t. Employer Section 2

1. Act applies to only following 2 organisations :-
 - a) Every factory (as defined in Factories Act, 1948)
 - b) Any organisation in which 20 or more employees are employed on any day during an accounting year.
2. If the Appropriate Government wants to implement Bonus Act on an organisation on which it is generally not applicable, can do so by giving an advance notification and following 2 conditions must be fulfilled :-
 - a) Advance notification must come at least + 2 months prior to the defined date.
 - b) Number of employees in such organisation should not be less than 10.
3. If the act is once applicable, this will

3. If the act is once applicable, this will remain applicable even if applicable conditions are not fulfilled.

W.r.t. Employee, section 2 and section 8

Definitions

Eligibility for Bonus

- Employee whose monthly salary does not exceed ₹ 21000 is covered under Bonus Act. (Max sal. 21000)
- For verification of limit of salary of Max ₹ 21000, only following components of salary are to be added :-
 - a) Basic salary
 - b) Dearness Allowance or Cost of living allowance
 - c) Food allowance
- The worker to become eligible for Bonus must work for at least 30 days in an accounting year.
- Bonus is calculated monthly but paid annually so if a worker has worked for a lesser period, he will get Bonus for sure, but only proportionate Bonus.
- Bonus is applicable on every worker if he fulfills minimum attendance of 30 days and maximum salary of ₹ 21000, it does not matter whether the role of worker is skilled or unskilled, physical or mental.

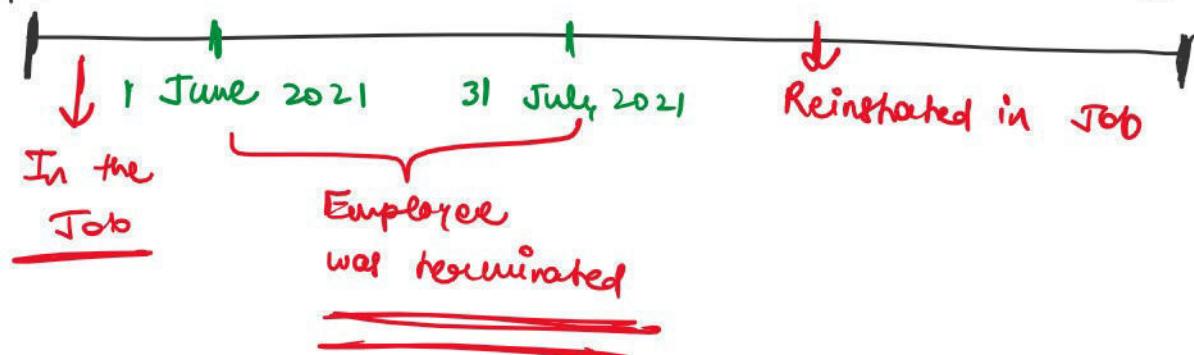
not matter whether the role of worker is skilled or unskilled, physical or mental, administrative, managerial, technical, clerical or any other kind.

- It does not matter whether the worker is part time, full time, casual, confirmed, Probation or any other category. Bonus is applicable if conditions are fulfilled.
- However, apprentice, trainee, Interns or Articled assistant etc will not be eligible for Bonus because they are neither employees nor they get wages or salary.
- In the counting of 30 Days, only the working days shall be counted. Working day means the day for which salary was paid whether with work or without work.

e.g. Time → F.Y. 21-22

Apr 2021

Mar 2022



Apr - May 2021 = Job Present = 2 months

Aug - Mar = Job Present = 8 months

June - July = Job Absent = 2 months

June - July = Job Absent = 2 months

Bonus will be paid for how many months?

- Bonus for 10 months will be paid for sure.
- However Bonus for remaining 2 months shall be paid only if wages/salary was also paid.

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Disqualification for Bonus Section 9

1. Disqualification means Bonus was forfeited even when an employee was eligible.
2. It means some wrong has been done by an eligible employee because of which he is not given benefit of Bonus.
3. Following are the prescribed reasons because of which Bonus **may be forfeited**:-
 - a) Fraud
 - b) Riotous Behaviour or violent behaviour in the premises of establishment
 - c) theft, misappropriation or sabotage of property of establishment.
4. All these incidents must occur in relation to establishment for which employee is working, otherwise disqualification can not take place.
5. In order to have disqualification for Bonus, Employee must be dismissed from

Bonus, Employee must be dismissed from service on these grounds. If an Employee is guilty of any or more or all these offences but still not dismissed, he can not be disqualified for Bonus.

Payment of Minimum Bonus (Section 10)

1. Minimum Bonus means compulsory Bonus which needs to be paid even if there is no surplus available.
2. It does not matter whether company is earning profits or incurring losses, Minimum Bonus is compulsory.
3. Minimum Bonus is as follows :—

(A) If age of Employee is 15 years and above,

Minimum Bonus per month shall be
→ £ 100 per month
OR
→ 8.33% of salary } whichever is
} Higher.

(B) If age of Employee is less than 15 years

Minimum Bonus per month shall be

→ £ 60 per month
OR
→ 8.33% of salary } whichever is
} Higher

4. Minimum Bonus is a statutory requirement which means

4. Minimum Bonus is a statutory requirement which means Employer can not pay less than this but can pay more than this.

Payment of Maximum Bonus Section 11

1. Maximum Bonus is prescribed by law so that Employees can never claim beyond this limit.
2. In simple words, Employees can demand Bonus beyond minimum limit but cannot demand beyond maximum limit.
3. However, if Employer himself wishes to pay beyond maximum limit, it is absolutely permitted.
4. Maximum limit of Bonus is as follows :-

20% of salary or wage (common for all age group)

Calculation of Bonus Section 12

- Bonus is calculated based on salary amount.
- If the salary amount is upto £ 7000, Bonus will be calculated on actual salary.
- If the salary amount is more than £ 7000, Bonus will be calculated as if the salary is just £ 7000.

E.g.

<u>Salary</u>	<u>Mathematical Bonus</u>	<u>Statutory Bonus as per law</u>
5000	500	500

Bonus 10% assumed

		<u>No per week</u>
5000	500	500
7000	700	700
10,000	1000	700
16000	1600	700
22000	2200	Not eligible

Establishments to include departments, undertaking and Branches Section 3

1. In counting of number of employees, and in verifying applicability of Bonus act, all departments, undertakings and Branches shall be added together.
2. This is also in line with the concept of one entity one applicability with respect to laws.
3. However, Bonus act further prescribes that if all department, Branches, undertakings prepare separate set of final accounts, they shall be counted and verified separately.
4. Even if law allows separate counting in case of separate final accounts, this rule can not work in case of companies, because company law mandates single Balance sheet and P+L A/c for company as a whole.

Proposed rate Bonus Section 13

Proportionate Bonus Section 13

1. If a worker has not worked for all days or months in a year, His Bonus shall be reduced proportionately.
2. In other words, minimum Bonus which is compulsory payment will get reduced proportionately because complete year working was not done by Employee.

Computation of number of working days Section 14

- In counting of working days, all paid days shall be added.
- Section 14 specifically provides following list of days which shall also be added in working day :-

- 1) Lay off Days
- 2) Leave with salary
- 3) Temporary disablement
- 4) Maternity leave

Deduction of certain amount from Bonus Payable Section 18

1. Bonus act allows the deduction from Bonus on account of any financial loss occurred to Employer because of Employee.
2. Deduction on account of financial loss should be done only from the Bonus of same accounting year in which financial

same accounting year from the bonus of same accounting year in which financial loss took place.

Adjustment of customary or interim Bonus → section 17
against Bonus payable under the Act :-

1. If Employer has paid any Preja Bonus or interim Bonus to Employee during the accounting year, the same can be adjusted from the compulsory Bonus payable under the act.
2. It means such Preja Bonus and Interim Bonus shall be considered to be advance Compulsory Bonus.

Time limit to pay Bonus → section 19

1. If there is no dispute pending between Employer and Employee with respect to Bonus, Bonus must be paid within 8 months from the date of closure of accounting year.
2. If there is a dispute pending between Employer and Employee, with respect to Bonus, Bonus shall be paid within 1 month from the date of decision of Labour Court.
3. Appropriate government can increase the 8 months period upto 2 years.

→ Total period including 8 months

Recovery of Bonus due from Employer → section 21

incurred a monthly

Recovery of Bonus due from Employer Section 21

1. When the Employer does not pay the Bonus, even after expiry of time limit, Employee or his legal heir or his legal representative can file a complaint.
2. Complaint must be filed within 1 year from the due date of Bonus.
3. If 1 year period is over, complaint can still be filed with the prior approval of Appropriate Government.
4. Complaint about non receipt of Bonus must be filed before appropriate Government.
5. If appropriate government finds the complaint to be valid, it will direct District Collector to recover amount of Bonus from Employer as arrears of land revenue.
6. District Collector will adopt all or any measure to recover Bonus amount from Employer.

Reference of dispute under the Act Section 22

1. Any dispute between Employer and Employee with respect to Bonus shall be treated as Industrial Dispute.
2. It means such disputes will be resolved

2. It means such disputes will be resolved as per procedures laid down in Industrial Disputes Act, 1947

Presumption about accuracy of Balance sheet and Profit & Loss a/c of Corporation and Companies . Section 23

1. If during the dispute, accuracy of financial statements is questioned, it will be presumed that they are accurate provided they should be audited under provisions of Company Law.
2. If workers or workers' union object the accuracy of financial statements, it shall be decided by redressal authority whether a re-audit is needed or not.

Audited accounts of Banking Companies not to be questioned **Section 24**

1. If the Employer is a Banking Enterprise, its audited accounts shall be treated unquestionable.
2. Workers and workers' union do not have a right to object their accuracy.

Audit of accounts of Employers other than Corporations or companies **Section 25**

1. If an enterprise is not covered under compulsory audit provisions, it need not undergo any audit unless redressal authority orders such audit.
2. If redressal authority orders any audit, it must be conducted within the given time limit.
3. If the Employer fails to get accounts audited, redressal authority will itself appoint auditor to carry out the audit.
4. In all cases, all audit expense shall be paid by Employer.

Offences by Companies Section 29

1. If the Employer under default is a company, Every person who was in charge of the company like directors and key managerial personnel shall be responsible.
2. However if any person proves that offence was committed without his consent and involvement, he will be considered 'Not guilty!'
3. This section is equally applicable on Partnerships and Limited Liability Partnerships.

Partnerships and Limited Liability Partnerships.

It means duty and liability of Partner will be same as duty and liability of Director.

Cognizance of offences Section 30

1. No civil or criminal court will take cognizance of offence under this Act.
2. However court will take cognizance only if matter is referred by appropriate Government or Labour court.
3. If the matter is referred to the court, court should not be less than Presidency Magistrate or 1st class Magistrate.

Protection of action taken under the Act Section 31

1. Any case, prosecution or legal proceeding can not take place against government or government officer for any loss which took place because of their action.
2. It should be noted that Good faith must be present in performance of duties by government officer.

Special provision with respect to Payment of Bonus linked with production or productivity

Section 31 A

1. Contribution Bonus under 4Ps will be removed

Section 31 A

1. Generally, Bonus under this act is computed on the basis of salary, However Bonus act also allows productivity Bonus, subject to certain conditions.
2. Following are the Compulsory conditions without which Productivity Bonus is not allowed:-
 - 1) Mutual agreement between employer and employee. It means if an employee or group of employees do not get ready to accept this productivity Bonus, they will be given Bonus based on salary.
 - 2) Minimum and maximum limits of Bonus must be maintained. It means Bonus calculated as per productivity should not come down below minimum level and should not ideally go beyond maximum level.

Act not to apply to certain classes of Employees

Section 32

Payment of Bonus Act, 1965 does not apply on following entities :-

1. Employees of General Insurance Companies.
2. Employees of LIC of India
3. Seamen under Merchant Shipping Business
4. Dock workers
5. Government Employees

5. Government Employees
6. Indian Red Cross Society
7. University and educational institution
8. Institutions established not for profit
9. RBI
10. Industrial Finance Corporation of India
11. State Financial Corporation
12. Deposit Insurance Corporation
13. NABARD - National Bank for Agriculture and Rural Development
14. Unit Trust of India
15. IDBI Industrial Development Bank of India
16. SIDBI Small Industries Development Bank of India
17. NHB National Housing Bank
18. Any other financial institution of Public sector
19. Inland Water Transport Establishment

Application of act to establishment in public sector
in certain cases Section 20.

1. Generally Bonus Act does not apply on public sector establishments.
2. However if **Both** the following **2** conditions are fulfilled, Bonus will apply on them as well :-

on them as well :-

- 1) Public sector Establishment must work in competition with private sector.
- 2) Income from such competitive business should be 20% or more of the total income.

Maintenance of Registers and Records Section 26

1. Every Employer covered under this act shall maintain registers and records as prescribed by appropriate Government.
2. Appropriate Government has prescribed following 3 registers to be maintained :-
Form A - Computation of Available surplus
B - Computation of Allocable surplus
C - Bonus payable Paid and Arrears.

Inspectors Section 27

1. Inspectors are appointed by appropriate government.
2. These inspectors are appointed to monitor compliance of Bonus Act, 1965 as well as other labour laws.
3. Appropriate government also specifies the limit within which inspectors will operate.
4. Inspectors appointed under Payment of Bonus Act, 1965 are given following powers in exercise of their duties :-

Now, when we have power in exercise of their duties :-

- a) Take information and Explanations from Employer.
- b) Enter premises belonging to Employer.
- c) Examine and cross examine any person.
- d) Take notes or copies from the relevant documents.
- e) Any other power as may be prescribed.

5. Inspectors appointed under this act are deemed to be public servant.

Power of Exemption Section 36

- ① Appropriate Government has power to provide exemption, whether partial or complete, conditional or absolute to any Employer or Group of Employers from the applicability of Bonus Act, 1965.
- ② The appropriate government must take into consideration following factors before granting exemption :-
 - 1) Financial position of the enterprise.
 - 2) Whether the exemption will be in public interest or not.

Special Provision with respect to Certain Establishment

Section 16

Certain Establishment
↓
Newly set up

1. Newly set up establishments are exempted from the applicability of Payment of Bonus Act, 1965.

1. Newly set up enterprises are exempted from the applicability of Payment of Bonus Act, 1965 for the first 5 years of their operations.
2. This exemption is not absolute and is available only if the employer does not have sufficient profits and available surpluses.
3. In simple words, Bonus is applicable only if enterprise has profits and available surpluses.
4. In the 6th year, Bonus will apply and surpluses of 5th and 6th year can be used, to pay Bonus.
5. In the 7th year, Bonus will apply and surpluses of 5th, 6th and 7th year can be used to pay Bonus.
6. In the 8th year Bonus will apply and surpluses of 5th, 6th, 7th, 8th year can be used to pay Bonus.
7. In the 9th year Bonus will apply and surpluses of 6th, 7th, 8th and 9th year can be used to pay Bonus.

Note :- 4 year rule can be referred from Section 15.

Set on and set off of allocable surplus

Section 15

1. Bonus payable and allocable surplus can not be

1. Bonus payable and allocable surplus can not be always same.
2. There can be following 3 situations in this regard :-
 - a) Bonus Payable = Allocable surplus
 - b) Bonus Payable < Allocable surplus (surplus)
 - c) Bonus Payable > Allocable surplus (Deficiency)
3. If Bonus payable is less than the allocable surplus, it will be a surplus situation and remaining money will be kept safe for next 4 years so that the same can be used in case of deficiency.
4. It means remaining allocable surplus can not be used for any other purpose for the next 4 years other than Bonus after which the same will become part of general reserve.
5. If Bonus payable is more than the allocable surplus, it is called deficiency situation which can be carried further for maximum 4 years after which payment must be made anyhow.
6. It means if money is not available, Bonus Payment can be deferred but for maximum 4 years.
7. Set on means using the surplus and set off means removing the deficiency.
8. Set on and set off always take place

8. Set on and set off always take place together but they cannot be said to be one and same thing.

Computation of Gross Profit Section 4

1. In case of Banking Company, Gross Profit shall be calculated as per First Schedule.
2. In all other cases, it shall be calculated as per Second Schedule.

Computation of available surplus Section 5

1. Available surplus shall be calculated after deducting certain items from Gross Profit.
2. Items which are to be deducted from Gross Profit are listed in Section 6.

Sums deductible from Gross Profit Section 6

1. Following are the items to be deducted from Gross Profit in order to calculate available surplus:-
 - 1) Depreciation as per Income Tax Act, 1961
 - 2) Development Rebate or Investment allowance or development allowance
 - 3) Direct tax
 - 4) Sum specified in Third Schedule.

2. Available surplus will not be used completely for Bonus and only a part of it shall be distributed. This part shall be allowable.

distributed. This part shall be allocable surplus.

Allocable Surplus Section 2 (g)

1. In case of company, other than a Banking company, which has not made dividend arrangements / provision, Allocable Surplus shall be 67% of Available Surplus.
2. For all other Employers, Allocable Surplus shall be 60% of Available Surplus.

Note Kindly read and revise all 22 definitions under section 2 of Payment of Bonus Act, 1965.

PRACTICE MANUAL**Fill in the blanks**

1. The two types of establishments under the Payment of Bonus Act are _____, _____.
2. To get eligible for bonus an employee is to work _____ in that accounting year.
3. Wage limit for getting bonus is ` _____.
4. The minimum bonus payable is at _____ of the salary or wage earned by the employee during the accounting year or ` _____ whichever is higher.
5. The time limit for bonus payment by issue of an award passed on the dispute regarding the payment of bonus is _____.
6. Annual return is to be filed in Form No. _____.
7. Any dispute arises between an employer and his employee in regard to the payment of bonus shall be deemed to be an _____.
8. Bonus is an _____ to increase the production.
9. Bonus is neither _____ nor _____ deferred payment of wages.
10. The establishment in public sector is an establishment owned, controlled or managed by _____.

Choose the correct answer**1. Which one of the following is not applicable to the Bonus Act?**

- (a) Every factory;
- (b) Every establishment in which 20 or more persons are employed on any day during an accounting year;
- (c) Life Insurance Corporation of India.

2. Who is not eligible to get bonus?

- (a) A temporary workman;
- (b) A dismissed employee;
- (c) A piece rated employee;
- (d) A retrenched employee.

3. The maximum bonus payable during an accounting year is _____ of the salary.

- (a) 8.33%
- (b) 12%
- (c) 15%
- (d) 20%

4. If an employee draws pay of `15,000/- what is the maximum bonus payable to him?

- (a) `10,000/-
- (b) 15,000/-
- (c) 21000/-
- (d) None of the Above

5. The time limit for making bonus payment is-

- (a) Within a period of one month from the close of the accounting year;
- (b) Within a period of three months from the close of the accounting year;
- (c) Within a period of six months from the close of the accounting year;
- (d) Within a period of eight months from the close of the accounting year.

6. Annual return shall be filed by every employer on or before

- (a) 31st March;
- (b) 30th September;
- (c) 1st February;
- (d) 30th June.

7. Which of the following is included in the definition of 'salary' or 'wage'?

- (a) Commission;
- (b) Dearness allowance;
- (c) Retrenchment compensation;
- (d) Value of any house accommodation.

8. Which one of the following is deductible from the gross profit?

- (a) Depreciation;
- (b) Development rebate;
- (c) Any direct tax payable;
- (d) All of the above.

9. _____ % of the paid up equity share capital as at the commencement of the accounting year is allowed deduction from the gross profit in respect of banking companies.

- (a) 7.5%
- (b) 6%
- (c) 8.5%
- (d) 5%

10. 6% of the reserves shown in the balance sheet as at the commencement of the accounting year is allowed for _____ company.

- (a) Foreign company;
- (b) Banking company;
- (c) Company other than banking company;
- (d) Corporation.

State whether TRUE or FALSE

1. Customary bonus is covered under the Payment of Bonus Act, 1965.
2. Bonus Act is not applicable to Government Departments.
3. A dismissed employee, reinstated with back wages is entitled to bonus.
4. Where an employee has not worked for all the working days he is entitled to full bonus.

5. Where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then the employer may deduct the amount of loss from the bonus payable to the employee.
6. During the proceeding before any arbitrator or Tribunal it is required to prove the accuracy of accounts of the establishment.
7. No court shall take cognizance of any offence punishable unless a complaint is made by the authority by appropriate Government.
8. Where an establishment is newly set up the bonus shall be payable only in respect of the accounting year in which the employee derives profit from such establishment.
9. An establishment shall be deemed to be newly set up by reason of a change in its location, management, ownership.
10. Customary bonus can be adjusted against the amount of bonus paid to the employee.

Model Questions

1. Narrate the circumstances which disqualify an employee to receive bonus.
2. What is available surplus and allocable surplus?
3. Write notes on 'set on' and 'set off' of allocable surplus with example.
4. What are the various methods in computation of bonus?
5. What are the obligations of the employer under the Act?
6. Write short notes on Productivity Linked Bonus.
7. What are the powers of the Inspector under this Act?
8. Discuss Section 21 of the Act which deals with the recovery of bonus due to an employee.
9. Define the term 'banking company'. Whether a co-operative bank is a banking company.
10. List the establishments that are exempted from this Act.

Answers:

Fill in the blanks

1. Establishment in private sector, establishment in public sector;
2. Not less than 30 days;
3. `21,000/-;
4. 8.33%, `100;
5. One month within the award becomes enforceable;
6. D;
7. Industrial dispute;
8. Incentive;
9. Gratuitous, deferred;
10. A Government company.

Choose the correct answer

1. C;
2. B;
3. D;
4. A;
5. D;
6. C;
7. B;
8. D;
9. A
10. C.

State whether TRUE or FALSE

1. FALSE;
2. TRUE;
3. TRUE;
4. FALSE;

5. TRUE;
6. FALSE;
7. TRUE;
8. TRUE;
9. FALSE;
10. TRUE.

MTP Question:

MTP June 2019

Question:1 Kelson Limited has two separate units at Delhi and Mumbai in India. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. Delhi unit is incurring continuous losses and hence bonus is not paid to the employees of this unit.

Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Answer: All the two units shall be treated as two separate establishments since all the two units maintain separate B/S and P&L Account.

Employee's of the unit which is incurring losses

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;
- are entitled to minimum bonus as per the provisions of Sec. 10, 12, 13 and 14 of the Payment of Bonus Act, 1965, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss)

MTP Dec 2018

Question:2 Who is an employee as per Payment of Bonus Act, 1965.

Answer: Section 2(13) defines the term 'employee' as any person employed on a salary or wage not exceeding `21,000/- per mensem (with effect from 01.04.2014) in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. Apprentice will not be treated as an employee.

The following case laws illustrate the eligibility of type of employees eligible for bonus-

- A temporary workman is entitled to bonus on the basis of the total number of days worked by him – Cooper Allen & Co. Limited V. Their Workmen – 1951 (2) LLJ 576;
- A part time employee as a sweeper engaged on regular basis is entitled to bonus – Automobile Karmachari Sangh V. Industrial Tribunal – 1970 (38) FJR 268;
- A dismissed employee, reinstated with back wages, is entitled to bonus – Gannon India Limited V. Niranjan Das – 1984 (40 LLJ 223);
- A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period – Bank of Madura Limited V. Bank of Madura Employees' Union – 1961 (1) LLJ 720
- A piece rated worker is entitled to bonus Malabar Tile Works V. Industrial Tribunal – 1970 (I) LLJ 79.

Question:3 Narrate the circumstances which disqualify an employee to receive bonus.

Answer: Disqualification for receiving bonus

Section 9 provides that an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

In Pandian Roadways Corporation Limited Madurai V. Presiding Officer, Labor Court- 1977 LLR 83 (Mad HC) the High Court held that the right of the management to forfeit bonus on the ground that the workman was dismissed from service for misconduct, would be only with reference to the accounting year in which the said Act of misconduct was committed and not with reference to any year or years preceding or succeeding the accounting in question.

MTP Jun 2018

Question:4 Mr. Rahul is the owner of a company and he is in the process of declaring bonus. For the purpose of declaring bonus Mr. Rahul would like to know how the gross profit is being calculated and what are the allowable deductions from it?

Answer: Steps required to be done for the computation of bonus

The following are the steps required to be done for the computation of bonus:

- Computation of gross profits;
- Sums deductible from gross profits;
- Computation of available surplus ;
- Computation of allocable surplus

Computation of gross profit

Section 16 of the Act provides that the gross profit derived by an employer from an establishment in respect of the accounting year shall-

- in the case of banking company, be calculated in the manner as specified in the First Schedule;
- in any other case, be calculated in the manner as specified in the Second Schedule.

Sums deductible from gross profit

Section 6 of the Act provides the following to be deductible from the gross profit –

- depreciation admissible under Section 32 of the Income Tax Act, 1961;
- development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income Tax Act, 1961;
- any direct tax payable for the accounting year by the employer;
- such other sums as specified in Third Schedule-
- Company other than banking company – the following are deductible –
 - ❖ Dividends payable on preference share capital;
 - ❖ 8.5% of its paid up equity share capital as the commencement of the accounting year;
 - ❖ 6% of its reserves shown in the balance sheet at the commencement of the accounting year;
 - Foreign company
 - ❖ 8.5% on the aggregate of the value of net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities in India;

- Banking companies – the following are deductible-
 - ❖ Dividends payable on preference share capital;
 - ❖ 7.5% of its paid up equity share capital as at the commencement of the accounting year;
 - ❖ 5% of its reserves shown in the balance sheet as at the commencement of the accounting year;
 - ❖ Any sum transferred to a reserve fund under Section 17(1) of the Banking Regulation Act, 1949 or to any reserves in India in pursuance of any direction or advice given by RBI;
- Foreign banking company – the following are deductible-
 - ❖ Dividends payable to its preference shareholders;
 - ❖ 7.5% of its total paid up equity share capital as its total working funds in India bears to its total working funds;
 - ❖ 5% of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total working funds;
 - ❖ Any sum deposited with RBI under Section 11(2)(b)(ii) of the Banking Regulation Act, 1949 not exceeding the amount required to be deposited;
- Corporation – the following are deductible –
 - ❖ 8.5% of its paid up capital as at the commencement of the accounting year;
 - ❖ 6% of its reserves, if any, shown in its balance sheet as at the commencement of the accounting year;
- Co-operative society – the following are deductible -
 - ❖ 8.5% of the capital invested by such society in its establishment;
 - ❖ Such sum as has been carried forwarded to a reserve fund under any relating to co-operative societies;
- Any other employer not falling under any of the aforesaid categories – the following are deductible-
 - ❖ 8.5% of the capital invested at the commencement of the accounting year;

MTP Jun 2017

Question: 5 What procedure shall an employee adopt for the recovery of the amount of bonus due to him from his employer under the Payment of Bonus Act 1965?

Answer: Recovery of bonus due from an employer

In those cases where any money by way of bonus is due to an employee from his employer under a settlement or an award or agreement, the employee is entitled to recover the same by following the procedure prescribed in section 21 of the act. It is important to note here that the mode of recovery of bonus prescribed under this section shall be available only if the bonus sought to be recovered is due under a settlement or an award or an agreement. It will not apply to recovery of bonus which is payable under the act.

The provisions relating to the recovery of bonus, as contained in section 21, are as under: (1) The bonus due to an employee from his employer under a settlement or an award or agreement, can be recovered by him by making an application to the Appropriate Government for the recovery of the same.

(2) The application may be made by the employee himself or by any person authorised by him in writing. In case of death of the employee, such an application may be made by his assignee or heirs.

(3) On receipt of the application, if the Appropriate Government is satisfied that any money is so due to the employee, it shall issue the certificate for that amount to the collector, and the collector shall proceed to recover the same in the same manner as an arrear of land revenue.

(4) The application to the Appropriate Government should be made within one year from the date on which the money became due to the employee from the employer. However, the Government may entertain such application even after the expiry of said period of one year, if it is satisfied that the applicant had sufficient cause for not making the application within the prescribed period of one year.

MTP Dec 2017

Question:6 Narrate the circumstances which disqualify an employee to receive bonus.

Answer: Disqualification for receiving bonus

Section 9 provides that an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

In 'Pandian Roadways Corporation Limited Madurai V. Presiding Officer, Labor Court'- 1977 LLR 83 (Mad HC) the High Court held that the right of the management to forfeit bonus on the ground that the workman was dismissed from service for misconduct, would be only with reference to the accounting year in which the said Act of misconduct was committed and not with reference to any year or years preceding or succeeding the accounting in question.

Question:7 Who is an employee as per Payment of Bonus Act, 1965.

Answer: Section 2(13) defines the term 'employee' as any person employed on a salary or wage not exceeding `21,000/- per mensem (with effect from 01.04.2014) in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. Apprentice will not be treated as an employee.

The following case laws illustrate the eligibility of type of employees eligible for bonus-

- A temporary workman is entitled to bonus on the basis of the total number of days worked by him – Cooper Allen & Co. Limited V. Their Workmen‘ –1951 (2) LLJ 576;
- A part time employee as a sweeper engaged on regular basis is entitled to bonus – Automobile Karmachari Sangh V. Industrial Tribunal‘ – 1970 (38) FJR 268;
- A dismissed employee, reinstated with back wages, is entitled to bonus – Gannon India Limited V. Niranjan Das‘- 1984 (40 LLJ 223);
- A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period – Bank of Madura Limited V. Bank of Madura Employees‘ Union‘ – 1961 (1) LLJ 720
- A piece rated worked is entitled to bonus – Malabar Tile Works V. Industrial Tribunal‘ – 1970 (I) LLJ 79.

Suggested Question:

Suggested June2018

Question:8 Kelson Limited has two separate units at Delhi and Mumbai in India. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. Delhi unit is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Answer: All the two units shall be treated as two separate establishments since all the two units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses:

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;
- are entitled to minimum bonus as per the provisions of Sec. 10,12,13 and 14 of the Payment of Bonus Act,1965, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).

However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the two units taken together.

Suggested Jun2017

Question:9 Discuss the procedure for the recovery of bonus due from an employer.

Answer: Section 21 of the Payment of Bonus Act, 1965 provides the procedure for the recovery of bonus in case the employer has not paid under a settlement or an award or agreement. In such cases either the employee himself or any other person authorized by him in writing in this behalf or in the case of death of the employee, his assignee or heirs may make an application to the appropriate government for the recovery of the money due to him. If the appropriate government, or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for that amount to the collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue.

Application for the recovery of money shall be made within one year from the date on which the money becomes due to the employee from the employer. After expiry of such one year period, an application may be entertained by the appropriate government only if it satisfied that the applicant had sufficient causes for not applying within said period.

Revisionary Question:

Revisionary Dec 18

Question:10 Notun Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Answer: All the 3 units shall be treated as 3 separate establishments since all the 3 units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses:

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;
- are entitled to minimum bonus as per the provisions of Sec. 10, 12, 13 and 14 of the Act, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).
- However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the 3 units taken together.

Question:13 Ambay Textiles Ltd. employed 20 full – time and 5 part -time employees who were drawing salary of less than ` 21,000 per month. After completing service of 28 days, in an accounting year, 10 full - time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full - time employees and to the part - time employees. Against the decision, all the employees applied to the authorities for relief. Decide, stating the provisions of the Payment of Bonus Act, 1956, whether the employees, who resigned, the remaining full - time employees and part - time employees will get relief.

Answer: In accordance with the provisions of Section 2(13) of the Payment of Bonus Act, 1965 any person other than an apprentice employed on a salary or wage not exceeding ` 21,000 per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward whether the terms of employment be express or implied is eligible for bonus.

Further, in accordance with the provisions of Section 8 of the Payment of Bonus Act, 1965 every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year.

The problem as asked is based on the above provisions of the Act and the answer may be given as follows:

- (a) As regards the employees who resigned: The employees who have resigned are not entitled to bonus because they worked only for 28 days in an accounting year although they are drawing salary less than ` 21,000 per month.
- (b) As regards full time remaining employees: These employees are entitled to get the bonus as they fulfil both the requirements as stated under Sections 2 (13) and 8 of the Act. Although the employees in this case have been reduced to 10, once the Act is applicable, it continues to apply even if number of employees fall below 20.
- (c) As regards part time employees: Even a part time employee is entitled to bonus on the basis of total number of days worked by him in an accounting year. The definition of an employee under the Act does not exclude part time employees from the definition of employee. Therefore, if such employees work for over 30 days in the accounting year and have drawn salary of less than ` 21,000 per month, they shall be entitled to receive bonus for that accounting year. The Payment of Bonus Act, 1965 does not prohibit such employees as long as they fulfill all the requirements stated above [Automobile Karmachari Sangh vs. Industrial Tribunal (1971)].

Revisionary June 2018

Question:14 Notun Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Answer: All the 3 units shall be treated as 3 separate establishments since all the 3 units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses:

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;
- are entitled to minimum bonus as per the provisions of Sec. 10, 12, 13 and 14 of the Act, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).
- However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the 3 units taken together.

Revisionary June 2018

Question:14 Abhay Textiles Ltd. employed 20 full-time and 5 part-time employees who were drawing salary of less than ` 10,000 per month. After completing service of 28 days, in an accounting year, 10 full-time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full-time employees and to the part-time employees. Against the decision, all the employees applied to the authorities for relief. Decide, stating the provisions of the Payment of Bonus Act, 1965, whether the employees, who resigned, remaining full-time employees and part-time employees will get relief.

Answer: The Act is applicable to the establishment since the establishment has employed 20 or more persons during any day of the AY; and if the provisions of the Act become applicable to an establishment once, they shall continue to be applicable notwithstanding subsequent reduction in the number of persons employed (Sec. 1).

20 full-time and 5 part-time employees are 'employees' within the definition of 'employee' [Sec. 2(13)].

The 10 full-time employees who resigned are not eligible for bonus since they have not worked for 30 days (Sec. 8).

The remaining 10 full-time employees and all the 5 part time employees are eligible for bonus, since they have worked for 30 days or more during the AY (Sec. 8) and even a part-time employee is entitled to bonus (Automobile Karmchari Sangh v Industrial Tribunal).

Workbook Question:

Question:15 Discuss the applicability of the Payment of Bonus Act, 1965.

Answer: Territorial wise this act is applicable to the whole of India. This Act shall apply to the following:

(i) Every factory; and

(ii) Every other establishment in which twenty or more persons are employed on any day during an accounting year;

(iii) Any establishment or class of establishments as notified by the appropriate Government, employing such number of persons less than twenty as may be specified in the notification, that the number of persons so specified shall in no case be less than ten.

(iv) An establishment to which this act applies shall continue to be governed by the Act notwithstanding that the number of persons employed falls below twenty or the number specified in the notification.

In deciding the number of persons employed in an establishment all employees, even those drawing more than the threshold limit must be taken into consideration. The strength of the employees of an establishment would be taken into consideration, irrespective of their place of work.

Question:16 What are the disqualifying situations from receiving bonus?

Answer: Section 9 provides that an employee shall be disqualified from receiving bonus, if he is dismissed from service for fraud or riotous or violent behavior while on the premises of the establishment or theft, misappropriation or sabotage of any property of the establishment.

Question:17 Discuss the procedure for the recovery of bonus due from an employer.

Answer: Section 21 of the Act provides the procedure for the recovery of bonus due from an employer. In such cases-

- the employee himself; or
 - any other person authorized by him in writing in this behalf; or
 - in the case of death of the employee, his assignee or heirs
- may make an application to the appropriate Government for the recovery of the money due to him. If the appropriate Government or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for that amount to the Collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue.

Every such application shall be made within one year from the date on which the money become due to the employee from the employer and after the date of expiry of one year if Appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the one year period .

Scanner Question:

Question:17 2010- Dec [3] (a) Write short note on :
 (v) 'Available surplus' and 'Allocable surplus'.

(4 marks)

Answer:**Available surplus and Allocable surplus:**

Available Surplus: From the gross profit certain deductions are made as provided in the act. Then a sum is added representing the tax benefit for bonus payment in the previous years i.e. difference between the direct tax calculated on gross profit for the previous year and direct tax calculated on gross profit arrived at after deducting the bonus paid or payable to the employees. This is available surplus.

Allocable Surplus:

- (i) 67% of Available surplus if the company (not banking company) has not made provisions for payment of dividend as per Income Tax Act.
- (ii) 60% of available surplus for any other case.

Question:18 2008- Dec [1] {C} Comment on the following statements based on legal provisions:**(b) Every employee in an establishment is entitled to bonus under the Payment of Bonus Act.**

(2 marks)

Answer:

False: Following conditions should be satisfied for entitlement of bonus under Payment of Bonus Act. (i) he has worked not less than 30 days (ii) his salary/ wage does not exceed ` 21,000 per month. [Section 2(13)] (iii) provided such establishment comes under the Payment of Bonus Act.

However, an employee who is dismissed from service for fraud or riotous behaviour or theft, mis-appropriation or sabotage of any property of an establishment is not entitled to bonus.

The Amendment Act has amended the Principal Act in the following manner:**Amendment of Eligibility Limit through Amendment of Sec. 2(13).**

Question:19 2008- Dec [4] (b) A dismissed employee is not entitled to bonus under Bonus Act.-Comment, based on legal provision.

(2 marks)

Answer:

Following conditions should be satisfied for entitlement of bonus under Payment of Bonus Act. (i) he has worked not less than 30 days (ii) his salary/wage does not exceed ` 21,000 per month [Section 2(13)] (iii) provided such establishment comes under the Payment of Bonus Act.

Section 21 of the Bonus Act, states that for the purpose of bonus due from employer, the term employee includes a person who is no longer in service. Hence a dismissed/retrenched employee is also entitled to receive boniis. However, if the dismissal or retrenchment is on account of fraud, riotous behaviour, misappropriation, theft and sabotage, he shall not be entitled to any bonus.

Question:20 2009- June [2] (d) Is there any time limit for payment of bonus under Bonus Act?

(2 marks)

Answer:

(a) Where there is dispute regarding payment of bonus pending before any Authority, under Sec. 22 all amounts payable within a month from the date on which the award becomes enforceable or the settlement comes into operation in respect of such disputes.

(b) In any other case within 8 months from the close of accounting year.

Appropriate Government or such Authority authorized by Govt, may extend the said period of 8 months but total period so extended shall not in any case exceed 2 years.

Question:21 2010- Dec [1] {C} Comment on the following based on legal provisions (No marks for wrong reasons/justification)

(a) A dismissed employee who was reinstated without wages for the period of dismissal is entitled to bonus.

(2 marks)

Answer:

No. It is incorrect. A reinstated employee is entitled to bonus if he is reinstated with wages for the period of dismissal. In this case, the dismissed employee is reinstated but without wages for the period of dismissal hence he/she is not entitled to bonus. Bonus is related with the wages paid and when wages have not been paid, question of paying bonus does not arise.

Question:22 2011 Dec [2] (e) Under Payment of Bonus Act number of days actually worked is one of the conditions and therefore state the method of calculation of working days. **(3 marks)**

Answer:

In addition to actual attendance following shall also be considered in computation of numbers of working days :

Section 14, of the Payment of Bonus Act, 1965 provides that an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:

- (a) he has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act 1946 (20 of 1946) or under the Industrial Disputes Act 1947 (14 of 1947) or under any other law applicable to the establishment;
- (b) he has been on leave with salary or wages;
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of employment; and
- (d) the employee has been on maternity leave with salary or wage, during the accounting year.

Question:23 2012- June [1] {C} Comment on the following based on legal provisions:

(e) ABC Ltd. which incurred heavy loss during 2011 -12 has not paid Bonus to any of its employees. **(2 marks)**

Answer:

As per Payment of Bonus Act, 1965 the employer should pay minimum bonus of 8.33% to the employee on his salary or wages earned during the accounting year. The minimum bonus should not be less than INR 100 otherwise INR 100 will be paid. Minimum bonus will have to be paid even if the employer does not have any allocable surplus in the concerned accounting year. If the employee has not attained fifteen year of age at the beginning of the year, the minimum bonus will not be less than INR 60.

Question:24 2014 - Dec [2] (d) (iii) The workers of a factory were paid a lump sum Bonus during Id festival, which was not in a fixed time of the year. When the statutory bonus becomes due, can the employer adjust the festival bonus from it? What other dues, if any, may be deducted from the statutory bonus? **(3 marks)**

Answer:

It is very customary these days to pay interim bonus in the form of puja bonus or other customary bonus, then the employer is entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee will be entitled to receive only the balance. Moreover, if an employee is found guilty of misconduct causing financial loss to the employer, then the employer can deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only. If an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 percent of his salary or wage for the days he has worked in that accounting year, is proportionately reduced.

Question:25 2015 - June [2] Answer the question:

(d) (ii) A worker was caught red handed for theft and was suspended for four days after proper enquiry. Is he entitled to bonus payable to an employee under The Payment of Bonus Act, 1965? **(2 marks)**

Answer:

Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for:

- (a) Fraud; or
- (b) Riotous or violent behaviour while on the premises of the establishment; or
- (c) Theft, misappropriation or sabotage of any property of the establishment. Hence, the worker is not entitled to bonus.

Question:26 2016- June [2] Answer the question:

(c) (i) What procedure shall an employee adopt for the recovery of the amount of bonus due to him from his employer under the Payment of Bonus Act, 1965? (7 marks)

Answer:

Recovery of bonus due from an employer:

In those cases where any money by way of bonus is due to an employee from his employer under a settlement or an award or agreement, the employee is entitled to recover the same by following the procedure prescribed in **Section 21** of the Act. It is important to note here that the mode of recovery of bonus prescribed under this section shall be available only if the bonus sought to be recovered is due under a settlement or an award or an agreement. It will not apply to recovery of bonus which is payable under the act.

The provisions relating to the recovery of bonus, as contained in

Section 21, are as under:

1. The bonus due to an employee from his employer under a settlement or an award or agreement, can be recovered by him by making an application to the Appropriate Government for the recovery of the same.
2. The application may be made by the employee himself or by any person authorised by him in writing. In case of death of the employee, such an application may be made by his assignee or heirs.
3. On receipt of the application, if the Appropriate Government is satisfied that any money is so due to the employee, it shall issue the certificate for that amount to the collector, and the collector shall proceed to recover the same in the same manner as an arrear of land revenue.
4. The application to the Appropriate Government should be made within one year from the date on which the money became due to the employee from the employer. However, the Government may entertain such application even after the expiry of said period of one year, if it is satisfied that the applicant had sufficient cause for not making the application within the prescribed period of one year.

Question:27 2016 - Dec [2] Answer the question:

(b) (i) Explain the ‘time limit for payment of bonus’ to the employees in different circumstances under the provisions of the Payment of Bonus Act, 1965. (5 marks)

Answer:

Time limit for payment of bonus:

Section 19 of the Payment of Bonus Act, 1965 prescribes the time limit for the payment of bonus under the following conditions:

- (1) **Under Section 19 (1) (a)** of the said Act, where the dispute is between the employer and the employees regarding the payment of bonus and such dispute is under reference to the prescribed authority, the employer is bound to pay his employee bonus in cash within one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
- (2) **Under Section 19 (1) (b)** of the said Act, in all other cases, the payment of bonus is to be made within a period of 8 months from closing of the accounting year. But, this period of 8 months may be extended up to a maximum of 2 years by the Appropriate Government or by any authority prescribed by the Appropriate Government only on an application to it by the employer and is satisfied that sufficient reasons exist for granting extension. Moreover, the extension can be made only by an order.

Question:28 2017- June [7] (b) Discuss the procedure for the recovery of bonus due from an employer. (5 marks)

Answer:

Procedure for the Recovery of Bonus Due from an Employer **Section 21** of the Act provides the procedure for the recovery of bonus in case the employer has not paid under a settlement or an award or agreement. In such cases:

- the employee himself; or
- any other person authorized by him in writing in this behalf; or
- in the case of death of the employee, his assignee or heirs

may make an application to the appropriate Government for the recovery of the money due to him. If the appropriate Government or such authority authorized is satisfied that any money is due, it shall issue a certificate to the Collector for

that amount to the Collector who shall proceed to recover the said amount in the same manner as an arrear of land revenue.

It may be noted that every such application shall be made within one year from the date on which the money become due to the employee from the employer. As such application may be entertained after the expiry of the said period of one years; if the Appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

Question:29 2012- Dec [2] (g) All the employees who are covered under Bonus Act were paid Holi Bonus of ` 500/- each. Later on due to loss, the Employer paid minimum Bonus @ 8.33% but after deduction of said ` 500/- Whether Employer was justified. (2 marks)

Answer:

Yes, Employer was justified as per provisions of **Section 17 of the Payment of Bonus Act, 1965**. The Employer is entitled to deduct the amount of any Puja Bonus or other customary Bonus (here Holi Bonus) so paid from the amount of bonus payable to the employees in respect of that accounting year.

Question:30 2013- June [1] {C} Comment on the following based on legal provision:

(d) Mr. E joined as Supervisor on monthly salary of INR 6,450 on 1st Feb 2013 and resigned on 28th Feb 2013. His employer paid Bonus @ 10% to all the eligible employees. Hence Mr. E is entitled to Bonus for the period of his service. (2 marks)

Answer:

Following conditions should be satisfied for entitlement of bonus under Payment of Bonus Act. (i) he has worked for not less than 30 days' (ii) his salary/wages does not exceed ` 21,000 per month [**Section 2(13)**] (iii) provided such establishment comes under the Payment of Bonus Act. Mr. E ' is not entitled to bonus as he has not worked for minimum period of 30 days.

Question:31 2013- Dec [4] (a) (ii) A company having its registered head office in Kolkata has three departments in Delhi, Chennai and Mumbai. The company paid minimum bonus under Payment of Bonus Act, to all its entitled employees of head office excepting the employees of departments located outside Kolkata. State whether employer was right. (3 marks)

Answer:

The employer is wrong. As per **Section 3 of the Payment of Bonus Act, 1965**, for the purpose of computation of bonus, an establishment shall include departments, undertakings, and branches. It is immaterial whether these are situated in same place or not.

Exception: A branch, department or undertaking shall not be treated as part of an establishment if the following 2 conditions are satisfied:

(a) A separate B/S and P&L A/c has been prepared for such branch, department or undertaking.

(b) Such branch, department or undertaking has never been treated as part of the establishment for the purpose of computation of bonus.

But since the question is silent regarding the above mentioned exceptions, we may assume that the establishment consists of different departments, undertakings, and branches and all such units are treated as part of same establishment for the purpose of computation of bonus.

Hence, the employer's contention is not correct and the employees of all the three departments are entitled to bonus.

Question:32 2014- June [2] (b) Mr. Sharma is a supervisor in a factory drawing salary of ` 7,000 pm. In a particular accounting year he was on one month leave with salary. His employer declared minimum bonus payable as per the Payment of Bonus Act, 1965, to all eligible employees. State in this connection:

- (i) What shall be the salary that shall be taken into account for the purpose of calculating bonus payable to him?
- (ii) What shall be the total bonus payable to him in that accounting year?
- (iii) What would be your answer if the company suffer losses in that accounting year?
- (iv) Is bonus payable to him if he was illegally terminated?

(1x4 = 4 marks)

Answer:

(i) The bonus will be calculated on ` 7,000 even if the employee earns a higher salary. Where the salary or wage of an employee exceeds ` 7,000 per mensem, the bonus payable to such employee under **Section 10** or, as the case may be under Section 11, shall be calculated as if his salary and wage were ` 7,000 per mensem (**Section 12**). This means employees getting salary or wage upto ` 1,000 will be covered by the Act, but for payment of bonus their salary will be taken as ` 7,000.

Amendment of Calculation of Bonus through Amendment of Sec. 12.

Sec. 12 of the Principal Act, provided that the bonus payable to an employee shall be in proportion to his/her salary. However, where an employee's salary was over INR 3,500 per month, for the purpose of calculating bonus, the salary was assumed to be ` 3,500 per month. With a view to maximise bonus earnings, the Amendment Act, has increased the wage ceiling from ` 3,500 per month to ` 7,000 per month or the minimum wage for the scheduled employment as fixed by the appropriate government, whichever is higher.

.Again for the purpose of this section, the Scheduled Employment shall have the same meaning as assigned to it in Clause (g) of Sec. 2 of the Minimum Wages Act, 1948.

(ii) The total bonus payable to him in that accounting year should be $(7,000 \times 12 \times 8.33\%) = ` 6,997.2$. For the purpose of calculating the total working days, leave with salary or wages shall be deemed to be working days for the employee. Therefore, Mr. Sharma would be eligible for 12 months bonus.

(iii) The bonus shall have to be paid by the employer notwithstanding anything contained in **Section 10(1)**, but this payment is subject to the other provisions of the Act. And even if the employer suffers loss during the accounting year, he is bound to pay the minimum bonus as prescribed in **Section 10 (State vs Sardar Dalip Singh Majhithia, 1979)**.

(iv) Disqualifications for payment of Bonus: (**Section 9**) notwithstanding anything contained in the Act, an employee shall be disqualified from receiving bonus under the Act, if he is dismissed from services for:

(a) Fraud;

(b) Riotous or violent behavior while on the premises of the establishment; or

(c) Theft, misappropriation or sabotage of any property of the establishment.

If an employee is illegally terminated from service, he still remains qualified and eligible to receive bonus. Where an employee was prevented from working by reason of an illegal order, he would be eligible for bonus.

Question:33 2015- Dec [2] (d) (iii) A workshop is employing 50 workmen. A shop- supervisor is drawing a monthly wages of ` 9,000. HRD paid bonus to all employees except the supervisor. The supervisor contends that he is also entitled to bonus. Referring to the provisions of Payment of Bonus Act, 1965, decide whether HRD's action is correct? (2 marks)

Answer

No, HRD's action is not correct. The upper limit of salary fixed in **Section 2 (13)** by the Payment of Bonus (Amendment) Act, 2015. Every employee whose gross salary is less than ` 21,000 shall be entitled to be paid bonus by his employer provided he has worked in the establishment for not less than thirty working days. In view of this, the supervisor drawing monthly salary of ` 9,000 is entitled to receive bonus from the company.

Question:34 2018- June [7] (b) Kelson Limited has two separate units at Delhi and Mumbai in India. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. Delhi unit is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment ? (5 marks)

Answer:

All the two units shall be treated as two separate establishments since all the two units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses:

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;
- are entitled to minimum bonus as per the provisions of Sections 10,12,13 and 14 of the Payment of Bonus Act,1965, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).

However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the two units taken together.

MINIMUM WAGES ACT, 1948

Minimum Wages Act, 1948

Introduction:

1. It is a State Subject, but central govt. can also make rules.
2. This act was enacted upon the recommendations of International labour organisation.
3. Objective of the act is to prescribe minimum rate of wages for specified employments.
4. Specified employment means those employments which are specifically stated in the act.
to
5. The act applies whole of India including J&K.
6. This act came into force on 15th March 1948.
7. Minimum wages and payment of wages work simultaneously, which means if minimum wages are not paid, claim procedure will be same as payment of wages.
8. If some provision is not present on any issue in the minimum wages act 1948, then factories act 1948 and payment of wages act 1936 will apply.

* Cost of living Index :

It is an Index no. which represent level of inflation in the market. When it goes up, requirement to increase minimum wages arises. It is a variable index which keeps on changing in different states and different time zone.

* Scheduled employment or Specified employment:

- (1) Min. wages act applies only on those employment which are specified in scheduled I.
- (2) Schedule has two parts.
- (3) First part has 18 entries.
- (4) Second part contain only agriculture.
- (5) Agriculture includes agriculture, dairy farming, Raising of Bee, livestock, Horticulture, floriculture and cultivation of land.

* Minimum wages of Delhi

- (1) For unskilled employee - ₹ 9,568 p.m.
- (2) For semi-skilled employee - ₹ 10,582 p.m
- (3) For skilled employee - ₹ 11,622 p.m
Graduate
- (4) For Graduate or above - ₹ 12,662 p.m.

Method of fixing minimum wages.

There are two methods which can be used to fix minimum wages.

(a) Committee method.

(Jaldi Jaldi emergency)

(b) Notification method.

(Dheere Dheere apan se)

(a) Committee Method: This method is used when the time available is less. A meeting takes place between Govt and advisory board. Minimum wages decided by this meeting is applied instantly. It means Govt. does not provide any grace period and minimum wages have to be paid by employers.

(b) Notification Method:

1. Meeting takes place between govt and advisory board to decide minimum wages.

2. A public notice is given and public suggestions are invited for minimum 2 month.

- 3. After receiving all the public suggestions, minimum wages so decided shall be fixed and finalised.
- 4. After finalization this wages will apply after three/3 months.

Revision of Minimum Wages.

- (1) State govt can revised minimum wages any no. of times.
- (2) However revision must be done compulsorily once in 5 years.

Component of Minimum Wages.

- (1) It is upto the govt to decide various components or no components for minimum wages.
- (2) If it is given in different components, it can be one of the following :
 - (a) Basic + Dearness allowance
 - (b) Basic + DA + any other special allowance.
- (3) Employer can also pay minimum wages.
- (4) If the employer ~~fails not~~ follow component prescribed

by government but still paying higher wages, it all right.

OVER TIME WAGES

- (1) Generally over time wages are double than the ordinary wages.
- (2) However in case of agriculture, over time wages shall be 1.5 times than the ordinary wages.

Advisory board

- (1) There are separate advisory boards for central and state govt.
- (2) These boards are established by govt only.
- (3) These boards consist of equal numbers of representatives from employer, employee and govt.
- (4) These boards can establish committees and sub-committees for some specific reasons.

Two or more classes of works.

If a worker is employed in the profile of one employment but is put to work in more than one profile, making him responsible for more than one type job, separate wages must be paid for the works. It means there shall be a principle of one work one wages.

Maintenance of Records

Following are the compulsorily records to be maintained by every employer.

Form 1 = Register of fines.

Form 2 = Register of deduction.

Form 3 = Annual return.

Form 4 = Overtime register

Form 5 = Muster Roll (attendance register)

Form 9A = Format of issuing
Notice regarding
Minimum wages.

Form 10 = Register of wages

Form 11 = Format of wages slip.

Misc. Point

1. Annual return must be submitted on or before 1st Feb for the of Jan to Dec.
2. Minimum wages is compulsory whatever may be the situation.
3. Minimum wages once decided can be modified if required.
4. If a worker is not getting minimum wages, ~~he~~ he is called forced labour.
5. Any provision not specified in this act shall be referred from payment of wages act, 1936 and ~~to~~ Factories act, 1948.

PRACTICE MANUAL**Fill in the blanks**

1. Adult is a person who has completed his _____ year.
2. Any person who is responsible to the owner for the supervision and control of the employee or for the payment of wages is an _____.
3. The schedule is divided into two parts. Part I of the schedule has _____ entries.
4. The minimum wages shall be paid in _____.
5. Where a person provides labor or service to another for remuneration which is less than the minimum wage, such labor is called _____.
6. When a worker works more than 9 hours on any day or more than 48 hours a week, he shall be entitled to overtime wages 1.5 times of the ordinary wages in case of employment in _____.
7. The minimum wages shall be paid in an establishment in which more than 1000 persons are employed before the expiry of _____ th day.
8. Total amount of deductions from the wages shall not exceed _____ of such wages where such deductions are paid to co-operative societies.
9. To set the weekly day of rest the employee has to work for a continuous period for not less than _____ days in a week.
10. The claim for minimum wages shall be made in _____.

Choose the correct answer

1. Schedule II of this Act relates to an employment of –

- (a) State Government;
- (b) Central Government;
- (c) Agriculture;
- (d) Local authority.

2. Minimum wages may be fixed by

- (a) The hour;
- (b) The day;
- (c) Month;
- (d) By any of the above method.

3. Review of minimum wages is to be done at such interval not exceeding

- (a) 3 years;
- (b) 5 years;
- (c) 7 years;
- (d) 10 years.

4. No minimum wages cannot be fixed where

- (a) Dispute is pending before the Tribunal;
- (b) Dispute is pending before any authority under any other law for the time being in force;

- (c) An award in operation;
 (d) Any one of the above three.

5. Wages of a worker shall be paid before the expiry of 7th day in the establishment for which less than _____ persons are employed.

- (a) 1000;
 (b) 500;
 (c) 250;
 (d) 100.

6. If the authority finds the application for claim of minimum wages is a vexatious one, he may impose a penalty a sum not exceeding

- (a) `100/-;
 (b) ` 50;
 (c) `500/-
 (d) `250/

7. The Central Government proposes the minimum rate of wages at

- (a) `5000/-
 (b) `7500/-
 (c) `10000/-
 (d) `15,000/

8. A wage slip shall be issued by every employer to every employee

- (a) at least a day prior to the disbursement of wages;
 (b) on the day on which the wages are disbursed;
 (c) none of the above.

9. Rule 24 provides that the number of hours which shall constitute a normal working day in respect of an adult shall be

- (a) 4.5 hours;
 (b) 9 hours;
 (c) 12 hours;
 (d) None of the above.

10. The appropriate government may fix minimum rate of wages for

- (a) Time work;
 (b) Piece work;
 (c) Guarantee time rate;
 (d) All the above.

Model Questions

1. Define the term 'cost of living index number' and 'scheduled employment'.
2. Elaborate the procedure for fixing and revising minimum wages;
3. What are the roles of Advisory Board?
4. What are the deductions that can be made from the wages?
5. List the forms prescribed for registers and records that are to be maintained under this Act.
6. Define 'contracting out'.
7. What are the powers of appropriate Government under this Act?
8. What are the obligations of the employers under this Act?
9. Describe the procedures for an employee to claim the short payment of wages or nonpayment of wages.
10. Under what circumstances fine may be imposed on an employed person.

Answers:

Fill in the blanks

1. 18th;
2. Employer;
3. 18;
4. Cash;
5. Forced labor;
6. Agriculture;
7. 10th day;
8. 75%;
9. Six;
10. Duplicate.

Choose the correct answer

1. C;
2. D;
3. C;
4. D;
5. A;
6. B;
7. C;
8. A;
9. B;
10. D

State whether TRUE or FALSE

1. TRUE;
2. TRUE;
3. FALSE;
4. TRUE;
5. FALSE;
6. TRUE;
7. TRUE;
8. TRUE;
9. FALSE;
10. TRUE

MTP Question:

MTP June 2019

Question: 1 Elaborate the procedure for fixing and revising minimum wages

Answer: Section 5 (1) provides that in fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall, either – appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be; or by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration. Section 5(2) provides that after considering the advice of the committee or committees all representations received by it before the date specified in the notification, the appropriate government shall by notification in the Official Gazette, fix, or, as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue. Where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate government shall consult the Advisory Board also.

In 'T.G. Lakshmaiah Setty & Sons, Adoni V. State of Andhra Pradesh' – 1981 Lab IC 690 it was held that what is contemplated by the Act to be notified under Section 5(1)(b) is no doubt draft proposals. The objection to draft proposals can be made both by employers and employees as well. Thus, if the employees had exercised their privilege to represent and ask for higher wages and if eventually the State authorities had adopted higher rates of minimum wages.

MTP Dec 2018

Question: 2 How is overtime Wages fixed as per Minimum Wages Act, 1948.

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages –

- in case of employment in agriculture - one and a half times the ordinary rate of wages;
- in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made.

Section 14(2) provides that this Act shall not prejudice the operation of the provisions of Section 59 of the Factories Act in any case where those provisions are applicable.

In Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules.

MTP Jun 2017

Question: 3 The Minimum Wages Act, 1948 prescribes payment of wages in cash only. Comment

Answer: Payment of Minimum Wages in cash only

1. Minimum wages payable under the Minimum Wages Act shall be paid in cash.
2. Where it has been the custom to pay wages wholly or partly in kind, the Appropriate Government being of the opinion that it is necessary in the circumstances of the case may by notification in the Official Gazette authorise the payment of minimum wages either wholly or partly in kind
3. If Appropriate Government is of the opinion that provision should be made for the supply at essential commodities at concession rates the Appropriate Government may by notification in the Official Gazette authorise the provision of such supplies at concessional rates.
4. The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner.

MTP Dec 2017

Question: 4 How is overtime Wages fixed as per Minimum Wages Act, 1948.

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

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MTP Jun 2017

Question: 5 How is overtime Wages fixed as per Minimum Wages Act, 1948.

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages –

- in case of employment in agriculture - one and a half times the ordinary rate of wages;
- in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no overtime wage is paid for a particular month a NIL entry should be made.

Section 14(2) provides that this Act shall not prejudice the operation of the provisions of Section 59 of the Factories Act in any case where those provisions are applicable.

In 'Municipal Council, Hatta V. Bhagat Singh' – 1998 LLR 298 it was held that Section 14 provides for payment of overtime only to those employees who are getting minimum rate of wages under the Act. It does not apply to those getting better wages under other statutory rules

Suggested Question:

Suggested Dec2018

Question: 6 (a) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, 1948

Answer: Procedure for Fixing and revising Minimum Wages (Sec 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(b) Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1) (b)].

After considering the advice of the committee or committees [under Sec. 5(1) (a)] or all representations received by it before the date specified in the notification [under Sec 5(1) (b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec 5(2)]. The power of the Government under Sec. 5(2) to issue notification revising minimum wages includes power to give retrospective effect to notification.

Question: 7 (a) E-Contracts

Answer: E-contracts are paperless contracts. It is in electronic form. They are conceptually very similar to traditional contracts. E-contract also require basis of contract. The following are ingredients of the e-contracts –

- An offer is to be made;
- Offer is to be accepted;
- There shall be a lawful consideration;
- There shall be an intention to create legal relations;
- The parties must be competent to contract;
- There must be free and genuine consent;
- The object of the contract must be lawful;

The main feature of this type of contract is speed, accuracy and reliability. The parties to the contract have to obtain digital certificate from competent authority. The Information Technology Act, 2000 regulates such contracts. Contract is signed through E-Mail is valid & enforceable.

Revisionary Question:

Revisionary Dec 2018

Question: 7 Explain the procedure for fixing and revising minimum wages under Minimum Wages Act 1948.

Answer: Procedure for Fixing and revising Minimum Wages (Sec 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(b) Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1)(b)].

After considering the advice of the committee or committees [under Sec. 5(1)(a)] or all representations received by it before the date specified in the notification [under Sec.]

5(1)(b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec. 5(2)]. The power of the Government under Sec. 5 (2) to issue notification revising minimum wages includes power to give retrospective effect to notification

Question: 8 With whom does the responsibility of fixing minimum rates of wages lie?**Answer:** This is provided in Sec 3 of the Minimum Wages Act, 1948.

The responsibility of fixing minimum wages lies with appropriate government. The appropriate government shall in the manner hereinafter provided-

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

Provided that the appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) review at such intervals as it may think fit such intervals not exceeding five years the minimum rates of wages so fixed and revise the minimum rates if necessary:

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

Revisionary June 2018

Question: 9 Explain the procedure for fixing and revising minimum wages under Minimum Wages Act 1948**Answer: Procedure for Fixing and revising Minimum Wages (Sec 5)**

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(b) Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1)(b)].

After considering the advice of the committee or committees [under Sec. 5(1)(a)] or all representations received by it before the date specified in the notification [under Sec. 5(1)(b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec. 5(2)]. The power of the Government under Sec. 5 (2) to issue notification revising minimum wages includes power to give retrospective effect to notification

Question: 10 With whom does the responsibility of fixing minimum rates of wages lie?**Answer:** This is provided in Sec 3 of the Minimum Wages Act, 1948.

The responsibility of fixing minimum wages lies with appropriate government. The appropriate government shall in the manner hereinafter provided-

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

Provided that the appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) review at such intervals as it may think fit such intervals not exceeding five years the minimum rates of wages so fixed and revise the minimum rates if necessary:

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

Workbook Question:

Question: 11 Define Wages and Minimum wages as per Minimum Wages Act, 1948?

Answer: Section 2(h) of Minimum Wages Act, 1948 defines the term 'wages' as all remuneration, capable of being expressed in terms of money, 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 or of work done in such employment and includes house rent allowance, but does not include –

- The value of – any house accommodation, supply of light, water, medical attendance; or any other amenity or any service excluded by general or special order of the appropriate government;
- any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- any traveling allowance or the value of any traveling concession;
- any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- any gratuity payable on discharge; Section 2(h) defines the term 'wages' and not 'minimum wages'. It is up to the appropriate Government to fix the minimum wages considering into the various aspects of the employment, sectoral organization etc., In many a case the Courts declare who are eligible to receive minimum wages apart from the decisions of the appropriate Governments.

Question: 12 Explain the procedure for fixing and revising minimum wages under Minimum Wage Act, 1948.

Answer: Section 5 (1) provides that In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall, either –

appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be; or

by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration.

Section 5(2) provides that after considering the advice of the committee or committees all representations received by it before the date specified in the notification, the appropriate government shall by notification in the Official Gazette, fix, or, as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue. Where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate government shall consult the Advisory Board also.

Question: 13 Discuss the provision relating with overtime under Minimum Wages Act, 1948

Answer: Section 14(1) provides that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

Rule 25 provides that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to Overtime wages-

in case of employment in agriculture - one and a half times the ordinary rate of wages;

in case of any other scheduled employment – double the ordinary rate of wages.

A register in this regard shall be maintained. If no over time wage is paid for a particular month a NIL entry should be made.

Question: 14 What are the different registers to be maintained by the employer under Minimum Wages Act, 1948?

Answer: Every employer, including a contractor who engaged laborers for others who owns the establishment/ factory etc., is bound by the provisions of this Act, to comply with the requirements of maintaining registers etc., The following are the forms prescribed for registers and records-

Form – I: Register of Fines;

Form – II: Register of deductions for damage or loss caused to the employer, by the neglect or default of the employed persons;

Form III: Unified Annual Return; Form IV; Overtime Register for workers;

Scanner Question:**Question: 15 2009 - June [4] (a) Write explanatory note on:**

(ii) Powers of Inspectors (Minimum Wage Act).

(4 marks)

Answer:

Powers of Inspector: (Minimum Wages Act)

The inspector may enter at all reasonable hours any premises for the purpose of examining any register, record of wages or notices and require the production of such documents for inspection.

Examine any person whom he finds in any such premise or place and who he has reasonable cause to believe is an employee/employed therein or an employee to whom work is given out therein.

Require any person giving out work and outworkers to give any information.

Seize or take copies of such register, record of wages or notice, or portion thereof as he may consider relevant in respect of an offence under the Minimum Wages Act 1948, which he has reasons to believe has been committed by an employer and exercise such other powers as may be prescribed.

Question: 16 2018 - Dec [8] Write short notes on:

(d) 'Overtime' under Minimum Wages Act, 1948

(5 marks)

Answer:

Overtime:

According to **Section 14(1)** states that where an employee whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be authorized, works on any day in excess of the number of

hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate government for the time being in force whichever is higher.

- Rule 25 states that when a worker works more than 9 hours on any day or more than 48 hours in a week, he shall be entitled to overtime wages.
- In case of employment in agriculture - one and a half times the ordinary rate of wages; in case of any other scheduled employment - double the ordinary rate of wages.
- A register in this regard shall be maintained. If no overtime wage is paid for a particular month a NIL entry in register should be made.
- **Section 14(2)** states that this Act shall not prejudice the operation of the provisions of **Section 59 of the Factories Act** in any case where those provisions are applicable.

Question: 17 2011- June [1] {C} Comment on the following based on legal provisions:

(f) Mr. Malhotra, Factory Manager, stated that payment of wages can also be made in kind. (Minimum Wages Act 1948) - offer your views. (2 marks)

Answer:

The Minimum Wages Act 1948 states that the wages shall be paid in cash and not in kind. If payment in kind is approved by the Govt, then and only then the wages can be paid in kind.

Question: 18 2011 - Dec [3] (e) Mr. Singh is engaged in two types of jobs in a factory that of a welder and security guard. As the wage rates are different for two different jobs, the employer calculates his minimum wages at an average rate. Whether this is correct. (2 marks)

Answer:

Where an employee performs two or more classes/types of work having different minimum rates of wages the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class. Thus employer just can not pay him at simple average rate of both wages of both classes of job. (**Sec. 16 of the Minimum Wages Act, 1948**)

Question: 19 2014- June [5] (a) (i) Explain Cost of living Index Number under The Minimum Wages Act, 1948.

(2 marks)

Answer:

“Cost of living Index Number” in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the Index Number ascertained and declared by the Competent Authority by notification in the official gazette to be the cost of living index number applicable to employee in such employment.

Question: 20 2014 - Dec [2] (c) (ii) A is engaged in two types of job in a factory, that of mechanic and watchman. The wage rates are different for two different jobs. The employer calculates his minimum wage on an average rate. State whether this is correct, and explain your views as per Payment of Minimum Wages Act, 1948.

(2 marks)

Answer:

Where an employee does two or more classes of work, to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class. Thus, employer just cannot pay him at simple average rate of both wages of both classes of job.

Question: 20 2015- Dec [2] (c) (iv) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, 1948. (3 marks)

Answer:

Procedure for Fixing and revising Minimum Wages (Sec.5):

(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed the appropriate government shall either:

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be, or

(b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committee appointed under clause (a) of sub- sec. (1) or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate government shall by notification in the Official Gazette, fix or as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue :

Provided that where the appropriate, government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-sec. (1) the appropriate government shall consult the Advisory Board also.

Question: 21 2015 - Dec [2] (d) (iv) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, 1948. (4 marks)

Answer:

Please refer 2015 - Dec [2] (c) (iv) on page no. 343

Question: 22 2016 - June [2] Answer the question:

(b) (ii) The Minimum Wages Act, 1948 prescribes payment of wages in cash only. Comment. '

(4 marks)

Answer:

1. Minimum wages payable under this Act shall be paid in cash.

2. Where it has been the custom to pay wages wholly or partly in kind, the Appropriate Government being of the opinion that it is necessary in the circumstances of the case may by notification in the Official Gazette authorise the payment of minimum wages either wholly or partly in kind.

3. If Appropriate Government is of the opinion that provision should be made for the supply at essential commodities at concession rates the Appropriate Government may by notification in the Official Gazette authorise the provision of such supplies at concessional rates.

4. The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner.

Question: 23 2018 - Dec [4] (a) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, 1948. (9 marks)

Answer:

Procedure for Fixing and revising Minimum Wages (Sec. 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

1. Appointment of committees. The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be

2. Publication of proposals in the Official Gazette. The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification.

After considering the advice of the committee or committees [under Sec. 5(1) (a)] or all representations received by it before the date specified in the notification [under Sec. 5(1.) (b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment.

The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec. 5(2)].

The power of the Government under Sec. 5(2) to issue notification revising minimum wages includes power to give retrospective effect to notification.

PAYMENT OF WAGES

ACT, 1936

PAYMENT OF WAGES ACT, 1936

- (1) This act was enacted on 28th March 1937.
- (2) It applies on whole of India including J&K.
- (3) This act regulates timely payment of wages without unreasonable deduction.
- (4) It applies only on commercial or industrial establishment and not on domestic workers.
- (5) It applies only on those workers whose Gross wages is maximum ₹ 18000 P.m.

RESPONSIBILITY FOR PAYMENT OF WAGES.

- (1) In case Factory person appointed by act occupies as manager shall be responsible.
- (2) In case of other establishment any person authorised by employer or employer himself will be responsible.
- (3) In case of company, chief accounts officer or HR manager may be authorised to pay wages.
- (4) In case of Railways, person nominated by Railway ministry shall be responsible.

(5) In any other case employer or person appointed by employer shall be responsible.

WAGE PERIOD

- (1) Wage period means the period for which wages are calculated and paid.
- (2) It can be daily, weekly, fortnightly or monthly but it can not be more than 1 month.
- (3) Wage period is decided by employer himself and consent of employee is not required.
- (4) Wage period can start on any day and it is not necessary that it starts on 1st of the month.

TIME LIMIT TO PAY WAGES.

- (1) In case of an organisation where less than 1000 workers are employed, wages shall be paid within 7 days
- (2) In case of organisation where 1000 or more workers are employed, wages shall be paid within 10 days.
- (3) In case of Mine & Shipping Industry, wages shall be paid within 7 days for completion of work.
- (4) In case of termination of workers, wages must be cleared within 2 days of termination.

- (5) In case closure of establishment, wages must be cleared within two days of closure.
- (6) Wages shall be distributed or paid during the shift time and he cannot be put to wait after shift hours.

FINES

1. Fine and deduction are two different things.
2. When employee is responsible for some loss to employer, employer can recover this loss from the wages of employee.
3. This recovery is called deduction.
4. If any amount other than loss is also recovered, this is actually to teach him a lesson.
5. This additional amount is called Fine and it is calculated arbitrarily.
6. Fine cannot increase more than 3% of wages.
7. Such fine cannot be recovered in installments.
8. Fine can be recovered in cash as well without reducing the wages.

9. Fine should be recovered within 90 days from the date of imposing the fine.
10. NO fine can be imposed if age of employee is less than 15 years.
11. Fine with amount and reasons must be displayed prominently on the wall of the organisation.
12. Fine should be recorded in a separate registered to maintain record for future purpose.
13. TOTAL amount of fine recovered from employees must be spent on the welfare of workers and it is not a business income.

DEDUCTION

1. Deduction means the actual amount to be recovered from worker either because of some loss or some expenses made by employer on behalf of employee.
2. Deduction can be done in installments without any limitation period.
3. Maximum permissible deduction is 50% of wages of employee in a month and balance can be recovered in subsequent months.

4. In case of co-operative societies maximum deduction shall be 75% of wages.
5. Deduction can be recovered either from wages and separately in cash.

* Specified Deduction

- (1) There are some specified deduction which can be treated as examples for deduction.
2. Following are specified deduction:
 - (a) Absence from duty.
 - (b) Damage or loss incurred by employer.
 - (c) Service provided by employer.
 - (d) Recovery of loans given to employee.
 - (e) Recovery of salary advance given to employee.
 - (f) Union Fee.
 - (g) Any expenses incurred by employer on behalf of employee.

* Maintenance of Register and Records

1. Every employer must maintain proper records of wages paid and arrears.
2. Such record shall be preserved in good condition for minimum ~~three~~ ^{Page 61 of 2} years from the date of last entry.

- 3. Such record shall be authenticated by employer as a token of certification that they are correct.

* CLAIM FOR WAGES

- 1. Worker can demand wages only within 12 month of due date.
- 2. Such 12month can be extend to 12month more months by labour commissioners.
- 3. Employee can file a claim only if the matter is of minimum ₹ 20. Individually and if it is a group of employees minimum amount should be ₹ 50.
- 4. Employer can also file claim against employee but minimum amount should be ₹ 1000.
- 5. If the employee present his case, he can do so without any formality but employer must deposit at least 75% of wages in arrears with the labour commissioner before presenting his case.
- 6. If employer wins the claim he will get back his deposits.
- 7. If employee wins the claim he may get compensation upto 10 times of arrears.

Misc. Point

1. When a person dies, his wages shall be paid to nominee and if there is no nominee to the legal heir.
2. Summary of Payment of Wages act with the details of person responsible to pay wages must be displayed on the wall prominently.
3. Contracting out is prohibited which means an agreement in which employee is ready to lose his right under the payment of wages act, 1936.
4. Recovery of wages shall be done as an order of court revenue.

8.

PRACTICE MANUAL**Fill in the blanks**

1. The wage period shall not exceed_____.
2. The term 'employer' includes the _____ deceased employer.
3. All payment of wages shall be made on_____.
4. The wage of employed person shall be paid to him with deduction of any kind except those _____ under this Act.
5. The total amount of fine which may be imposed in any wage period shall not exceed an equal to _____ of the wages payable to him in respect of wage period.
6. Every register and record shall be preserved for a period of _____ after the date of last entry made therein.
7. The claim for delayed payment of wages for deduction made from the wage is to be made in Form_____ in case of individual employed person.
8. The proviso to Section 15(2) provides that an application against the delayed payment of wages is to be filed within _____ months to the authority from the date on which the payment is due.
9. The wages in respect of any person terminated shall be payable before the expiry of _____ working day from the date of termination.
10. The limitation for a claim would always start from the date on which the wage is _____.

Choose the correct answer

1. The payment of wages Act applies to wages payable to an employed person in respect of wage period if such wages for that wage period do not exceed `_____ per month.
 - (a) `6500/-
 - (b) `10000/-
 - (c) `18,000/-
 - (d) `25,000/-
2. Payment of wages shall be made
 - (a) In current coins;
 - (b) By currency notes;
 - (c) Cheque;
 - (d) By crediting in bank account;

(e) Any of the above.

3. No fine shall be imposed on the employees under the age of –

- (a) 10
- (b) 15
- (c) 18
- (d) None of the above

4. The authorization to act on behalf of an employed person or persons for the claim of delayed payment of wages is to be given to the authority in Form No. –

- (a) A
- (b) B
- (c) C
- (d) D

5. In appeal against the order of the authority may be filed to the District Court within

- (a) 30 days;
- (b) 45 days;
- (c) 60 days;
- (d) 90 days;

6. The wages of employed persons in an establishment where less than 1000 persons are employed, shall be paid before

- (a) 7th day;
- (b) 10th day;
- (c) 15th day;
- (d) Second working day.

7. No fine shall be recovered after the expiry of _____ days from the day on which it was imposed.

- (a) 30;
- (b) 60;
- (c) 90;
- (d) 1 year.

8. Which shall be deemed to be absent by an employed person?

- (a) Refused to work;
- (b) Participating in work;
- (c) None of the above;
- (d) Either (a) or (b).

9. The Authority may refuse to entertain an application for the claim

- (a) That the applicant is not entitled to present the application;
- (b) That the application is barred by limitation;
- (c) That the applicant shows no sufficient cause for making a direction;
- (d) Any of the above.

10. If the employee does not attend the hearing the application will be

- (a) Dismissed;
- (b) Decided as ex-parte;
- (c) None of the above.

State whether TRUE or FALSE

1. All deductions and all realizations shall be recorded in a register to be kept open by the person responsible for the payment of wages.
2. Every payment made by the employer to the employee shall be deemed to be a deduction from wages.
3. Any loss of wage, resulting in the suspension of an employee amounts to deduction of wages.
4. If the application for the claim of wrong deduction is filed beyond limitation period, the authority would reject the application.
5. The term 'employed person' includes the legal representatives of a deceased employed person.
6. Every employer shall be responsible for the payment of wages to be paid under the Act to persons employed by him.
7. A notice is not required to be issued before imposing fines on the employed person.
8. Fine may be recovered from the employed person by installments.
9. No recovery shall be made of advances given before employment against the advance given for travelling expenses.
10. The application for claim of delayed payment of wages should be filed in duplicate. One copy shall bear such Court fee as may be prescribed.

Model Questions

1. What is the procedure in imposition of fine on the employee under this Act?
2. What are the remedies available against wrong deductions?
3. Describe the procedure to claim the delayed payment of wages or deductions made from the wages.
4. What are the kinds of deductions that can be made from the wages?
5. Whether a property of an employer can be attached for nonpayment of wages? Discuss the procedure involved in this regard.
6. What is the punishment imposable
 - (a) If the employer fails to maintain registers;
 - (b) Willfully obstructs an Inspector in the discharge of his duties under this Act by any person.
7. Describe the procedure for filing of nomination for the purpose of this Act.
8. Elaborate the provisions of Section 5 which deals with the time within which wages shall be paid.
9. Define the terms 'wages' and 'wage period'.

Answer:**Fill in the blanks**

1. One month;
2. Legal representative;
3. A working day;
4. Authorized;
5. 3%

6. 3 years;
7. A; 8. 12 months;
9. Second;
10. Accrues.

Choose the correct answer

1. C;
2. E;
3. B;
4. D;
5. A;
6. A;
7. C;
8. D;
9. D;
10. A.

State whether TRUE or FALSE

1. TRUE;
2. TRUE;
3. FALSE;
4. FALSE;
5. TRUE;
6. TRUE;
7. FALSE;
8. FALSE;
9. TRUE;
10. TRUE

MTP Question:

MTP Dec 2018

Question: 1 State the limits for deductions permissible and the procedure for imposition of fine as per Payment of Wages Act, 1936.

Answer: (i) Section 2(13) defines the term „employee“ as any person employed on a salary or wage not exceeding `21,000/- per mensem (with effect from 01.04.2014) in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied. Apprentice will not be treated as an employee.

The following case laws illustrate the eligibility of type of employees eligible for bonus-

- A temporary workman is entitled to bonus on the basis of the total number of days worked by him – „Cooper Allen & Co. Limited V. Their Workmen“ – 1951 (2) LLJ 576;
- A part time employee as a sweeper engaged on regular basis is entitled to bonus – Automobile Karmachari Sangh V. Industrial Tribunal – 1970 (38) FJR 268;
- A dismissed employee, reinstated with back wages, is entitled to bonus – Gannon India Limited V. Niranjan Das – 1984 (40 LLJ 223);
- A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period – Bank of Madura Limited V. Bank of Madura Employees‘ Union – 1961 (1) LLJ 720
- A piece rated worked is entitled to bonus – Malabar Tile Works V. Industrial Tribunal – 1970 (I) LLJ 79.

MTP Dec 2017

Question: 2 On whom does the responsibility for payment of wages lie under the Payment of Wages Act, 1936?

Answer: Every employer shall be responsible for payment to persons employed by him of all wages required to be paid under the Payment of Wages Act, 1936 (Sec 3). But in the case of persons employed (otherwise than by a contractor) in factories, industrial establishments or upon railways, the following persons shall also be responsible for the payment of wages:

- (i) in factories if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948;
- (ii) in industrial or other establishments if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;
- (iii) upon railways (other than in factories) if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned.
- (iv) in the case of contractor, a person designated by such contractor who is directly under his charge; and
- (v) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

Notwithstanding anything contained in sub-section(1), it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.

MTP Jun 2017

Question: 3 State the limits for deductions permissible and the procedure for imposition of fine as per Payment of Wages Act, 1936.

Answer: Limit of deductions

Section 7(3) provides up to which limit of the wage, the deductions may be made from the wages of the employees. Notwithstanding anything contained in this Act the total amount of deductions which may be made in any wage-period from the wages of any employed person shall not exceed –

- in cases where such deductions are wholly or partly made for payments to cooperative societies - 75% of such wages and
- in any other case – 50

Where the total deductions authorized under sub-section (2) exceed seventy five per cent or as the case may be, fifty per cent of the wages the excess may be recovered in such manner as may be prescribed.

Revisionary Question:

Revisionary Dec 2018

Question: 4 What do you understand by the term „Industrial establishment“ under the Payment of Wages Act, 1936?

Answer: According to Section 2(ii) of the Payment of Wages Act, 1923, "industrial or other establishment" 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 forces of the Union or the Civil Aviation Department of the Government of India;

- (i) dock wharf or jetty;
- (ii) Inland vessel mechanically propelled;
- (iii) mine quarry or oil-field;
- (iv) plantation;
- (v) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;
- (vi) 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 to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;
- (vii) any other establishment or class of establishments which the Central Government or a State Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

Revisionary June 2018

Question: 5 What do you understand by the term 'Industrial establishment' under the Payment of Wages Act, 1936?

Answer: According to Section 2(ii) of the Payment of Wages Act, 1923, "industrial or other establishment" 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 forces 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 oil-field;
- (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 to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;
- (h) any other establishment or class of establishments which the Central Government or a State Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

Workbook Question:

Question: 6 Write short note on Contracting out.

Answer: Section 23 of Payment of Wages Act, 1936 provides that any contract or agreement whether made before or after the commencement of this Act whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

Question: 7 What is wage period under Payment of Wages Act, 1936?

Answer: In payment of the wages it is important to fix the wage period. Section 4 of the Act provides that every responsible for the payment of wages shall fix periods in respect of which wages shall be paid. This section further provides that no wage period shall exceed one month. The wage period may be daily, weekly or fortnightly or for any period but the period should not exceed one month.

Question: 8 What is the provision regarding displaying of the Act in the establishment under Payment of Wages Act, 1936?

Answer: Section 25 of Payment of Wages Act, 1936 provides that the person responsible for the payment of wages of persons employed in a factory or an industrial or other establishment shall cause to be displayed in such factory or industrial or other establishment a notice containing such abstracts of this Act and of the rules made there under in English and in the language of the majority of the persons employed in the factory, or industrial or other establishment as may be prescribed.

Question: 9 State the procedure of payment of undisbursed wage in case of death of employed person under Payment of Wages Act, 1936

Answer: Section 25A of Payment of Wages Act, 1936 provides that subject to the other provisions of the Act all amounts payable to an employed person as wages shall if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known –

- be paid to the person nominated by him in this behalf in accordance with the rules made under this Act; or
- where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.

Where, in accordance with the provisions of sub-section (1), all amounts payable to an employed person as wages –

- are paid by the employer to the person nominated by the employer person; or
- are deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to pay those wages.

Scanner Question:**Question: 10 2017 - June [8] Write short note on the following: (d) Limit of deductions from wages**

(5 marks)

Answer:

Limit of Deductions from Wages

Section 7(3) provides up to which limit of the wage, the deductions may be made from the wages of the employees. Notwithstanding anything contained in this Act the total amount of deductions which may be made in any wage-period from the wages of any employed person shall not exceed:

- in cases where such deductions are wholly or partly made for payments to co-operative societies - 75% of such wages and
- in any other case - 50% of such wages.

Where the total deductions authorized under **sub-section (2)** exceed seventy five per cent or as the case may be, fifty per cent of the wages the excess may be recovered in such manner as may be prescribed.

Question: 11 2008 - Dec [4] (a) Write explanatory note on:**(ii) Permissible deduction under Payment of Wages Act;**

(4 marks)

Answer:

The deductions from wages of an employee may be of the following kinds subject to limit on deductions as prescribed in the Act. The deductions relate to following may be made as per the provisions of the Act:

- (i) For fines
- (ii) for absence from duty
- (iii) for damage or loss
- (iv) for services
- (v) for recovery of advances
- (vi) for payments to cooperative societies and insurance claims

(vii) other permissible deductions. It is needless to state the deductions made should not exceed the prescribed limits. If the aggregate of deductions made exceeds the limits prescribed in this regard, the excess recovery may be made in such manner as prescribed.

Question: 12 2009 - Dec [1] {C} Comment on the following statements based on legal provisions:

(a) Wages of all the workers shall be paid before 5th of following month.

(2 marks)

Answer:

This relates to Payment of Wages Act, 1936.

Particulars	Wage payment
Any railway, factory, industrial establishment, other establishment where less than 1,000 employees are employed.	Before expiry of 7 th day of last day of working period.
Where 1,000 or more employees are employed.	Before expiry of 10 th day of last day of working period.
Dock Wharf or Jetty or Mine.	Before expiry of 7 th day of last day of working period.

Question: 13 2011- June [3] (d) Mr. Bakshi wants to submit claims arising out of deduction made contrary to the provision of the Act from his wages, by his employer. Following information be informed (Payment of Wages Act):

- (i) Besides the Employee, who can apply to the Authority for direction for refund and compensation ? (2 marks)
- (ii) Time limit within which to apply ? (1 mark)
- (iii) Besides refund of deducted amount, whether any compensation is allowed ? (1 mark)

Answer:

- (i) Employee himself or any legal practitioner or any official of a Registered Trade Union authorized in writing or any Inspector under payment of wages Act or any other person acting with the permission of the Authority appointed under the Act may apply for direction.
- (ii) Every such application 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 was due to be made. Application may be admitted after the said 12 months subject to certain condition.
- (iii) Yes, refund of the deducted, compensation not exceeding 10 times the amount so deducted be allowed after hearing of both the parties.

Question: 14 2011 - Dec [3] (f) The employer is not liable to pay any wages or compensation to workman when an undertaking closes down.- State legal position. (2 marks)

Answer:

Where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than weekly or other recognised holiday, the wages earned by him shall be paid before expiry of the second day from the day on which his employment is so terminated. (**Sec. 5(2) of the Payment of Wages Act, 1936**)

Question: 15 2012- June [1] {C} Comment on the following based on legal provisions:

(f) Works Manager has deducted INR 500 from wages towards the cost of tools and raw materials supplied to workers for purpose of employment (Payment of Wages Act). (2 marks)

Answer:

As per Payment of Wages Act, 1936, the deductions will be made only if there is a provision in this regard. Tools etc. are not eligible for deductions as per this Act, hence the works manager is wrong if he deducts any amount on account of tools and raw materials.

Question: 16 2013- June [4] (d) (ii) Wages can not be paid by cheque but can be paid in kind. Answer based on provision of Payment of Wages Act 1936. (2 marks)

Answer:

Employer may after obtaining written authorization of employed persons pay them the wages either by cheque or by crediting to their Bank A/c. In all other cases, wages shall be paid in current coins or currency notes or both but cannot be paid in kind.

Question: 17 2013 - Dec [5] (c) What are the conditions to deduct for recovery of advances made under the Payment of Wages Act, 1936? (3 marks)

Answer:

Deductions under **Clause (f) of sub-Section (2) of Section 7 (the Payment of Wages Act, 1936)** shall be subject to the following conditions namely:

- (i) recovery of advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advances given for travelling expenses;
- (ii) recovery of an advances of money given after employment began shall be subject to such conditions as the Appropriate Government may impose;
- (iii) recovery of advances of wages not already earned shall be subject to ^hy rules made by the Appropriate Government regulating the extent to which such advances may be given and the installments by which it may be recovered.

Question: 18 2014- Dec [2] (c) (i) Anil Pvt. Ltd. imposed a fine on Anurag, one of its employees for regularly reporting late for work. The fine was imposed on 4* June 2014. The management wanted to recover the amount in November 2014 during half yearly increment. Can the Company recover this amount of fine, state your views as per Payment of Wages Act, 1936. (2 marks)

Answer:

As per **Section 8 (6) of the Payment of Wages Act 1936** no fines can be recovered after expiry of 90 days from the date on which it is imposed. So ABC Pvt. Ltd. will not be able to recover the fine in November 2014 as the gap exceeded 90 days.

Question: 19 2015 - June [2] Answer the question:

(c) (i) The responsibility for payment of wages is that of employer'. Explain.

(3 marks)

Answer:

Sec. 3 of Payment of Wages Act, 1936, lays down that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act. In addition to the employer, the following persons shall also be responsible for the payment of wages.

- (a) In factories, the person named as manager;
- (b) In industrial or other establishments, the person, if any, who is responsible to the employer for the supervision and control of the industrial or other establishments;
- (c) Upon railways otherwise than in factories, the person nominated by the railway administration in this behalf for the local area concerned;
- (d) In case of a contractor, a person designated by such contractor;
- (e) In any other case, a person designated as responsible for complying with the provisions of the Act.

Question: 20 2017 - Dec [4] (a) What are the different kinds of deduction that can be made from wages under the Payment of Wages Act, 1936? (10 marks)**Answer:**

Section 7 gives the details of deduction from wages. The wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under this Act. Every payment made by the employed person to the employer or his agent shall for the purposes of this Act, be deemed to be a deduction from wages.

Any loss of wages resulting from the imposition, for good and sufficient cause upon a person employed of any of the following penalties, namely:-

- the withholding of increment or promotion (including the stoppage of increment at an efficiency bar);
- the reduction to a lower post or time scale or to a lower stage in a time scale; or

• Suspension;

shall not be deemed to be a deduction from wages in any case where the rules framed by the employer for the imposition of any such penalty are in conformity with the requirements if any which may be specified in this behalf by the Appropriate Government by notification in the Official Gazette.

Section 7(2) provides that Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act and may be of the following kinds only namely:

- fines;
- deductions for absence from duty;
- deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;
- deductions for house-accommodation supplied by the employer or by government or any housing board set up under any law for the time being in force (whether the government or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by the appropriate Government by notification in the Official Gazette;
- deductions for such amenities services supplied by the employer as the Appropriate Government or any officer specified by it in this behalf may by general or special order authorize;
- deductions for recovery of advances of whatever nature (including advances for travelling allowance or conveyance allowance), and the interest due in respect thereof, or for adjustment of over-payments of wages;
- deductions for recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the appropriate Government and the interest due in respect thereof;
- deductions for recovery of loans granted for house-building or other purposes approved by the appropriate Government and the interest due in respect thereof;

- deductions of income-tax payable by the employed person;
- deductions required to be made by order of a court or other authority competent to make such order;
- deductions for subscriptions to and for repayment of advances from any provident fund to which the Provident Funds Act, 1952 applies or any recognized provident funds as defined in **Section 2(38) of the Indian Income Tax Act, 1961** or any provident fund approved in this behalf by the appropriate Government during the continuance of such approval;
- deductions for payments to co-operative societies approved by the appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office and
- deductions, made with the written authorisation of the person employed for payment of any premium on his life insurance policy to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 or for the purchase of securities of the Government of India or of any State Government or for being deposited in any Post Office Saving Bank in furtherance of any savings scheme of any such government.
- deductions made with the written authorization of the employed person, for the payment of his contribution to any fund constituted by the employer or a trade union registered under the Trade Unions Act, 1926 for the welfare of the employed persons or the members of their families, or both, and approved by the appropriate Government or any officer specified by it in this behalf, during the continuance of such approval;
- deductions made, with the written authorisation of the employed person, for payment of the fees payable by him for the membership of any trade union registered under the Trade Unions Act, 1926;
- ' deductions, for payment of insurance premium on Fidelity Guarantee

Bonds;

- deductions for recovery of losses sustained by a railway administration on account of acceptance by the employed person of counterfeit or base coins or mutilated or forged currency notes;
- deductions for recovery of losses sustained by a railway administration on account of the failure of the employed person to invoice, to bill, to collect or to account for the appropriate charges due to that administration, whether in respect of fares, freight, demurrage wharfage and carnage or in respect of sale of food in catering, establishments or in respect of sale of commodities in grain shops or otherwise;
- deductions for recovery of losses sustained by a railway administration on account of any rebates or refunds incorrectly granted by the employed person where such loss is directly attributable to his neglect or default;
- 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 the Central Government may, by notification in the Official Gazette specify;
- deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees.

Nothing contained in this section shall be construed as precluding the employer from recovering from the wages of the employed person or otherwise any amount payable by such person under any law for the time being in force other than the Indian Railways Act 1890.

Question: 21 2009 - Dec [3] (b) Mr. Sham was terminated from employment by the employer on 25.11.09. Personnel Manager directed him to collect his wages earned on 1.12.09. Mr. Sham objected to the date. State legal provision as to the date of payment. (2 marks)

Answer:

Sham's objection is right. When any worker is terminated, his wages earned should be paid to him before the expiry of second working day from the day of his termination. It is not so in the given case. Sham's wages should be paid to him before the expiry of 27/11/2009.

Question: 22 2009 - Dec [4] (b) Manager of ABC Ltd. told that total amount of deduction which may be made from the wages of any workman during a month shall not exceed 90% of such wages.—State legal provisions. (2 marks)

Answer:

Section 7 (2) of the Payment of Wages Act, 1936 contains the illustrations of various kinds of deductions which the employer can make from the wages of an employed person.

As per the **Section 7(3) of the Payment of Wages Act, 1936** the total amount of deductions, which may be made in any wage period from the wages of any employee, shall not exceed

- (i) 75% of such wages in cases where such deductions are wholly or partly made for payments to co-operative societies;
- (ii) in any other case, they shall not exceed 50% of such wages.

Where the total deductions authorised under **Section 7(2)** exceed 75%, or 50% of the wages as the case may be, the excess may be recovered in such a manner as may be prescribed.

In the light of legal provisions, the action of employer is not valid.

**PENSION FUND
REGULATORY AND
DEVELOPMENT AUTHORITY
ACT, 2013**

Pension fund & Regulatory and development authority act, 2013

Introduction

Pension is not restricted to Govt. employees only, it is also applicable on every individual who opens a pension accounts with the Central govt. Pension is annuity payment, payable either monthly or annually. Any individual ^{whether} employee or not can open Pension A/c. It runs like P.F. where ^{we} deposite some amount regularly and will get it back after a particular period of time. This act applies to whole of India including J&K.

Definition

- (1) Authority : Means pension fund regulatory and development authority established by Central Govt.
- (2) Central Record Keeping Agency : It is the organisation to perform functions of record keeping account - ting, administration and providing customer service for all the people who opened pension scheme.
- (3) Chairperson : Means person appointed as ~~Chairperson~~ of P.F.R.D

(4) Document : 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, in printed or in electronic version, which is intended to be used, or which may be used by the Interim pension Fund Regulatory and development authority, or authority or an intermediary or any other entity connected with the national pension system, for the purpose of recording the matter.

(5) Individual pension account : Means an account opened by subscriber, which is in the nature of a binding contract between pension authority and subscriber.

(6) Intermediary : Means all the person associated with collection, management, record keeping and distribution of pension fund. It includes central record keeping agency, national pension trust, advisors and other point of ^{se}vice.

(7) Member : Means Member of PFRDA and Chair person is also treated as a member.

(8) National pension system : It means a system in which individual subscriber may make payment of contribution, which is

accumulated and distributed as pension.

NPS Trust: It is a govt body who holds all ^{the} asset of NPS and perform the administration.

Notification: It means any notice published in official gazette.

Pension Fund: It is an intermediary which is given licence by authority to collect pension contribution and distribute the pension.

Pension Regulatory and development fund: It is a fund

Maintained by authority for its own expenses, creating awareness about NPS and general administration.

Point of Presence: It is a connectivity center between pension authority and the subscriber. They are located at various places' places for record keeping, collections and other service request.

Prescribed: Means prescribed by rules made under this act.

Regulated asset: Means those assets which are held by pension fund authority or central record keeping agency. Such assets can be tangible & intangible, purchased or leased and in any state.

Regulations: Means the regulation made by authority under this act.

Scheme: Means a scheme of pension fund approved by the authority under this act.

Securitiy appellate Tribunal: Means a securities appellate tribunal established under sec. (1) of sec. 15K of the Securities and Exchange Board of India act 1992.

Subscriber: Includes a person who subscribes to a scheme of a pension fund.

Trustee Bank: Means a banking company as defined in the Banking Regulation Act, 1949.

National pension System

(1) It come into effect on 1st Jan. 2004. but its authority was established in 2013

(2) Pension scheme is open for every one whether employee or not.

(3) Subscriber can take advance upto a maximum of 25% of the contribution made.

(4) All the administration is done by PFRDA.

- (5) Central record keeping agency performs record keeping, accounting and updations.
- (6) A person can open more than one pension account.
- (7) A person can choose from various investment options, wherever he wants to put his money.
- (8) Whether a person take exit from the NPS, he has to purchase life insurance policy.

Central Record Keeping Agency

- (1) It is an agency licenced by authority.
- (2) There is one agency only but ~~and~~ authority can establish more than one agency as well.
- (3) It will perform the functions of record keeping, accounting and updation of pension records.
- (4) It will manage record of all the regulated asset of authority.
- (5) All the customer service regarding account maintenance is given by point of presence with the help of this agency.

Point of Pensions (sec. 22)

- (1) Point of Pensions receive license from authority.
- (2) It receives contribution, makes collection and provide benefits to the members who have opened the account.
- (3) It must follow all the condition as per which registration was granted.
- (4) It will work as medium to spread pension benefit.

Pension Fund (sec. 23)

- (1) It will be created by the contribution of subscriber.
- (2) It will be working separately for separate region.
- (3) It means there can be more than 1 pension fund as well.
- (4) It can be a govt company or private sector co.
- (5) However at least one pension fund should be a govt company.

- * Certain restriction on foreign companies or individual or association of person.
- ① Any company which handles pension fund should have Indian shareholder's.
- ② If some shares are given to foreign or foreign company, it must not exceed 26.1% of paid up capital.

* Prohibition of invest of fund of subscribers outside India

It is obvious that Indian investment should remain in India. The entire money collected by pension fund should be invested in Indian securities.

* Eligibility norms of the central record keeping agency

All the eligibility norms are prescribed by authority. It may relate to capital, past history, financial capabilities, ability to maintain records, IT resources, Human resources and other parameters. These rules are compulsory criteria to get licence.

Scanner Question:

Question: 1 2019- June [4] (b) What are the basic features of the national pension system as contained in the Pension Fund Regulatory and Development Authority Act, 2013?**(8 marks)**

TOPIC NOT YET ASKED BUT Equally Important For Examination

Question: 2 Write short notes on Central Recording Keeping Agency.

Answer:

Central Record keeping Agency:

1. The Authority shall, by granting a certificate of registration under sub-section (3) of **Section 27**, appoint a central record keeping agency: Provided that the Authority may, in public interest, appoint more than one central record keeping agency.

2. The central record keeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.

3. All the assets and properties owned, leased or developed by the central record-keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

Provided that the central record keeping agency shall be entitled to be compensated the fair value, to be ascertained by the Authority, of such regulated assets as may be determined by regulations:

Provided further that where the earlier revocation of the certificate of registration is based on violation of the conditions in the certificate of registration or the provisions of this Act or regulations, unless otherwise determined by the Authority, the central record keeping agency shall not be entitled to claim any compensation in respect of such regulated assets.

Question: 3 Write short notes on Point of Presence.**Answer:****Point of presence:**

1. The Authority may, by granting a certificate of registration under sub-section (3) of **Section 27**, permit one or more persons to act as a point of presence for the purpose of receiving contributions and instructions, transmitting them to the Trustee Bank or the central record keeping agency, as the case may be, and paying out benefits to subscribers in accordance with the regulations made by the Authority from time to time in this regard.
2. A point of presence shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.

Question: 4 Write short notes on Pension Fund.**Answer:****Pension funds:**

1. The Authority may, by granting a certificate of registration under sub-section (3) of **Section 27**, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.

2. The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds: Provided that at least one of the pension funds shall be a Government company.

Explanation: For the purposes of this sub-section, the expression "Government Company" shall have the meaning assigned to it in **Section 617** of the Companies Act, 1956.

3. The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.
4. The pension fund shall manage the schemes in accordance with the regulations.

Question: 5 Explain the Provision of National Pension System.**Answer:****National Pension System [Section 20]**

1. The contributory pension system notified by the Government of India in the Ministry of Finance vide notification number F. No. 5/7/2003-ECB & PR, dated the 22nd December, 2003, shall be deemed to be the National PensiQn

System with effect from the 1 st day of January, 2004, and such National Pension System may be amended from time to time by regulations.

2. Notwithstanding anything contained in the said notification, the National Pension System shall, on the commencement of this Act, have the following basic features, namely:

- (a) every subscriber shall have an individual pension account under the National Pension System;
- (b) withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the conditions, such as purpose, frequency and limits, as may be specified by the regulations;
- (c) the functions of record keeping, accounting and switching of options by the subscriber shall be effected by the central record keeping agency;
- (d) there shall be a choice of multiple pension funds and multiple schemes: Provided that—
 - (i) the subscriber shall have an option of investing up to hundred per cent of his funds in Government Securities; and
 - (ii) the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the Authority;
- (e) there shall be portability of individual pension accounts in case of change of employment;
- (f) collection and transmission of contributions and instructions shall be through points of presence to the central record keeping agency;
- (g) there shall not be any implicit or explicit assurance of benefits except • market-based guarantee mechanism to be purchased by the subscriber;
- (h) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and
- (i) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

3. In addition to the individual pension account mentioned in Clause (a) of sub-section (2), a subscriber may also, at his option, have an additional account under the National Pension System having the features mentioned in Clauses (c) to (g) of sub-section (2) and also having the additional feature that the subscriber shall be free to withdraw part or all of his money at any time from the additional account.

Question: 6 What are the eligibility norms of the central record keeping agency.

Answer:

Answer: Eligibility norms of the central record keeping agency:

The central record keeping agency, points of presence and pension funds, shall satisfy the eligibility norms as may be specified by the regulations, including minimum capital requirement, past track- record including the ability to provide guaranteed returns, costs and fees, geographical reach, customer base, information technology capability, human resources and such other matters.