

## **EMPLOYMENT UNDER INDIAN LABOUR LAWS**

Employment laws in India provides for administrative, judicial, and federal decisions for creating cordial relations between employers and employees. The laws define responsibilities for establishments based on different criteria such as work environment to employees/workers, their remuneration, working hours, the scale or type of industry and establishment. Please find below a brief note on Indian labour laws applicable to white collar employees in the state of Maharashtra: -

### **A. Maharashtra Shops and Establishment Act, 2017 (MSEA)**

The Shop and Establishment Act is applicable to all the commercial establishments and offices. The intention of this legislation is to protect the rights of employees by defining uniform benefits irrespective of the industry and type of establishment he / she is being employed.

<b>Sr. No.</b>	<b>Particulars</b>	<b>Description</b>
1.	Applicability  (Rule 3 of Maharashtra Shops and Establishments Rules, 2018)	MSEA is applicable for all establishments in the state of Maharashtra that employ more than 10 employees.
2.	License  (Section 6 of MSEA)	MSEA License is required to be obtained by all establishments that employ more than 10 employees. This license is required to be obtained within 60 days of the commencement of business.
3.	Casual Leaves  (Section 18 (2) of MSEA)	Every employee/worker shall be entitled to eight (8) days casual leave with wages in every calendar year which shall be credited into the account of the employee/worker on a quarterly basis but shall laps if unavailed at the end of the year.
4.	National Holidays  (Section 18 (7) of MSEA)	A worker shall be entitled to eight paid festival holidays in a calendar year, namely, 26th January, 1st May, 15th August and 2nd October and four such other festival holidays as may be agreed to between the employer and the employees/workers as per the nature of business, before the commencement of the year.
5.	Paid leaves  (Section 18 (3) of MSEA)	Every employee/ worker who has worked for a period of 240 days or more in an establishment during a calendar year shall be allowed during the

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		subsequent calendar year, leave with wages for a number of days calculated at the rate of one (1) day for every twenty (20) days of work performed by him during the previous calendar year and every employee/ worker shall be permitted to accumulate earned leave upto a maximum of forty-five (45) days.
6.	Working hours  (Section 12 & 13 (2) of MSEA)	(i) No adult employee/ worker shall be required or allowed to work in any establishment for more than nine (9) hours in any day and forty-eight (48) hours in any week; (ii) No woman employee/ worker shall be required or allowed to work in any establishment except between the hours of 7 a.m. and 9-30 p.m.
7.	Weekly Off day  (Section 16(1)(b) of MSEA)	Establishments can remain open throughout the week without the requirement to be closed for one full day so long as every worker is allowed a weekly holiday of at least 24 hours.
8.	Opening and Closing hours  (Section 11 of MSEA)	The MSEA does not prescribe the opening or closing hours. It provides the State Government the flexibility to determine opening and closing hours for different classes of establishments, premises, shopping complexes or malls or for different areas and for different periods, etc.
9.	Overtime pay provision  (Section 15 of MSEA)	Where an employee/ worker in any establishment is required to work beyond nine (9) hours a day or forty-eight (48) hours a week, he shall be entitled, in respect of the overtime work, wages at the rate of twice his ordinary rate of wages. The total number of overtime hours shall not exceed one hundred and twenty-five (125) hours in a period of three (3) months
10.	Compensatory Off  (Section 16(1)(c) & proviso to 18(7) of MSEA)	<ul style="list-style-type: none"><li>- An employee who is required to work on a fixed holiday shall be provided a compensatory off (in addition to double the wages)</li><li>- If an employee is required to work on his/her regular weekly holiday he/she is entitled a compensatory off within 2 months of such weekly holiday besides twice the rate of ordinary wages.</li></ul>

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11.	Women working in night shifts  (Rule 13 of Maharashtra Shops and Establishments Rules, 2018)	Women workers are permitted to work between 9:30 pm and 7:00 am subject to the following conditions: (a) The consent of the woman worker has been procured (b) Adequate protection of dignity, honor and safety are provided by the employer The employer provides adequate protection from instances of sexual harassment at workplace. Transportation facility is provided to the women workers from the establishment to the doorstep of their residence.
12.	Leave encashment  (Section 18(5) of MSEA)	Employees are entitled to encash his/her leaves accrued but unused annual leaves upon termination subject to the maximum cap of 45 days leaves.
13.	Severance Pay  (Section 66 of Maharashtra Shops and Establishment Act, 1948)	(i) Employer shall dispense with the services of an employee who has been in his continuous employment for not less than a year by giving at least thirty days' notice in writing, or wages in lieu of such notice; (ii) If the employee has been in continuous employment for less than a year but more than three months, than at least fourteen days' notice in writing, or wages in lieu of such notice.  This notice shall not be necessary where the services of such employees are dispensed with for misconduct.  "misconduct" shall include-  (a) absence from service without notice in writing or without sufficient reasons for seven days or more;  (b) going on or abetting a strike in contravention of any law for the time being in force; and  (c) causing damage to the property of his employer.
14.	Crèche Facility  (Section 23 of MSEA)	In every establishment wherein fifty or more workers are employed, there shall be provided and maintained a suitable room or rooms as crèche for the use of children of such workers:

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		Provided that, if a group of establishments, so decide to provide a common crèche within a radius of one kilometer, then, the same shall be permitted by the Chief Facilitator, subject to such conditions as may be specified in the order.
15.	Annual Return  (Rule 27 of Maharashtra Shops and Establishments Rules, 2018)	Every employer shall online upload the Annual Return in Form 'R' on the website within two (2) months for the year ending on 31st December

## B. Maternity Benefit Act, 1961 (MBA)

MBA is a uniform law which is applicable throughout the republic of India. MBA regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit. Set out below are some of the important benefits and provisions under the law.

Sr. No.	Particulars	Description
1.	Applicability  (Section 2 of MBA)	MBA is applicable for all establishments in the state of Maharashtra that employ more than 10 employees or were employed, on any day of the preceding twelve (12) months.
2.	Employment of, or work by, women prohibited during certain periods  (Section 4 of MBA)	(i) No employer shall knowingly employ a woman in any establishment during the six (6) weeks immediately following the day of her delivery, miscarriage, or medical termination of pregnancy; (ii) No woman shall work in any establishment during the six weeks immediately following the day of her delivery, miscarriage, or medical termination of pregnancy;
3.	Right to payment of maternity benefits  (Section 5(1) of MBA)	Every woman shall be entitled to average daily wage for her actual absence immediately preceding six (6) weeks up to and including the day of her delivery and for the six (6) weeks immediately following that day
4.	Maximum Period  (Section 5(3) of MBA)	The maximum period for which any woman shall be entitled to maternity benefit shall be twelve (12) weeks of which not more than six (6) weeks shall precede the date of her expected delivery

## C. Payment of Gratuity Act, 1972 (PGA)

Sr. No.	Particulars	Description
1.	Applicability (Section 1 (3) of PGA)	PGA is applicable to every establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten (10) or more persons are employed, or were employed, on any day of the preceding twelve (12) months.
2.	Meaning of Gratuity (Section 2 of PGA)	Gratuity is one of the retirement benefits offered by an employer to its employee. It is lumpsum amount an employer pays when an employee leaves an organization.
3.	Eligibility for gratuity (Section 6(1) of PGA)	To be eligible for gratuity under the Gratuity Act, an employee needs to have at least five (5) full years of service with the current employer, except in the event that an employee passes away or is rendered disabled due to accident or disease, in which case gratuity must be paid.
4.	Incidence of payment of gratuity (Section 7 of PGA)	Gratuity is paid when an employee is eligible for superannuation, retires, resigns, on his death (to be paid to his nominee) or is rendered disabled due to accident or disease.
5.	Calculation of gratuity payment (Section 6(2) of PGA)	For every completed year of service or part thereof in excess of six (6) months, the employer shall pay gratuity to an employee at the rate of fifteen (15) days' wages based on the rate of wages last drawn by the employee concerned.

## D. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPFA)

This Act applies to establishment employing twenty (20) or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf.<sup>1</sup>

Employees Provident Fund (EPF) is the main scheme under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. This scheme is managed under the guidance of Employees' Provident Fund Organization (EPFO).

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<sup>1</sup> Section 1 (3) (b) of EPFA

Under EPF scheme, an employee must pay a certain contribution towards the scheme and an equal contribution is paid by the employer. The employee gets a lump sum amount including self and employer's contribution with interest on both, on retirement. The contribution paid by the employer is twelve (12) per cent of basic wages plus dearness allowance plus retaining allowance and equal contribution is payable by the employee too.

## **E. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ('POSH Act')**

This Act requires setting up of Internal Complaints Committee at every office of the organisation or institution, having more than 10 employees, to hear and redress complaints pertaining to sexual harassment. In case, the number of employees is less than 10, the Act provide for setting up of Local Committee in every district by the District Officer. The committee while inquiring into such complaint shall have the same power as vested in a civil court. Companies are required to disclose and confirm their compliance with POSH Act. Companies are required a statement disclosing their compliance with the provisions relating to construction of an internal complaints committee under the POSH Act in the report of the Board of Directors.

The Internal Committee or the Local Committee shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer. The District Officer shall forward a brief report on the annual reports received under sub-section to the State Government. The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.<sup>2</sup>

The POSH Act lays down certain duties of the employer and District Officer such as creating awareness on sexual harassment at workplace, sensitize the employees, assist the complaints committee in conducting the inquiry, act upon recommendations of the committee, monitor timely submissions of reports of the committee etc.

The non-compliance of the provisions of the POSH Act by the employer may result in fine which may extend to fifty thousand rupees (INR 50,000) and can also lead to cancellation of the license or withdrawal, or non-renewal, or approval, or cancellation of the registration.

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Solomon & Co.***

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<sup>2</sup> Section 21 & 22 of the POSH Act.

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