

## FAQ'S

## Doing Business in India

### Labour laws

#### 1. List of actions that are considered as misconduct in workplace

•Willful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior. •Going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof; •Willful slowing down in performance of work, or abetment or instigation thereof; •Theft, fraud or dishonesty in connection with the employers' business or property or the theft or property of another workman within the premises of the establishment; •Taking or giving bribes or any illegal gratification; •Habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation; •Habitual breach of any Standing Order or any law applicable to the establishment or any rules made there under; •Collection without the permission of the Manager of any money within the premises of the establishment except as sanctioned by any law for the time being in force; •Engaging in trade within the premises of the establishment; •drunkenness, riotous, disorderly or indecent behavior on the premises of the establishment; •Commission of any act subversive of discipline or good behavior on the premises of the establishment; •Habitual neglect of work, or gross or habitual negligence; •Habitual breach of any rules or instruction for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the establishment; •Habitual commission of any act or commission for which a fine may be imposed under the Payment of Wages Act, 1936. •Canvassing for union membership, or the collection of union dues within the premises of the establishment except in accordance with any law or with the permission of the Manager •Willful damage to work in process or to any property of the establishment; •holding meeting inside the premises of the establishment without the previous permission of the Manager or except in accordance with the provisions of any law for the time being in force; •Disclosing to any unauthorised person any information in regard to the processes of the establishment which may come into the possession of the workman in the course of his work; •Gambling within the premises of the establishment; •Smoking or spitting on the premises of the establishment where it is prohibited by the employer; •Failure to observe safety instructions notified by the employer or interference with any safety device or equipment installed within the establishment; •Distributing or exhibiting within the premises of the establishment hand-bills, pamphlets, posters, and such other things or causing to be displayed by means of signs or writing or other visible representation on any matter without previous sanction of the Manager; •Refusal to accept a charge-sheet, order or other communication served in accordance with these Standing Orders; •Unauthorised possession of any lethal weapon in the

establishment.

## 2. What are the registers to be maintained under The Child Labour (Prohibition and Regulation) Act, 1986?

Register showing the name, date of birth, hours and periods of work, intervals of rest and the nature of work of any such child(employed or permitted to work).

## 3. What are the notices to be displayed under the Child Labour (Prohibition and Regulation) Act, 1986 and list of actions that are considered as misconduct at workplace?

An abstract of Section 3 and 14 of the Act in local language and English of the Child Labour (Prohibition and Regulation) Act, 1986. List of actions are: 1) Willful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior. 2) Going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof. 3) Willful slowing down in performance of work, or abetment or instigation thereof. 4) Theft, fraud or dishonesty in connection with the employers' business or property or the theft or property of another workman within the premises of the establishment. 5) Taking or giving bribes or any illegal gratification. 6) Habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation. 7) Habitual breach of any Standing Order or any law applicable to the establishment or any rules made there under. 8) Collection without the permission of the Manager of any money within the premises of the establishment except as sanctioned by any law for the time being in force. 9) Engaging in trade within the premises of the establishment. 10) Drunkenness, riotous, disorderly or indecent behavior on the premises of the establishment. 11) Commission of any act subversive of discipline or good behavior on the premises of the establishment. 12) Habitual neglect of work, or gross or habitual negligence. 13) Habitual breach of any rules or instruction for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the establishment. 14) Habitual commission of any act or commission for which a fine may be imposed under the Payment of Wages Act, 1936. 15) Canvassing for union membership, or the collection of union dues within the premises of the establishment except in accordance with any law or with the permission of the Manager. 16) Willful damage to work in process or to any property of the establishment. 17) Holding meeting inside the premises of the establishment without the previous permission of the Manager or except in accordance with the provisions of any law for the time being in force. 18) Disclosing to any unauthorised person any information in regard to the processes of the establishment which may come into the possession of the workman in the course of his work. 19) Gambling within the premises of the establishment. 20) Smoking or spitting on the premises of the establishment where it is prohibited by

the employer. 21) Failure to observe safety instructions notified by the employer or interference with any safety device or equipment installed within the establishment. 22) Distributing or exhibiting within the premises of the establishment hand-bills, pamphlets, posters, and such other things or causing to be displayed by means of signs or writing or other visible representation on any matter without previous sanction of the Manager. 23) Refusal to accept a charge-sheet, order or other communication served in accordance with these Standing Orders. 24) Unauthorised possession of any lethal weapon in the establishment.

#### **4. What are the occupations where employment of Child is prohibited?**

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on.

#### **5. Who is a Child under The Child Labour (Prohibition and Regulation) Act, 1986?**

Child means a person who has not completed 14 years of age.

#### **6. What are the welfare amenities to be provided to workmen under The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996?**

The welfare amenities that are needed to be provided are: 1) Canteen (if 100 workers were/are working). 2) Rest Room (if workers are night halting). 3) Drinking Water. 4) Toilets/Urinal/Wash Room. 5) First Aid Facility.

#### **7. What are the notices/abstracts to be displayed at work spot?**

The notices/abstracts to be shown at work are: 1) Abstract of Act. 2) Notice showing rates of wage. 3) Wage period. 4) Date of payment of wages. 5) Hours of work. 6) Name and Address of Inspectors. 7) Place & Time of disbursement of Wages. 8) Copy of Certificate of registration. 9) Copy of Health and Safety Policy (of application).

#### **8. What are the documents to be attached along with the application for registration under The Building and Other Construction Workers (Regulation of Employment and Conditions**

of Service) Act, 1996?

The following documents need to be attached: 1) Form I. 2) Proof of status of Contractor's firm. 3) Demand Draft

**9.** What is the mode of payment of fee and in whose favour demand draft is to be obtained under The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996?

Mode of payment is through Demand Draft. The payment has to be made in favour of either of the following concerned officers: 1) Assistant Labour Commissioner (Central). 2) Regional Labour Commissioner (Central). 3) DDO, O/o Dy. CLC(C).

**10.** What is the fee to be remitted along with the application of registration under The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996?

The fee structure is as follows: 1) US\$ 1.45 for upto 100 building workers. 2) US\$ 7.25 for exceeding 100 but not more than 500 building workers. 3) US\$ 14.5 for more than 500 building workers.

**11.** What are the minimum no. of building workers for whom certificate of Registration is required to be obtained?

The minimum number of Labourers required are 10.

**12.** How many returns are to be submitted by an employer in Small Establishments and Very Small Establishments?

In both Establishments, a core return in 'Form A' is required to be submitted.

**13.** How many Registers are required to be maintained under the Labour Laws (Exemption from Furnishing Return & Maintaining Register by certain Establishment) Act, 1988?

The Registers required to be maintained by both Establishments are as under the Labour Laws (Exemption from Furnishing Return & Maintaining Register by certain Establishment) Act, 1988: 1) Small Establishment: Form D and Form E Registers. 2) Very Small Establishment: Form B, Form C and Form D Registers. Also, records have to be maintained in electronic media.

**14. Who is covered under this Labour Laws (Exemption from Furnishing Return & Maintaining Register by certain Establishment) Act, 1988?**

This Act applied to: 1) Small Establishment: The Establishment in which not less than 10 and not more than 19 persons are employed or were employed on any day in preceding 12 months. 2) Very Small Establishment: The Establishment in which not more than nine are employed or were employed on any day in preceding 12 months.

**15. When happens when membership falls down after the date of application?**

Application shall not become invalid.

**16. Registrar of Trade Union withdrew a union's registration in view of non performance of certain statutory provisions. Is it possible?**

Registrar has the power only to cancel the registration. He cannot withdraw the order of registration issued by him/her.

**17. A Trade Union, which has an identical name with another. Will it be registered?**

Registrar of Trade Union shall not register that union until they make a change in the identical name under the Trade Union Act.

**18. Is it compulsory for the employer to employ those sponsored by Employment Exchanges under the Employment Exchanges Act, 1959?**

No, the employer is not obliged to select or employ a person from the well under the Employment Exchanges Act, 1959.

**19. Is it permissible for an employee to relinquish his rights under the Minimum Wages Act, 1948?**

An employee is prohibited from contracting out of the Act, i.e. from giving up any of his rights under the Act and any contract or agreement made by him relinquishing or reducing his right to a minimum rate of wages, any privilege or concession accruing to him under the Minimum Wages Act, 1948 is null and void. (Section 25).

**20. Is it permissible for an employee to recover minimum wages payable under the Minimum Wages Act, 1948 Act by filing a suit in a Civil Court?**

The Act prohibits Civil Courts from entertaining any suit for recovery of minimum wages payable under the Minimum Wages Act, 1948 (Section 24).

**21. Is an employer required to maintain any register and record under the Minimum Wages Act, 1948?**

Every employer must maintain a muster-roll-cum-wage register and also a bound inspection book. (Rule 27 & 28) of the Minimum Wages Act, 1948.

**22. Can a group of employees make a single application for claiming minimum wages under the Minimum Wages Act, 1948?**

A single application can be made on behalf or in respect of any number of employees as per The Minimum Wages Act, 1948.

**23. Can the Authority appointed under the Act to decide the claims of the employees award compensation to the tune of ten times of the amount of the difference between wages payable and wages actually paid, in every case of the Minimum Wages Act, 1948?**

The limit of 'ten times the amount of such excess' mentioned in section 20(3)(i) of the Minimum Wages Act, 1948 is the maximum limit. When the Authority awards heavy compensation under the said section, it must give reasons for doing so.

**24. Are the employees of a Students Hostel entitled to minimum rates of wages fixed for hotels and restaurants?**

The intention of the Legislature was to include employment on hotels and restaurants under purview of the Minimum Wages Act. When the Legislature specifically omitted the term 'Students' Hotels' in the Schedule, it thereby excludes it from the purview of the Minimum Wages Act.

**25. Can an Industrial Tribunal fix wages at rates higher than the rates of minimum wages fixed under the Minimum Wages Act?**

An Industrial Tribunal adjudicating a dispute relating to wages is not bound by the minimum rates of wages fixed under the Minimum Wages Act and it is open to it to fix wages at rates higher than the rates of minimum wages fixed under the Minimum Wages Act, 1948.

**26. Can an Industrial Tribunal adjudicate upon a dispute relating to the fixation of wages of employees covered under the Act?**

Section 24 of the Act does not bar the jurisdiction of an Industrial Tribunal to adjudicate upon a dispute relating to the fixation of wages of employees covered under the Act.

**27. Can an employee getting wages higher than the minimum wages fixed under the Act claim overtime wages under Section 20(2) of the Act?**

Where an employee gets wages higher than the minimum wages fixed under the Act, he cannot claim any benefit under the Act. For further details please access following link.

**28. If an employer, who is not paying basic wages and cost of living allowance separately as fixed under the Act but who is paying wages more than prescribed minimum rates under the Act, committing any illegality?**

The minimum rate of wages fixed under the Act is remuneration payable to the worker as one package of fixed amount, neither the scheme of the Act nor any provision of the Act provides that the rate of minimum wages is to be split into basic wages and cost of living allowance. Therefore, where an employer is paying total sum which is higher than the minimum rate of wages fixed under the Act

including cost of living allowance, the employer is not committing any illegality. For further details please access following link.

**29. Who can file Claim application under the Minimum Wages Act, 1948?**

An employee, any legal practitioner or any official of a registered trade union authorized in writing to act, any inspector under the Act or any person with permission of the authority can file claim under the Minimum Wages Act, 1948. For further details please access following link.

**30. What should be done when employer pays less than the prescribed Minimum Wage?**

An aggrieved employee can file a claim application requesting relief before the Authority under the Minimum Wages Act, 1948. For further details please access following link.

**31. Earlier I employed 22 Labourers, now I have reduced to 18 workmen, whether my establishment has to continue with the Labour license or surrender under the Contract Labour (R&A) Act, 1970?**

Yes, your establishment will continue to be covered under the provisions of the Contract Labour (R&A) Act, 1970 for a period of one year from the day on which 20 or more workmen were lastly employed. For further details please access following link.

**32. What is the procedure for the issuance of a duplicate license under the Contract Labour (R&A) Act, 1970?**

A fee of US\$ 0.075 to be remitted along with a request under the Contract Labour (R&A) Act, 1970. For further details please access following link.

**33. Is a subcontractor supposed to take License under the Contract Labour (R&A) Act, 1970?**

If principal employer endorses the name of sub-contractor in the agreement, after having Form V from principal employer, a subcontractor is requested to take license under the Contract Labour (R&A) Act, 1970. For further details please access following link.



**34.** I employed 20 Contract Labour only on one day, will my establishment be covered under Contract Labour (R & A) Act, 1970?

Yes. For further details please access following link.

**35.** Can the Authority be appointed under the Act to decide the claims of the employees and award compensation to the tune of ten times of the amount of the difference between wages payable and wages actually paid, in every case?

The limit of 'ten times the amount of such excess' mentioned in section 20(3)(i) of the Act is the maximum limit. When the Authority awards heavy compensation under the said section, it must give reasons for doing so.

**36.** If a Trade Union has an identical name with another, will it be registered?

Registrar of Trade Union shall not register that union, until they make a change in the identical name under the Trade Union Act.

**37.** What happens when the membership falls down after the date of application?

The application shall not become invalid.

**38.** Who is covered under the Labour Laws (Exemption from Furnishing Return & Maintaining Register by certain Establishment) Act, 1988?

This Act applied to Small Establishment: The Establishment in which not less than 10 and not more than 19 persons are employed or were employed on any day in preceding 12 months.

**39.** Registrar of Trade Union withdrew a union's registration in view of non performance of certain statutory provisions. Is it possible?

Registrar has the power only to cancel the registration. He cannot withdraw the order of registration issued by him.

**40. When happens when membership falls down after the date of application?**

Application shall not become invalid.

**41. How many Registers are required to be maintained?**

•The Registers required to be maintained by both Establishments are as under: •Small Establishment: Form D and Form E Registers. •Very Small Establishment: Form B Form C and Form D Registers. Also records have to be maintained in electronic media.

**42. What is the minimum no. of building worker for whom certificate of Registration is required to be obtained?**

•The minimum number of Labour required are Ten.

**43. What are the welfare provisions that need to be made for the workers under the Indian labour laws?**

As per the Indian labour laws, employers need to ensure that following amenities are available to their employees: Canteen (if 250 or more Contract Labour were/are working) Restroom /Shelters/Lunch Rooms (If 150 or more Contract Labour were/are working) Drinking Water Toilets/ Urinal/ Washroom First Aid Facility Creche (if 50 or more women workers are ordinarily employed) Washing facilities For more information, [click here](#).

**44. What are the occupations where employment of Child is prohibited?**

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on.

**45. What are the registers to be maintained under Act?**

Register showing the name of date of birth of every child so employed or permitted to work, hours and

periods of work of any such child and intervals of rest, the nature of work of any such child.

**46. What are the notices to be displayed under the Act and list of actions that are considered as misconduct at workplace?**

An abstract of Section 3 and 14 of the Act in Local Language and English. List of actions are: •Willful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior. •Going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof; •Willful slowing down in performance of work, or abetment or instigation thereof; •Theft, fraud or dishonesty in connection with the employers' business or property or the theft or property of another workman within the premises of the establishment; •Taking or giving bribes or any illegal gratification; •Habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation; •Habitual breach of any Standing Order or any law applicable to the establishment or any rules made there under; •Collection without the permission of the Manager of any money within the premises of the establishment except as sanctioned by any law for the time being in force; •Engaging in trade within the premises of the establishment; •drunkenness, riotous, disorderly or indecent behavior on the premises of the establishment; •Commission of any act subversive of discipline or good behavior on the premises of the establishment; •Habitual neglect of work, or gross or habitual negligence; •Habitual breach of any rules or instruction for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the establishment; •Habitual commission of any act or commission for which a fine may be imposed under the Payment of Wages Act, 1936. •Canvassing for union membership, or the collection of union dues within the premises of the establishment except in accordance with any law or with the permission of the Manager •Willful damage to work in process or to any property of the establishment; •holding meeting inside the premises of the establishment without the previous permission of the Manager or except in accordance with the provisions of any law for the time being in force; •Disclosing to any unauthorised person any information in regard to the processes of the establishment which may come into the possession of the workman in the course of his work; •Gambling within the premises of the establishment; •Smoking or spitting on the premises of the establishment where it is prohibited by the employer; •Failure to observe safety instructions notified by the employer or interference with any safety device or equipment installed within the establishment; •Distributing or exhibiting within the premises of the establishment hand-bills, pamphlets, posters, and such other things or causing to be displayed by means of signs or writing or other visible representation on any matter without previous sanction of the Manager; •Refusal to accept a charge-sheet, order or other communication served in accordance with these Standing Orders; •Unauthorised possession of any lethal weapon in the establishment.

**47. After what age can a person start working in India?**

In India, child below 14 years cannot be employed. However, there are following exceptions which include non - hazardous family enterprises and child working as an artist in the audio - visual entertainment industry. Additionally, a child above 14 years but below 15 years of age can be employed only for 4.5 hours a day and cannot work during the night. For more information, [click here](#).

**48. Is there anything that I need to adhere to, before recruiting women for my company?**

The following need to be adhered to for recruiting women in a company: Every employer employing more than 10 workers shall constitute an “Internal Complaints Committee” (ICC) to address any complaints of the women employee related to sexual harassment. Women employees are entitled to 12-26 weeks of maternity leave. Moreover, women are not to be allowed to work in a factory between 10:00 pm to 5:00 am. For more information, [click here](#).

**49. What are the privileges in terms of pay that laid-off labourers can avail?**

Workers who have completed one year of services are eligible for compensation equal to 50% of total Basic wages and Dearness Allowance.