

## **Key changes under the Maharashtra Shops & Establishments (Regulation of Employment and Conditions of Service) Act of 2017**

By Notification dated 7<sup>th</sup> September 2017 issued by the State of Maharashtra in its Official Gazette, the Maharashtra Shops & Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (**'2017 Act'**) has been notified, and the erstwhile Maharashtra Shops and Establishments Act, 1948 (**'1948 Act'**) has been repealed.

Inspired by the Central Government's Model Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2016 (**'Model Act'**), the 2017 Act brings home certain long-due changes to the regulations governing shops and establishments in the State of Maharashtra.

### **Applicability**

Whereas the applicability of the 1948 Act was not contingent on the number of employees employed by an establishment, the 2017 Act does not apply to establishments employing less than 10 employees. Even so, establishments employing less than 10 employees are nonetheless required to intimate the Facilitator or the Chief Facilitator (both of which are required to be appointed under Section 28 of the 2017 Act to exercise jurisdiction in specific areas and advise the employers apart from discharging functions of inspectors under the 1948 Act) of commencement of business within 60 days (double of the erstwhile 30-days period) thereof by way of an online application in terms of Section 7 of the 2017 Act.

### ***"Establishment" and "Employer"***

In a significant simplification of the definition of "establishments" for the purposes of applicability of the 2017 Act, the distinct treatment afforded to a "commercial establishment" under the 1948 Act has been forgone and substituted by a singular, wide and common definition of "establishment".

Exemptions from the application of provisions of the 2017 Act have also been specifically restricted to 13 categories of establishments and individuals, enumerated under Section 3 of the 2017 Act, and include government establishments, High Court and other Court law libraries and intermittent workers, among others.

The 2017 Act has also broadened the definition of "employer" to expressly include partners of firms, directors of companies and persons appointed by the Government to manage affairs of a Government establishment in case of corresponding categories of industries.

### **Opening and closing hours**

Capitalizing on the Model Act's provision allowing States to opt to permit shops and establishments to operate throughout the day on all seven days of the week, Maharashtra is

the first State to remove restrictions on opening and closing hours of establishments under Section 11 of the 2017 Act, subject as of date, merely to the exceptions of permit rooms, beer bars, dance bars, hookah parlors, discotheques, shops selling or establishments serving wine or any other kind of liquor, theatres and cinema exhibition houses, opening and closing hours whereof have been separately notified by the Industries, Energy and Labour Department's Notification dated 19<sup>th</sup> December 2017.

## **Adult and women workers**

Simultaneously, however, protection to adult and women workers of shops and establishments has been ensured under Sections 12 and 13 of the 2017 Act. While Section 12 disallows the former from being required or allowed to work for more than 9 (nine) hours per day or 48 (forty-eight) hours per week or for more than 5 (five) continuous hours without at least a half-hourly break (against the erstwhile hour-long break), Section 13 prohibits discrimination against women workers and disallows them from being required or allowed to work either before 7:00 a.m. or after 9:30 p.m. on any working day. As such, even generally, any worker of an establishment cannot be allowed or required to work for more than 10.5 (ten and a half) hours per day (reduced from the erstwhile 11 (eleven) hours per day) or 12 (twelve) hours per day in case of intermittent or urgent nature of work.

## **Leaves**

The 2017 Act (under Section 18) has also hiked the number of paid casual leaves to be allowed to every worker of an establishment to a total of 8 (eight) days per calendar year, albeit the unredeemed leaves from 1 (one) calendar year may not be credited to the subsequent year. As for the workers who have worked at the establishment for any more than 240 (two hundred and forty) days in a given calendar year, such workers are entitled to a paid leave each for every 20 (twenty) days of work done in the previous calendar year. At the same time, workers having worked for 3 (three) or more months in a given calendar year, must be allowed not more than 5 (five) leaves for every 60 (sixty) days of work done in the year.

As regards accumulation of such earned leaves by a worker, the same has been allowed (under Sub-Section (5) of Section 18) for up to a maximum of 45 (forty-five) days, over the erstwhile 42 (forty-two) days, and a worker disallowed by the employer from availing of accumulated leaves beyond 45 (forty-five) days will be entitled to encashment of such number of leaves.

Additionally, under Sub-Section (7) of Section 18 of the 2017 Act, every worker is entitled to 8 (eight) paid festival holidays, 4 (four) of which are prescribed to be – 26<sup>th</sup> January, 1<sup>st</sup> May, 15<sup>th</sup> August and 2<sup>nd</sup> October of every year, and the remaining 4 (four) of which are required to be mutually agreed between the employer and the employee in advance of the commencement of the year. It is further provided that where a worker is required by the employer to work on any 1 (one) or more of such of the 8 (eight) compulsory holidays, not only would the worker be entitled to an extra paid leave in lieu of the compulsory holiday, but also double the average pay for work done on the compulsory holiday.

## **Overtime compensation**

Contrary to the multiple categories prescribed for calculation of overtime work hours and wages payable therefor, Section 15 of the 2017 Act has simplified the same in requiring any worker working beyond 9 (nine) hours a day or 48 (forty-eight) hours a week to be eligible for double the ordinary rate of payment, while capping the maximum overtime work hours at 125 (one hundred and twenty-five) hours for every 3 (three) months.

## **Welfare measures**

On the front of welfare measures, Sections 20-24 of the 2017 Act require employers to ensure provision of first-aid facilities, wholesome drinking water supply, latrine and urinal facilities, a creche facility (for establishments employing 50 (fifty) or more workers) and a canteen (for establishments employing 100 (one hundred) or more workers).

## **Penalty**

Contravention penalty under Section 29 of the 2017 Act has been significantly increased to a minimum of INR 1,00,000 (Indian National Rupees One Lakh) over the erstwhile minimum amount of INR 1,000 (Indian National Rupees One Thousand) and further provisions to ensure compliance and tracking have been included in the form of a Labour Identification Number (LIN) to be issued by the Facilitator to the employer upon registration, and the provisions of an option to employers to maintain electronic records.

## **CONCLUSION**

Evidently, the revamping of the provisions is not only in keeping with the time and age, but also in line with the Central and State Governments' vision of promoting trade and commerce in the country while simultaneously balancing its social welfare obligations to the workers and other stakeholders.

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