

THE PAYMENT OF WAGES ACT, 1936

Object of the Act:

The Payment of Wages Act regulates the payment of wages to certain classes of persons employed in industry and its importance cannot be under-estimated. The Act guarantees payment of wages on time and without any deductions except those authorized under the Act. The Act provides for the responsibility for payment of wages, fixation of wage period, time and mode of payment of wages, permissible deduction as also casts upon the employer a duty to seek the approval of the Government for the acts and permission for which fines may be imposed by him and also sealing of the fines, and also for a machinery to hear and decide complaints regarding the deduction from wages or in delay in payment of wages, penalty for malicious and vexatious claims. The Act does not apply to persons whose wage is Rs. 24,000/- or more per month. The Act also provides to the effect that a worker cannot contract out of any right conferred upon him under the Act.

Application of the Act:

It extends to the whole of India. It applies in the first instance to the payment of wages to persons employed in any factory to persons employed (otherwise than in a factory) upon any railway by a railway administration or either directly or through a sub-contractor by a person fulfilling a contract with a railway administration and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of section 2.

The State Government may after giving three months' notice of its intention of so doing by notification in the Official Gazette extend the provisions of this Act or any of them to the payment of wages to any class of persons employed in any establishment of class of establishments specified by the Central Government or a State Government under sub-clause (h) of clause (ii) of section 2.

Definitions:

Employed person sec 2 (i) includes the legal representative of a deceased employed person

Employer sec 2 (ia) includes the legal representative of a deceased employer

Industrial or other establishments Sec 2 (i1) means any -

- a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

b) 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;

c) Dock wharf or jetty;

d) inland vessel mechanically propelled;

e) mine quarry or oil-field;

f) plantation;

g) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;

h) 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;

i) any other establishment or class of establishments which the Central Government or a State Government the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette. 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.

Wages Sec 2 (vi)

wages” means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms 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-

a) any remuneration payable under any award or settlement between the parties or order of a Court;

b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made;

e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include—

1. any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
2. the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of 1[the appropriate Government
3. any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
4. any travelling allowance or the value of any travelling concession;
5. any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
6. any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

Responsibility for payment of wages [Section 3]

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid.

1. In the case of the factory, manager of that factory shall be liable to pay the wages to employees employed by him.
2. In the case of industrial or other establishments, persons responsibility of supervision shall be liable for the payment of the wage to employees employed by him.
3. In the case of railways, a person nominated by the railway administration for specified area shall be liable for the payment of the wage to the employees.

4. In the case of contractor, a person designated by such contractor who is directly under his charge shall be liable for the payment of the wage to the employees. If he fails to pay wages to employees, person who employed the employees shall be liable for the payment of the wages.

Fixation of wage-periods:

Sec 4 provides that, every person responsible for the payment of wages under section 3 shall fix periods in respect of which such wages shall be payable. No wage- period shall exceed one month. That means wage can be paid on daily, weekly, fortnightly (for every 15 days) and monthly only. Wage period for payment of wages to employees by employer should not exceed 30 days i.e. one month according to this act. But wages cannot be paid for quarterly, half yearly or once in a year.

Time of payment of wages:

Sec 5 provides that, the wages of every person employed

1. In railway factory or industrial or other establishment, if there are less than 1000 employees, wages of employees should be paid before the expiry of the 7th day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 7 days i.e. before 7th date if wage is paid on 1st in previous month)
2. In other railway factory or industrial or other establishment, if there are more than 1000 employees, wages of employees should be paid before the expiry of the 10th day after the last day of the wage period. (ex:- wages should be paid on starting of present month within 10 days i.e. before 10th date if wage is paid on 1st in previous month)
3. For employees of port area, mines, wharf or jetty, wages of employees should be paid before the expiry of the 7th day after the last day of the wage period.

If the employee is terminated or removed for the employment by the employer the wage of that employee should be paid within 2 days from the day on which he was removed or terminated. Except the payment of wage of the terminated employee, all the wages of the employees should be paid by their employer on the working day only.

Wages to be paid in current coin or currency notes:

Sec 6 of the act states that, all wages shall be paid in current coin or currency notes or in both. However, the employer may, after obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

Deductions which may be made from wages:

At the time of payment of the wage to employees, employer should make deductions according to this act only. Employer should not make deductions as he like. Every amount paid by the employee to his employer is called as deductions.

The following are not called as the deduction

1. Stoppage of the increment of employee.
2. Stoppage of the promotion of the employee.
3. Stoppage of the incentive lack of performance by employee.
4. Demotion of the employee
5. Suspension of the employee

The above said actions taken by the employer should have good and sufficient cause.

Deduction made by the employer should be made in accordance with this act only. The following are said to be the deductions and which are acceptable according to Sec 7(2) of the Act, namely

1. Fines,
2. Deductions for absence from duty,
3. Deductions for damage to or loss of goods made by the employee due to his negligence,
4. Deductions for house-accommodation supplied by the employer or by government or any housing board,
5. Deductions for such amenities and services supplied by the employer as the State Government or any officer,
6. Deductions for recovery of advances connected with the excess payments or advance payments of wages,
7. Deductions for recovery of loans made from welfare labour fund,
8. Deductions for recovery of loans granted for house-building or other purposes,
9. Deductions of income-tax payable by the employed person,
10. Deductions by order of a court,
11. Deduction for payment of provident fund,
12. Deductions for payments to co-operative societies approved by the State Government,
13. Deductions for payments to a scheme of insurance maintained by the Indian Post Office
14. Deductions made if any payment of any premium on his life insurance policy to the Life Insurance Corporation with the acceptance of employee,
15. Deduction made if any contribution made as fund to trade union with the acceptance of employee,

16. Deductions, for payment of insurance premia on Fidelity Guarantee Bonds with the acceptance of employee,
17. Deductions for recovery of losses sustained by a railway administration on account of acceptance by the employee of fake currency,
18. Deductions for recovery of losses sustained by a railway administration on account of failure by the employee in collections of fares and charges,
19. Deduction made if any contribution to the Prime Minister's National Relief Fund with the acceptance of employee,
20. Deductions for contributions to any insurance scheme framed by the Central Government for the benefit of its employees with the acceptance of employee.

The total amount of deductions from wages of employees should not exceed 50%, but only in case of payments to co-operative societies, deduction from wages of employee can be made up to 75%.

In *Align Components Pvt. Ltd., and another Vs. Union of India and others* (WRIT PETITION STAMP NO.10569 OF 2020) it is contended that though the Managements are willing to offer work to the workers and though the workers would be willing to perform the work, restrictions have been imposed on the continuance of the manufacturing activities so as to restrict the spread of Covid-19 and as a consequence of which, the Managements have been mandated to reduce/shut down their manufacturing activities. In this backdrop, though these petitioners pray for exemption from paying monthly wages for the period of restriction of manufacturing activities, the learned Advocate for the petitioners submits on instructions that these petitioners are willing to pay 50% of the gross wages or the minimum rates of wages prescribed under the Minimum Wages Act, whichever is higher.

Court held that Apex Court is dealing with a similar cause of action, I would not be inclined to interfere with the impugned order and would expect the petitioners to pay the gross monthly wages to the employees, save and except conveyance allowance and food allowance, if being paid on month to month basis in the cases of those workers who are not required to report for duties."

"It is clarified that since the State of Maharashtra has partially lifted the lock down recently in certain industrial areas in the State of Maharashtra, the workers would be expected to report for duties as per the shift schedules subject to adequate protection, from Corona Virus infections, by the employer. In the event such workers voluntarily remain absent, the Management would be at liberty to deduct their wages for their absence subject to the procedure laid down in Law while initiating such action. This would apply even to areas where there may not have been a lock down."

Fines: Sec 8

Fine should be imposed by the employer on employee with the approval of the state government or prescribed authority. Employer should follow the rules mentioned below for and before imposing of fine on the employee.

1. Notice board of fines on employee should be displayed in the work premises and it should contain activities that should not be made by employee.
2. Fine should not be imposed on the employee until he gives the explanation and cause for the act or omission he made.
3. Total amount of fine should not exceed 3% of his wage.
4. Fine should not be imposed on any employee who is under the age of 15 years.
5. Fine should be imposed for one time only on the wage of the employee for the act or omission he made.
6. Fines should not be recovered in the way of installments from the employee.
7. Fine should be recovered within 60 days from the date on which fine were imposed.
8. Fine should be imposed on day act or omission made by the employee.
9. All fines collected from the employee should be credited to common fund and utilize for the benefit of the employees.

Deductions for absence from duty (Sec 9)

1. Deductions can be made by the employer for the absence of duty by the employee for one day or for any period.
2. The amount deducted for absence from the duty should not exceed a sum which bears the same relationship to the wage payable in respect of the wage- period as this period of absence does to such wage-period. (Example: if the salary of an employee is 6000/- per month and he was absent for duty for one month. Deduction from the salary for absence of duty should not exceed 6000/-)
3. Employee present for the work place and refuses to work without proper reason shall be deemed to be absent from duty.
4. If 10 or more persons together absent for the duty without any notice and without reasonable cause, employer can make 8 day of wages as deduction from their wage.

Deductions for damage or loss (Sec 10)

Employer should give an opportunity to the employee to explain the reason and cause for the damage or loss happened and deductions made by employer from the employee wage should not exceed the value or amount of damage or loss made by the employee.

All such deduction and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed.
Deductions for services rendered (Sec 11)

House-accommodation amenity or service provided by the employer should be accepted by the employee, than only the employer can make deduction from the wage of the employee. Deduction should not exceed an amount equivalent to the value of the house-accommodation amenity or service supplied.

Deductions for recovery of advances (Sec 12)

In case of advance paid to the employees by the employer before employment began, such advance should be recovered by the employer from the first payment of the wages /salary to the employee. But employer should not recover the advance given for the travelling expense for the employee.

Deductions for recovery of loans (Sec 12A)

Deductions for recovery of loans granted for house-building or other purposes shall be subject to any rules made by the State Government regulating the extent to which such loans may be granted and the rate of interest payable thereon.

Deductions for payments to co-operative societies and insurance schemes (Sec 13)

Deductions for payments to co-operative societies or deductions for payments to scheme of insurance maintained by the Indian Post Office or with employee acceptance deductions made for payment of any premium on his life insurance policy

to the Life Insurance Corporation shall be subject to such conditions as the State Government may impose.

Maintenance of registers and records (Sec 13A)

Every employer should maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

Every register and record required to be maintained and preserved for a period of three years after the date of the last entry made therein. It means for every transaction made within employer and employee should have 3 years of record.

Inspectors (Sec 14)

The state government may appoint an inspector for purpose of this act. Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860. The inspector of this act is having powers mentioned below

1. Inspector can make enquiry and examination whether the employers are properly obeying the rules mentioned under this act.
2. Inspector with such assistance, if any, as he thinks fit, enter, inspect and search any premises of any railway, factory or industrial or other establishment at any reasonable time for the purpose of carrying out the objects of this Act.
3. Inspector can supervise the payment of wages to persons employed upon any railway or in any factory or industrial or other establishment.
4. Seize or take copies of such registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by an employer.

Sec 14A provides that, every employer shall afford an Inspector all reasonable facilities for making any entry, inspection, supervision, examination or inquiry under this Act.

Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims (Sec 15)

To hear and decide all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid, including all matters, incidental to such claims, there will be a officer mentioned below appointed by the appropriate government.

- a) any Commissioner for Workmen's Compensation; or
- b) any officer of the Central Government exercising functions as
 - i. Regional Labour Commissioner; or
 - ii. Assistant Labour Commissioner with at least two years' experience; or
- c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or

d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or

e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:

Appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

If any employer does opposite to the provisions of this act, any unreasonable deduction has been made from the wages of an employed person, or any payment of wages has been delayed, in such case any lawyer or any Inspector under this Act or official of a registered trade union authorized to write an application to the authority appointed by government for direction of payment of wages according to this act. Every such application shall 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 of the wages was due to be made. Time of making an application can be accepted if there is reasonable cause.

After receiving of the application the authority shall give an opportunity to hear the applicant and the employer or other person responsible for the payment of wages and conducts the enquiry if necessary. It is found that there is mistake with employer; authority shall order the employer for payment of the wage or refund to the employee of the amount deducted unreasonably or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit. There will not be any compensation payable by employer if there is a reasonable and genuine cause in delay in the payment of wages.

Powers of authorities appointed under Section 15 (Sec 18)

Every authority appointed under sub-section (1) of Section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of Section 195 and of Chapter XXVI of the Code of Criminal Procedure, 1973.

Appeal (Sec 17)

In the following situation the parties who ever dissatisfied can appeal to the district court

1. If the application dismissed by above authorities
2. Employer imposed with compensation exceeding 300/- rupees by the authorities.
3. If the amount exceeding 25/- rupees withheld by the employer to single unpaid employee. 50/- in case of many unpaid employees

Reasons for penalty

1. Delay in payment of wages
2. Un reasonable deductions
3. Excess deduction for absence of duty
4. Excess deduction for damage or loss to employer
5. Excess deduction for house-accommodation amenity or service

Punishable with fine which shall not be less than 1000/- rupees but which may extend to 7500/- rupees

1. If Wage period exceed one month.
2. Failure in payments of wages on a working day.
3. Wages not paid in form of current coin or currency notes or in both.
4. Failure to maintain record for collected fines from employee.
5. Improper usage of fine collected from employees.
6. Failure of employee to display notice containing such abstracts of this Act and of the rules made.

Punishable with fine which may extend 3000/- rupees

1. Whoever obstructs an Inspector in the discharge of his duties under this Act
2. Whoever willfully refuses to produce on the demand of an Inspector any register or other document
3. Whoever refuses or willfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorized by or under this Act

Whoever repeats the same offence committed before. Imprisonment for a term which shall not be less than one month but which may extend to 6 months and fine which shall not be less than 3750/- rupees but which may extend 22500/-rupees.