

Industrial Relations & labour Laws

Chapter 14

'Bombay Shops & Establishments Act 1948 '

Summary

In this chapter you will learn:

- 1.The definitions of commercial establishment, establishment, and shop.
- 2.The procedure for registration of establishments
- 3.The working hours of shops and commercial establishments, restaurants and theatres
- 4.The obligations of employers as regards to health and safety of employees and statutory compliance thereof.

Introduction:

Bombay Shops & Establishments Act 1948, extends to the State of Maharashtra. It came into effect on 11.01.1949 with a view to regulate the conditions of work & employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theaters other places of public amusement or entertainment and other establishments.

Definitions:

Apprentice - is a person who is employed, whether on payment of wages or otherwise, for the purpose of being trained in trade, craft or employment in any establishment.

Commercial Establishment - is an establishment that carries on any business, trade or profession, but

does not include a factory, shop, residential hotel, restaurant & other eating places, theater or amusement places.

Employee - is a person who is employed whether directly or through any agency, for wages or some other considerations, in an establishment.

Establishment - means a shop, commercial establishment, residential hotel, restaurant & other eating places, theater or amusement places & includes those notified by the government.

Factory - is any premises defined under section 2[m] of the Factories' Act 1948.

Restaurant or eating house - means any premises where meal or refreshments are sold to the public for consumption.

Shop - means any premises where goods are sold and includes an office, a store room, godown, warehouse, or work place mainly used for trading.

Registration of establishments:

A shop or establishment is to be registered under the Act by payment of fees stipulated for registration & renewal. A notice is also required to be given in case employer wishes to close down his establishment, within 10 days of such closing.

Working Hours of Shops:

Shops can remain open between 7 am & 8.30 pm. Concessions are available for shops selling essentials like milk, vegetables & those selling pan, bidis etc. Commercial establishments should operate within 8.30 am to 8.30 pm. Government can revise these working hours. Employees should not be asked to work > 9 hours in a day or 48 hours in a week. Rest intervals have to be offered in such a way that worker does not work > five hours at a stretch. Every commercial establishment has to remain closed for a day each week, and employee is

to be paid for this weekly holiday. These provisions with minor variation are applicable to other establishments under the Act.

Employment of Children & Women:

Lesser hours of work are stipulated for young persons [15 - 18 years] child [below 15] labour is prohibited. Working hours for young persons or women are restricted to six in the morning to seven in the evening.

Leave with Wages:

Every employee who has been employed for not less than three months in any year has to be paid five days leave for every 60 days of work. If an employee has worked for more than 240 days in a year, 21 days leave has to be granted. The leave salary shall be inclusive of basic salary & DA, but exclusive of OT.

Applicability of Other laws:

Provisions of following Acts are applicable to establishments - Payment of Wages act 1936; Workmen's Compensation Act 1923; Industrial Employment [Standing Orders] Act 1946; Maternity Benefits Act 1961.

Health & Safety:

Every establishment must take measures to keep premises clean, ventilated & sufficiently lighted during working hours. Fire protection & first aid box are to be provided.

Inspection:

An inspector appointed under the Act has powers to enter, examine the premises, registers, records and notices & take evidence of any person. If any offence is suspected, records can be seized and retained for investigation. Prosecution for the violation of the Act has to begin with a sanction of legal authority and the complaint has to be filed by the Inspector within three months from the date on which the alleged commission of the offences came to the knowledge of the Inspector.

Overtime Wages:

Overtime wages are payable at twice the ordinary rate. They are payable for hours of work > nine hours a day or over 48 hours a week.

Termination of Service:

Employee has to be given a notice of 30 days or salary in lieu thereof while terminating services under this Act. No such notice or pay is applicable if employee is dismissed for misconduct

Exemptions:

The Government by issue of notification can temporarily exempt all establishments from certain provisions on account of say festivals. It can permanently exempt any establishment from application of some or all provisions of the Act.

Maintenance of Registers:

Employers need to maintain register of employment, register of leave, a visit book & register showing lime washing etc.

Employer has also to display in a language understood by the majority of employees the extracts of the Act, rules framed there under & notice of the day of weekly off.

Obligations of Employers:

1. Get the establishment registered & update registration
2. Observe opening, closing hours and closed day in a week, notified religious / national holidays
3. Comply with daily, weekly working hours, rest intervals, rules regarding employment of children, young persons and women, health, safety, overtime payment, notice for termination of service, & issue of appointment letters to employees etc.
4. Comply with Payment of Wages Act, Workmen's Compensation Act, Maternity Benefit Act
5. Maintain all registers and records and submit such annual and other returns and statements as may be required by the government.
6. Cooperate with Inspectors.

Miscellaneous:

When this Act comes into force, employees who were in receipt rights & privileges which are better than the provisions of the Act, then they will continue to enjoy them. Workers in factories continue to be governed by the provisions of the Factories' Act 1948. Every local Authority has to submit to the Commissioner of Labour, Mumbai a report on the working of the Act.