



CAIIB

Module-D Unit-1

Human Resources Management



CAIIB HRM Module D Unit 1- Industrial Relations (A)

Personnel Function

- Personnel management is a managerial function of planning, organising, directing, controlling and co-ordinating the line functions or operative functions such as recruitment, development, compensation, integration, utilisation and maintenance of people so that their individual objectives as well as the organisational goals are achieved.
- Personnel management deals with the aspect of relationship between and among people and is concerned about their well-being as individuals and as groups so that they can give their best. Personnel management which has evolved into HRM has three major spheres of activities; viz. **strategic, professional as well as administrative**. These again get bifurcated into **welfare aspect** relating to safety, health, amenities and facilities, **personnel aspect** relating to recruitment, development, compensation and incentives, and **relationship aspect** relating to employee relations, settlement of industrial disputes, negotiation with unions etc.

Functions of 'Personnel Management'

Strategic Functions:

- ✓ Organisation Mission/Vision, Business Goals, Strategy Formulation,
- ✓ Organisation Life Cycle stage,
- ✓ Organisation Competency Identification (Key Competencies Required) including Competency Mapping Industry/Competitor Analysis.

Professional Functions:

- ✓ Performance Management and Review Mechanism,
- ✓ Key Result Areas, Key Performance Indicators and Key Deliverables,
- ✓ Employee Morale and superior performance.

Administrative Functions:

- ✓ Recruitment & Selection,
- ✓ Performance and Potential Evaluation,
- ✓ Training and Development,
- ✓ Compensation,
- ✓ Rewards and Recognition,
- ✓ Employee retention.
- ✓ Career and Succession Planning,
- ✓ Employee wellness/welfare.

Legal Aspects of Personnel Function

The important labour laws in India which apply to organisations can be classified under the following groups:

Legislation on Working Conditions:

- The Factories Act, 1948 The Mines Act, 1952
- The Contract Labour (Regulation and Abolition) Act, 1970
- Shops and Establishment Act (enacted by different States)

Legislation on Wages:

- The Payment of Wages Act, 1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

Legislation on Social Security

- The Employees' Compensation Act, 1923
- The Employees' State Insurance Act, 1948
- The Employees' Provident Fund and Miscellaneous Provisions Act, 1952
- The Maternity Benefit Act, 1961
- The Payment of Gratuity Act, 1972

Legislation on Employment and Training

- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- The Apprentices Act, 1961

The broad objectives of these enactments can be summarised as under:

- ✓ To protect and safeguard the interest and well-being of the working class against the possible arbitrary action of employers.
- ✓ To regulate and improve the working conditions.
- ✓ To provide for fixation and payment of minimum wages.
- ✓ To ensure timely payment of wages and avoid unauthorised deductions from the wages.
- ✓ To spell out and notify the service conditions for the information of all concerned.
- ✓ To provide for formation of trade unions with a view to promoting collective bargaining.
- ✓ To arrange for social security measures in the event of sickness, disablement and death of workmen.
- ✓ To promote industrial peace by providing for machinery for settlement of industrial disputes.
- ✓ To be receptive to the market demands and enact legislation for facilitating modern businesses.

- ✓ To promote ease of doing business, reducing compliance burdens, and modernizing the legal framework surrounding the regulation of industrial relations in India.

Legislation On Working Conditions

The Contract Labour (Regulation and Abolition) Act, 1970

- The Act is applicable to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding twelve months as contract labour. In Maharashtra, this threshold limit has been enhanced to 50.
- The Act is not applicable to establishments performing work only of an intermittent or casual nature.
- A workman is deemed to be employed as '**contract labour**' when hired through a contractor with or without the knowledge of the principal employer.
- Every principal employer of the establishment to which the Act applies must get the establishment registered under the Act for employing contract labour and every contractor must obtain a license under the Act for executing work through contract labour.
- The principal employer, who has not obtained the registration or whose registration is **revoked under Section 8 of the Act**, is prohibited from employing any contract labour.

The appropriate government may prohibit any establishment from employing contract labour considering:

- Whether the conditions of work and benefit provided for contract labour are satisfactory
- Whether the work is incidental to or necessary for the business of the establishment
- Whether the work is of a perennial nature or of sufficient duration
- Whether it is ordinarily done through regular workmen.

A contractor is required to provide:

- A canteen if the establishment employs 100 or more workers;
 - Rest rooms if the contract labour is required to halt at night;
 - Sufficient supply of drinking water and washing facilities; and
 - First-aid box.
- If the contractor fails to provide these facilities, the principal employer has to provide these amenities.
 - The payment of wages shall be made by the contractor in accordance with the provisions of **Payment of Wages Act, 1936**. It is the responsibility of the principal employer to pay the unpaid wages if the contractor fails to pay the same.

Note: By a notification of **December 6, 1976**, the **Central** Government has prohibited employment of contract labour by banks for sweeping, dusting and watching of buildings. Having regard to the emerging developments, Reserve Bank of India (being the custodian of Banks) has since allowed outsourcing in Banks in non-core activities which have been clearly spelt out like – sweeping, dusting, watching buildings, etc.

The Bombay Shops and Establishments Act, 1948

- A shop or establishment (which includes commercial establishment) is to be registered under the Act with the local authority. The license is valid for one year and needs to be renewed.
- No employee should be asked to work more than 9 hours on any day and 48 hours in a week. Employees are allowed to work 6 hours extra in each week and six days in a year for preparation of accounts, stock taking etc. But such over-time should **not exceed 24 hours**.
- It provides for rest intervals in such a way that no employee is required to work for more **than 5 hours before** having an interval for rest of at least one hour.
- It also provides for weekly holidays. Every commercial establishment has to remain closed on one day of the week and the employee is to be paid for such closed day.
- The Act makes provision for leave. If an employee has worked for more than 240 days during a **year, he is entitled to 21 days leave** which can be accumulated up to 42 days. If the employee is discharged before he has availed of the leave he is to be paid for that leave. Even when the employee quits employment, he is to be paid for such leave if his application for such leave was rejected earlier.
- The Act requires the employer to maintain attendance register, leave record, etc.

Trade Union Act, 1926

- The main objective of the Act is to provide for registration of trade unions and give the registered trade unions a legal status and immunity to their office bearers from civil and criminal liability for pursuing legitimate union activities.
- **‘Trade dispute’** has been defined by the Act as a dispute between employers and workmen, or workmen and workmen, or employers and employers, which is connected with the employment or non-employment or terms of employment or the conditions of labour.
- Any seven or more members of a trade union can by subscribing their names to the rules of the union and by complying with the provisions of the Act, apply for registration of the trade union. Provided that no Trade Union of workmen shall be registered unless at least ten per cent or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.

- **Under Sec. 9A of the Act, a registered** Trade Union of workmen shall at all times continue to have **not less than 10% or 100 of the workmen**, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members.
- If the trade union is in existence for more than a year before it applies for registration, it shall submit a statement of assets and liabilities in the prescribed form to the Registrar of Trade Unions.
- The Registrar shall issue a certificate of registration which is a conclusive proof of registration of the trade union and it can be withdrawn **after giving two months' notice**.

A trade union after registration:

- Becomes a body corporate and a legal entity, distinct from its members,
- Has perpetual succession and a common seal,
- Has powers to acquire and hold movable and immovable property,
- Has power to contract,
- Can by its name sue and be sued.

The general fund of the registered trade union shall not be spent on any objects other than the following:

- Payment of salaries and expenses of the office-bearer of the trade union;
- Administrative expenses including audit of the accounts of the general fund;
- Expenses of legal proceedings for prosecuting or defending the trade union
- For the conduct of trade dispute
- Compensation to members for loss arising out of trade disputes
- Allowances to members or their dependants on account of death, old age, sickness, accidents
- Taking out insurance policies on the lives of members
- Provision of social, educational or religious benefits to the members or their dependents.

The account books and list of membership of a trade union shall be opened for inspection to any member.

Not less than one-half of office-bearers of the trade union shall be the persons actually engaged or employed in the industry to which the union is connected.

Industrial Dispute Act, 1947

This is an Act to provide for investigation and settlement of industrial disputes between employer and employer, workman/workmen and workman/workmen and employer and woman/workmen.

The Supreme Court, through various judgements, has outlined the objectives as:

- To ensure social justice to employers and employees and bringing about harmony

- To settle disputes through conciliatory machinery
- To prevent illegal strikes and lockouts
- To provide compensation to workmen in case of lay-off, retrenchment, closure
- To promote collective bargaining.

In an attempt to resolve the industrial dispute the Act makes it obligatory to constitute a works committee in industrial establishments employing 100 or more workmen. The committee consists of equal number of representatives of workmen and employer. However, the total number of members in the Works Committee should **not be more than 20**. The works committee is formed to promote measures to secure and preserve amity and good relations between the employer and workmen.

The Act provides for redressal of Industrial disputes in a three pronged way:

- By constituting works committee;
 - By appointment of conciliation officer or constitution of Board of Conciliation;
 - By referring the matter to the labour court, tribunal or national tribunal.
- The Act also provides for voluntary reference of disputes to arbitration if the employer and workmen agree to refer it to the arbitrator before the dispute has been referred to the labour court or tribunal.
 - The Act makes it obligatory for the employer to give a notice of change before effecting any change in the conditions of service in respect of wages, hours of work, leave and holidays, Introducing new rules of discipline, withdrawal of any concession or privilege. **21 days' notice to the workmen** likely to be affected by the proposed changes is required to be given.
 - The Act prohibits strikes and lock-outs in public utility services without giving due notice and also provides for general prohibition of strikes and lock-outs under certain circumstances.
 - The Act provides for lay-off, retrenchment and closure for which a specified procedure is required to be followed and compensation at the prescribed rate to be paid to the workmen affected.

Industrial Relations Code 2020

It subsumes three major Central laws that relate to industrial dispute settlement and collective bargaining arrangements, namely –

- **The Industrial Disputes Act, 1947**
- **The Trade Unions Act, 1926**
- **Industrial Employment (Standing Orders) Act, 1946.**

The objects of these Acts have been retained for the most part with the Industrial Relations Code, 2020 consolidates the laws for ease of compliance into a single document. However, certain changes have been brought in with a view to promote ease

of doing business, reducing compliance burdens, and modernizing the legal framework surrounding the regulation of industrial relations in India.

Salient Features

- The definition of worker has been broadened and now includes **working journalists** as defined in Section 2(f) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act of 1955 and **employees of Sales promotion** as defined in Section 2(d) of the Sales Promotion Employees (Terms of Service) Act 1976. Persons employed in a supervisory capacity earning less than Rs. 18,000 per month (or any amount notified by the Central Government) is included in the definition of “worker”.
- **Fixed-term employment** has a legal basis. It allows employers greater flexibility to hire in line with supply and demand. Fixed-term employees are eligible to receive tips on a pro-rata basis if they serve for one year under their respective employment contracts. They are given equality with permanent employees concerning working conditions, wages, allowances, and other benefits.
- The applicability threshold of the Labour Disputes (Regulation) Act 1947 under the **Labour Relations Bill 2019** had been established in establishments employing **100 or more employees**. However, the Industrial Relations Code 2020 has raised this threshold to 300.
- **Concerning layoffs and reductions in personnel**, Section 65 applies to industrial establishments that are **not included** in Chapter X of the Code, which is essentially Chapter VB of the Industrial Dispute Act of 1947. It applies to **industrial establishments in which more than fifty workers are working on average per working day during the previous calendar year**.
- **Section 77 of Chapter X applies to industrial establishments in which no less than 300 workers or a greater number of workers than may be specified by the corresponding government, were employed on average per working day in the previous 12 months**. Therefore, the establishments included in this provision must obtain prior permission from the Government for layoffs, staff reductions and closure.
- **The Code forbids strikes and immediate lockouts in all companies** and therefore no company can strike contrary to the contract 60 days before the strike or the expiry of a date specified in the strike notification. Strikes are also prohibited while mediation is in progress and within 7 days of the conclusion of such a process. Strikes are also prohibited while proceedings are pending before a labour court or 60 days after they are concluded.

Trade Union: Negotiating Union/Negotiating Council

The Industrial Relations Code 2020 provides a new concept for negotiating trade unions or negotiating councils in an industrial company.

- In the case of a single union in an industrial company, the employer recognizes that union as the sole bargaining union of the workers.

- If there are several unions, the union is recognized by the employer as a bargaining union **with 51% of the employees** in the industrial company's model directory.
- In the case of several trade unions, none of which fulfil the above-mentioned 51% membership criteria, the employer forms a negotiating council made up of representatives of these registered trade unions, who are supported by at least 20% of the total workforce of the industrial company.
- **Industrial Relations Code 2020** also provides that if the Central/State Government believes that there is a need for a union or confederation to be recognized as a central/state union, that government may recognize the trade unions alike.

Strikes And Lockouts

- Industrial Relations Code 2020 defines "**strike**" as including the concerted casual vacation on a given day of fifty percent or more of the workers in an industry.
- No employee can strike without reporting a strike to the **employer 14 days** in advance. This notification is valid for a maximum of 60 days.
- No employer can lockout one of its employees **without giving 14 days'** notice of the lockout. This notification is **valid for a maximum of 60 days**.

Industrial Relations Code 2020 prohibits strikes and lockouts:

- During and up to seven days after arbitration; and
- During and up to sixty days after or before trial in a court or arbitrator
- During any period in which a settlement or arbitration award is in effect.
- Employers are required to report to the relevant government and arbitration officer within five days of receiving/announcing a strike/lockout.

Standing Orders

- Industrial Relations Code 2020 states that the provisions regarding standing orders will apply to the establishments that have had three hundred or more employees on any day in the preceding **twelve months or a year**.
- An employer will be required to prepare a draft of standing orders, based on the Central Government model standing order, **within 6 months** from the code start date, in consultation with recognized negotiating unions or members of the negotiating council concerning the same and it must be certified by the certifying officer.

Re-skilling Funds

Industrial Relations Code 2020 provides for the creation of a "**reskilling fund**" for employees laid off from the industrial establishment by the employer. The fund will be made up of the following amounts:

- Employer contribution, equivalent to 15 days of salary as the last retirement of the worker immediately before being fired.
- Contributions from other sources as prescribed.

- The fund must be used to pay the last 15 days of salary extracted by the worker, to his account, within 45 days after the worker's dismissal.

Layoff And Retrenchment

- Industrial Relations Code 2020 defines lay-off as the inability of an employer, due to shortage of coal, or power, material or breakdown of machinery, accumulation of material or natural calamity from giving employment to a worker whose name is on the muster roll and has not been retrenched.
- Retrenchment refers to the termination of service of a workman for any reason other than disciplinary action. It does not include retirement, non-renewal of contract, or completion of tenure of fixed-term employment or termination on the ground of continued ill-health.
- The provisions on lay-off and retrenchment under Industrial Relations Code 2020 do not apply to industrial establishments with less than 50 workers on an average per working day or seasonal industrial establishments.
- Whenever a worker whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off. Compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him, had he not been so laid-off.
- Further, factories, mines and plantations, which have three hundred or more workers must take prior permission of the appropriate Government before lay-off, retrenchment and closure.

Grievance Redressal Mechanism

- Industrial Relations Code 2020 states that any industrial establishment employing more than 20 employees must have one or more complaint redressal committees for the resolution of disputes arising from individual complaints.
- The committee should be made up of an equal number of members representing employers and workers, and the chair should be elected, alternately, from among employees and workers, on a rotating basis each year.
- The number of grievance redress committees cannot exceed 10 and there must be adequate representation of female workers on the committee and must not be less than the proportion of women employed in the industrial establishment.

Compliance Requirements

Short Title	Threshold for Applicability	Requirement
Works Committee	100 or more workers	Constitution of Works Committee consisting of representatives of employer and workers
Grievance Redressal Committee	20 or more workers	Constitution of Grievance Redressal Committees for consisting of equal number of members representing employer and workers
Preparation of draft Standing Orders by Employer	300 or more workers	Employer must prepare draft Standing Orders within a period of six months from the date of commencement of this Code

Legislation of Wages

The Payment of Wages Act, 1936

- **Objectives:** To regulate payment of wages at least once in a month and at a regular interval, and to prevent unauthorized deductions from the wages.

Features and main provisions

- The Act can be made applicable by the State Government by notification to establishments.
- The Act covers employees whose wages are less than Rs. 24,000/- p.m.
- The term 'wages' has a very wide coverage meaning remuneration, overtime payment, leave salary, payment on termination, etc., but excludes any bonus, contribution to PF or Pension Fund, and any Gratuity payable.
- In organisations employing less than 1,000 persons wages shall be paid before the expiry of the seventh day, and where more than 1,000 persons are employed it shall be paid before the expiry of the tenth day, after the last day of the wage period in respect of which wages are payable.
- Payment of wages is to be made in currency notes. On authorisation from the employees payment can be made by cheque or to the credit of the employee's account.
- Payment is to be made without any deductions except those deductions which are authorised by the Act.
- Authorised deductions include: fines, deductions for absence, deductions for damages or loss, deduction for house accommodation and other amenities, recovery of advance, adjustment for over payments, recovery of loans, IT deductions, payment to co-operative society, LIC premium etc.
- Deductions are authorised for absence. However, if 10 or more employees acting in concert absent themselves without notice and cause, deductions can be made for a **maximum period of 8 days**.
- Deductions for damage or loss caused due to neglect can be made only after giving an opportunity to the employee to show cause against the deductions.

Note: The Payment of Wages Act, 1936 is not directly applicable to banks. However, the Shops and Establishment Acts of different States have incorporated some of these provisions and made this Act applicable to banks.

The Minimum Wages Act, 1948

- **Objectives:** The Act aims to provide for fixing minimum rates of wages in certain employments.

Features and main provisions

- The Act is applicable to employments listed in the Part I and Part II of the Schedule to the Act. It covers certain establishments regardless of number of workers employed. Some of the establishments covered are: rice mill, flour mill, tobacco manufacturing, oil mill, employment in agriculture, dairy farming, horticulture, poultry, etc.
- Wages means all remuneration capable of being expressed in terms of money payable to a person but does not include value of accommodation, supply of light, water and other amenities, contribution to the pension fund or provident fund or social insurance scheme or gratuity payable on discharge, and travelling allowance.
- Where the appropriate government has fixed minimum rates of wages, the employer is bound to pay at rates not less than the rates notified.
- The rates of wages can be fixed for different employment, classes of employment, different localities. The rates may be a time rate, a piece rate, a guaranteed time rate and overtime rate.
- Any contract or agreement by an employee relinquishing his/her right under this Act shall be null and void.

Note: The Act has fixed the floor level for wages. The provisions of this Act do not apply to banks as it is not treated as scheduled employment.

The Payment of Bonus Act, 1965

- **Objectives:** To provide for payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and matters connected therewith.

Features and main provisions

The Act applies to all factories and establishments employing 20 or more persons.

Bonus is payable to:

- **Employee whose salary/wages does not exceed Rs. 21,000 per month.**
- **Who has worked in the establishment for not less than 30 days.**
- Not disqualified to claim bonus due to fraud, theft or any other misconduct.
- Bonus of very person drawing salary between Rs. 7,000/- and Rs. 21,000/- per month shall be calculated as if his salary were Rs. 7000/- pm or the minimum wages for the employment as fixed by the appropriate Government, whichever is higher.
- Determination of Gross Profit is the first step towards calculating amount of bonus. From Gross Profit certain charges are to be deducted such as remuneration of partners or proprietors, a return of 8.5 per cent on equity capital and 6 per cent in reserves, depreciation under the Income Tax, direct

taxes, dividend paid or payable. After deducting these, 'available surplus' is arrived at. 67 per cent of available surplus is 'allocable surplus' for a company and for others it is 60 per cent. Bonus is to be paid from the allocable surplus.

- It is an obligation on the employer to pay bonus at a minimum rate of 8.33 per cent of the salary or Rs. 100/- whichever is higher.
- It is to be paid irrespective of profit or loss or whether there is allocable surplus or not in the accounting year. The maximum rate is fixed at 20%.
- The Fourth Schedule to the Act illustrates the method of set-on and set-off. The excess of allocable surplus after distributing bonus shall be set-on and carried forward up to the fourth accounting year. In the case of shortage or want of allocable surplus, the amount distributed will be carried forward for set-off out of allocable surplus.
- New establishments get exemption from payment of bonus for a period of 6 years or up to the year they show profit, whichever is earlier.
- Bonus is to be paid within a period of 8 months from the close the accounting year.
- An acknowledgement of an employee is to be obtained on revenue stamp in form "C" for having received bonus payment.

The Equal Remuneration Act, 1976

- **Objectives:** To provide for the payment of equal remuneration to men and women employees and for the prevention of discrimination on the grounds of sex against women.

Features and main provisions

- Remuneration includes basic salary and any additional emoluments payable in cash or in kind.
- It is the duty of the employer to pay equal remuneration to men and women for the same work or work of a similar nature.
- No discrimination will be made while recruiting for the same work except where the employment of women is prohibited or restricted.
- No discrimination should be made against women in the matter of conditions of service, promotions, training etc.
- It is obligatory to maintain prescribed registers and other documents in relation to employees.

Legislation on Social Security

The Employees' Compensation Act, 1923

Objectives: The Act imposes an obligation upon the employer to pay compensation to workers for accidents arising out of and in the course of employment. The Act provides for compensation for the injury which is in addition to his normal wages.

Features and main provisions

- The Act applies to any person employed otherwise than in clerical capacity in railways, factories, mines, loading and unloading work on a ship, construction of roads and bridges and other hazardous occupations specified in Schedule II to the Act. The Act does not apply to members of Armed Forces.
- The compensation is payable for any personal injury sustained by the workman in an accident arising out of and in the course of employment. No compensation is payable if the disablement does not continue for more than three days.
- Section 4 to 7 detail the rate at which compensation is payable for different types of disablement caused due to injury for fatal injury as well as permanent total disability.
- Permanent Partial Disablement – according to incapacity caused.
- Temporary Disablement – fixed amount per month up to a period of 5 years.
- The Act provides for the compensation amount to be deposited with the Commissioner for Workmen's Compensation in the case of fatal accidents.

Doctrine of Notional Extension:

The Supreme Court explained this doctrine: “as a rule employment does not commence until the workman has reached the place of employment and does not continue when he has left the place of employment. This is however subject to the theory of notional extension of the employer's premises so as to include the area the workman passes and repasses while going to and returning from the workplace. it has to be proved by the employee that:

- There was an accident,
- The accident had a causal connection with the employment and
- The accident must have been suffered in course of employment.

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

- **Objectives:** to provide substantial security and monetary assistance to the employees and their families and to protect them during old age, disablement, etc. The Act provides for a scheme for institution of provident fund.

Features and main provisions

- An employee includes any person employed for wages in any kind of work, in connection with the work of an establishment. As per an amendment to the Provident Fund Scheme from time to time, the wage limit coverage has been enhanced to Rs. 15,000/- per month.
- The Act is applicable to factories and other establishments employing 20 or more persons.
- The normal rate of contribution to provident fund by the employees and the employers is 12 percent.
- The Central Government declares the rate of interest to be credited annually to the accounts of the provident fund subscribers.
- A member may withdraw full amount from his PF account in the event of retirement from the service after attaining the age of 55 years;
 - ✓ Retirement on account of permanent incapacity,

- ✓ Migration for permanent settlement abroad,
- ✓ Termination in the course of mass retrenchment.
- The scheme provides for transfer of PF account of the member on his leaving the service of an employer and joining another establishment.
- A refundable withdrawal can be made for: house-building, financing LIC policy, illness of member or his family members, member's marriage or marriage of his son, daughter, brother, sister, etc., with certain limits. However, non-refundable withdrawal even upto 100% of employee contribution from PF can be made only for the purpose of house-building.

The Maternity Benefit Act, 1961

- **Objectives:** The Act is a social security legislation to promote the welfare of working women. It also prohibits working of pregnant woman for a specified period before and after delivery. It provides for leave and certain monetary and other benefits.

Features and main provisions

- The Act applies to every establishment, factory, mine, etc., having 10 or more employees.
- The maximum period of maternity leave is – 26 weeks; eight weeks before the date of delivery. Provided that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.
- Maternity leave of 12 weeks is also allowed to mothers legally adopting a child below the age of 3 months.
- In case, where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.
- To be entitled for maternity leave a woman must have worked for not less than 80 days in the 12 months immediately preceding the day of expected delivery.
- In case of miscarriage, a woman is entitled to six weeks of leave from the day of miscarriage.
- For illness arising out of delivery, premature birth or miscarriage, a woman can take extra leave up to a maximum period of one month.
- Every woman entitled to maternity benefit is also entitled to a medical bonus of Rs. 250/- if no pre-natal or post-natal care has been provided for by the employer free of charge.
- Every establishment having fifty or more employees shall have the facility of crèche within such distance as may be prescribed, either separately or along with common facilities. Provided that the employer shall allow four visits a day to the crèche by the woman, which shall also include the interval for rest allowed to her.

The Payment of Gratuity Act, 1972

- **Objectives:** The Act provides for a scheme of compulsory payment of gratuity to employees employed in factories, mines, shops and other establishments having 10 or more employees.

Features and main provisions

- The Amendment Act of – 2017 removed the salary ceiling of an employee, but the maximum gratuity payable shall be Rs.20 lakh w.e.f. 1.1.2016.
- Section 4 confers a right on the employee to receive gratuity if he has rendered continuous service of not less than 5 years, on superannuation, retirement or resignation or death. The completion of 5 years is not necessary if the termination of employment is due to death or disablement.
- For every completed year of service or part thereof in excess of 6 months, gratuity is payable at the rate of 15 days' last drawn salary as per Section 4(2).
- Gratuity can be forfeited if the services of an employee are terminated for any act of willful omission or negligence causing damage or loss to the property of the employer, to the extent of loss.
- Section 6 provides for nomination facility. The employee who has completed one year of service has to submit nomination in the prescribed form. Nomination has to be in the name of a family member(s).
- Payment of gratuity under this Act is not liable to be attached in execution of any decree or order of any civil, revenue or criminal court.

Note: The gratuity payable under the scheme of the banks or other employer, can be attached to the extent the amount exceeds the one payable under the Act.

Legislation on Employment And Training

The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

- **Objectives:** To enable government authorities to assess the employment potential and to have better appreciation of labour market as well as to enable unemployed persons, to seek employment.

Features and main provisions

- The employer is obliged to notify the vacancy before filling up any vacancy. The vacancy should be notified in writing to the employment exchange having jurisdiction over the **area at least 15 days** before the date on which the applicants are to be interviewed.
- The employer is required to submit quarterly and biennial returns to the Employment Exchange giving details regarding total number of employees, vacancy position and occupational classification of employees,
- While employers are required to notify the vacancy, they are not obliged to appoint only those sponsored by employment exchanges.
- The Act does not apply to vacancies to be filled through promotion or on the results of any examination conducted or interview held by any independent agency such as Union or State Public Service Commission and the like.

The following two enactments in Banking context:

- **Banking Companies' (Acquisition & Transfer of Undertakings) Act, 1970:** This is the Act under which the 14 major banks were nationalized in July 1969 and subsequently in April 1980, 6 more banks were nationalized. The Act provides for the Central Government to make regulations on service conditions for the employees of these banks.
- **Banking Regulation Act, 1949:** This Act is applicable to all the scheduled banks including the nationalized banks. **Section 10(1)** prohibits employment of any person who has been adjudicated insolvent or has been convicted by criminal court of an offence involving moral turpitude.



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