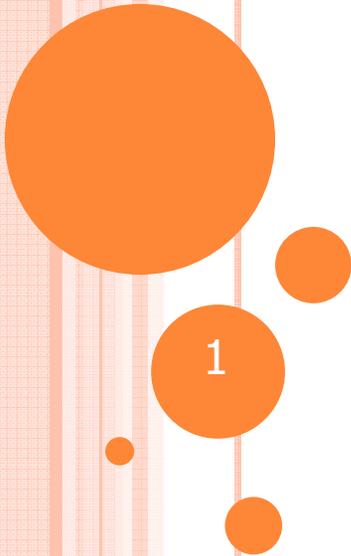


# Problems Faced by Micro, Small & Medium Enterprises



# CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

## Existing law:

- **S.7 of the Act**, makes it mandatory for an industry employing **20 or more workmen** on any day in the preceding 12 months and engaging contract workmen to obtain **Registration** under the Act from the concerned Authority.
- **S. 12 of the Act**, makes it mandatory for a contractor employing **20 or more workmen** on any day in the preceding 12 months to obtain **License** under the Act from the concerned Authority.

**Problem:** Industries / Contractors have to undergo for manual formalities for obtaining Registration Certificates / License under the Act from the concerned Authority and it requires lot of time for follow- up.

## Recommendations:

1. Procedure for applying for Registration / License for the first time and for their amendment / renewals from time to time be **made online**.
2. To give relief to the Industries / Contractors from the formalities of obtaining Registration Certificates / License, **the existing limit of employing 20 or more workmen be increased to 40 or more workmen**.

# CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

## Existing law:

**S.13 (3) of the Act**, provides that license granted under the Act, is valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

## Problem:

Labour Department normally issues license for 1 year. Therefore Contractors have to apply manually for the renewal of their license every year and it requires lot of time to follow-up with the authorities.

## Recommendation:

Validity of License may be fixed for **5 years**.

*Some States like Haryana is already giving License under the Act for a period of 5 years.*

# CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

## Existing law:

**S.10 of the Act**, Appropriate Government has powers to prohibit employment of Contract Labour in the jobs related to **perennial nature**.

## Problems:

1. Demand from customers is fluctuating from month to month. This fluctuation is more in case of Export oriented units.
2. In order to meet the requirement of fluctuating demands, industries are engaging temporary labour but gives them break in employment after every 3-4 months to avoid their claim for permanency in employment (on completion of continuous working for 240 days).
3. As a result of the above industries have to engage extra workforce to meet its requirements during the break period of the workmen.

## Recommendation:

Industries be permitted to engage **at least 30% of their total work force as contract labour in the jobs related to perennial nature**.

# EMPLOYEES' STATE INSURANCE ACT, 1948 (ESI ACT, 1948)

## **Existing law:**

**Rule 50 of the ESI (Central) Rules, 1950** provides Rs. 15000/- as the wage ceiling limit for the coverage of an employee under the Act (prior to 01.04.2010 wage ceiling limit was Rs. 10,000/-) .

## **Problem:**

Many employees, who's wages increase and crosses the ceiling limit of Rs. 15,000/- are deprived of the ESI facility despite the fact that they were earlier covered under the Act.

## **Recommendation:**

As in the case of Employees' Provident Fund, once an employee is covered under the Act, he continues to be covered under the Act, irrespective of the wage ceiling limit. Similarly, once an employee is covered under the ESI Act, the benefit of ESI may be given to him even if he crosses the ceiling limit and his contribution may be deducted at Rs. 15,000/-.

# EMPLOYEES' STATE INSURANCE ACT, 1948 (ESI ACT, 1948)

## Existing Law:

**S.46 of the Act** provides certain Medical benefits to insured person.

## Problems:

1. Lack of facilities in ESI Dispensaries and Hospitals.
2. In case of critical illness, there is lengthy process of getting the patient referred to Private Hospitals on the ESI penal.
3. Delay in payments to Private Hospitals by ESI, which results in their reluctance for giving treatment to patient.

## Recommendations:

1. The ESI Dispensaries and Hospitals be made well equipped.
2. In case of lack of facility to deal with illness, patient be referred to private hospitals on the penal of ESI irrespective of the nature of illness.
3. Power of referring the patient to Private Hospital be given to the CMO of the concerned Local Area. This will help in getting speedy treatment.
4. Timely payments be made by ESI to private hospitals to ensure prompt treatment by them.

# EMPLOYEES' PROVIDENT FUND & MISC. PROVISIONS ACT, 1952 (EPF ACT, 1952)

## Existing law:

**Paragraph 26 of the Employees provident Fund Scheme, 1952** makes it mandatory for an industry to cover every employee engaged by it from the date of his joining.

## Problem:

Many a times industries have to engage temporary/ casual workers for very short duration (10 to 15 days) for doing some construction work, repair works, etc. These workers are usually reluctant in getting deduction done for payment of their EPF contribution.

## Recommendation:

Contribution of EPF in respect of an employee should be made to be deducted, who works for at least 30 days in an industry and after the completion of 30 days working.

# FACTORIES ACT, 1948

## **Existing law:**

State Factories Rules usually provides for renewal of Factory License by the Inspector for 5 calendar years at a time.

## **Problems:**

1. The procedure for applying for renewal of Factory License is manual and requires lot of paper work, which is time consuming.
2. Factory License is normally issued for a period of 1 year. Therefore the industries have to undergo the same process for renewal of license every year.

## **Recommendations:**

1. Procedure for applying for factory License and Renewal thereof be made on Line.
2. Validity of Factory License issued at a time be made mandatory for 5 years.

*Some states like Delhi & Haryana already has provision for online submission of the application for renewal of the license for 1 year or 5 years and is granting license for 5 years if the application is made for 5 years.*

# FACTORIES ACT, 1948

## Existing law:

**S. 64 of the Act,** Provides that total number of hours of overtime shall not exceed 50 for a quarter.

## Problems:

1. Demands from customers are fluctuating, especially in the case of export oriented units.
2. In order to meet the demands of customers, sometimes the workers are required to work overtime. But due to maximum limit fixed under the Act, Industry have to engage extra workforce, who do not have experience and this results in higher rejections and lower productivity.

## Recommendation:

Total number of overtime hours be increased from 50 to 100 for a quarter.

# INDUSTRIAL DISPUTES ACT, 1947

## **Existing law:**

Under Section 11 & 12 of the Act, the conciliation officer has been given power to hold conciliation proceedings in respect of an Industrial Dispute. He has the power to investigate the industrial dispute and induce the parties to come to a fair and amicable settlement.

## **Problems:**

1. In case of failure of conciliation proceedings, the conciliation officer has no power to recommend to the State Government for not referring the matter for Adjudication to Labour Court or Industrial Tribunal even if it is a fit case for not referring the industrial dispute.
2. The State Government, also, as a routine, refers all the industrial disputes for adjudication to Labour Court or Industrial Tribunal.

## **Recommendations:**

1. Conciliation Officer be given powers to make recommendation in his report regarding fitness of the industrial dispute for making reference.
2. State Government shall be given power to overrule the recommendation of the Conciliation Officer if not found suitable.

# INDUSTRIAL DISPUTES ACT, 1947

## Existing law:

No time limit has been prescribed under the Act for initiating Conciliation Proceedings in respect of an Industrial Dispute.

## Problem:

Industrial Disputes which are even 5 to 7 years old are entertained by the Conciliation Officer.

*(even in Civil Law there is limitation with regard to filling of the case)*

## Recommendation:

Provision should be introduced under the Act that Industrial Disputes **beyond 1 year** shall not be entertained by the Conciliation Officer.

# INDUSTRIAL DISPUTES ACT, 1947

## Existing law:

- S. 25-M(1) of the Act requires, industries employing more than 100 workmen on an average per day to seek prior permission of the State Government for lay off of a workman.
- S. 25-N (1) of the Act requires, industries employing more than 100 workmen on an average per day to seek prior permission of the State Government for retrenchment of a workman.
- S. 25-O (1) of the Act requires, industries employing more than 100 workmen on an average per day to seek prior permission of the State Government for retrenchment of a workman.

## Problems:

1. Permission for lay off / retrenchment/closure is not usually granted.
2. It gives rise to industrial unrest.

## Recommendation:

The above provisions should be amended and the requirement for seeking prior permission of the State Government for Lay-off / Retrenchment / Closure should be made in case of industries employing more than 300 workmen instead of existing 100.

# TRADE UNIONS ACT, 1926

## **Existing law:**

S. 4 of the Act provides that 10% or 100 workmen (whichever is less) subject to minimum 7 workmen may apply for registration of Trade Union.

## **Problems:**

1. It gives rise to multiple Trade Unions in an industry.
2. There remains clash between multiple Trade Unions as each Union tries to out shine the other.

## **Recommendations:**

1. Registration of only one Trade Union in an industry shall be permitted.
2. Where the members in a Trade Union is less than 100, requirement of at least 30% of the total workforce be made mandatory for the Registration of a Trade Union.

# MINIMUM WAGES ACT, 1948 & EMPLOYEES PROVIDENT FUND & MISC. PROVISIONS ACT, 1952

## Existing law

Minimum Wages Act, 1948	Employees Provident Fund & Misc. Provisions Act, 1952
<ul style="list-style-type: none"><li>• <b>S. 2 (h)</b> of the Minimum Wages Act, 1948 defines wages.</li><li>• The Act permits to split the wages into allowances.</li><li>• Appropriate Government notifies minimum wages under the Act from time to time.</li><li>• The Act do not define Basic Wages.</li></ul>	<ul style="list-style-type: none"><li>• <b>S. 2(b)</b> of the Act defines Basic Wages</li><li>• <b>S. 6</b> of the Act, requires payment of contribution by the employee @ 12% of [Basic Wage + Dearness Allowance + Retaining Allowance (if any)]</li><li>• The Act do not define wages</li></ul>

# MINIMUM WAGES ACT, 1948 & EMPLOYEES PROVIDENT FUND & MISC. PROVISIONS ACT, 1952

## Problems:

1. In order to pay less contribution to EPF, wages of workers are split into Basic Wages + Dearness Allowance + Other Allowances such as Conveyance Allowance, Washing Allowance, etc.
2. EPF contribution is paid only on Basic Wages + Dearness Allowance, which is sometimes less than the minimum wages notified by the Appropriate Government under the Act.

*As was in the case of APFC Gurgaon vs. M/s. G4S Security Services (I) Ltd., 2011 LLR 316. It was due to the above problem, the Punjab & Haryana High Court has held that EPF contribution paid on basic wages which was less than minimum wages has been rightly paid.*

## Recommendations:

1. In Minimum Wages Act, definition of Basic Wages and Dearness Allowance be introduced.
2. In Employees Provident Fund & Misc. Provisions Act, 1952, a provision shall be introduced to the effect that for the calculation of EPF Contribution, the rate of Basic Wages / Dearness Allowance shall not be less than the rate of Basic Wages/ Dearness Allowance notified by the Appropriate Government under Minimum Wages Act.

***THANK U VERY MUCH  
FOR YOUR ATTENTION !!!!***

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