
Weekly Newsletter from HR Vidyalaya Corporate Services LLP

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DISCLAIMER

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New finds this week

- by Team HR Vidyalaya

Labour Codes and Dismay among the Industry

The expected implementation of Labour Codes has again hit the rock. Where it was announced that it will be implemented in April 2021 and even after 6 months there is no sign of notification of the Rules..... Still Governments of Kerala, Tamilnadu, Andhra Pradesh, West Bengal and few other smaller States have not notified the DRAFT RULES, in line with Central Government and other State Governments.

It is more than 2 years the Code on Wages was passed in the Parliament and yet to be implemented.

Reforms in the Labour is much needed and crucial to Industrial growth in India. Many Establishments are already floating the existing Rules and they have their own Policies against the mandatory provisions of the Legislations, causing considerable challenges to the Workforce, in the name of Industry Practice.

Further, the market is having a mix of Indian entities, direct Multinational entities and Join Venture organizations of India & Foreign countries. As it is, Larger Indian entities and MNC's are enjoying many privileges and pretend to be untouchable by the Authorities, for various reasons. If reforms are also delayed, then it will create clear divide between (a) Entities which are sensitive to legal conformations (b) Entities which are non-sensitive and ready to 'manage' any situation and (c) those Entities who do not have stand on either side.

Then, one must rely on the Judgments by Hon'ble Court which makes the Organizations to conform with the applicable provisions, like Hon'ble Apex Court Judgment on PF Allowances, in 2019.

Unfair Termination.... Do not Terminate anyone from Job on the following, which is usually called as Protected Characteristics:

1. Gender
2. Age
3. Disability
4. Marital Status
5. Pregnancy and Maternity
6. Race
7. Religion and Belief
8. Sexual Orientation

How a Probationer can be terminated? Hon'ble Supreme Court's observation

There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job than the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order Would be sought to be challenged on the ground of being arbitrary. Therefore, normally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge, the employer states that the services were. not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services

Abandonment by a Workmen

Any habitual absence without leave or absence without leave for more than 10 days (8 days in few States) is considered to be Abandonment by a Workman.

The workman not reporting for duty within 10/8 calendar days as mentioned above, shall be deemed to have automatically abandoned the services and lost his lien on his appointment.

But in one case the Hon'ble Apex court has observed that such automatic termination is bad in law..... the employee shall be heard before being terminated. But in yet another case it has held that holding of enquiry in all cases of abandonment will not be imperative.

**Few Companies have a Policy not to engage Blood Relations of current employees
Who are called Blood Relatives?**

Father	Mother	Spouse
Brother	Sister	Son
Daughter	Brother's wife	Sister's husband
Son's wife	Daughter's husband	

After joining the establishment, if in case an employee marries another employee, this policy may not work

Standing Order applicability

A Factory which is covered by Industrial Establishment Standing Orders Act and has got Standing Orders Certification from the Appropriate Authority. The Corporate/Head office of the Factory is situated separately and is covered by the Shops Act. The Certified Standing Orders of the Factory won't apply to the employees of the Corporate/Head office, as held in the case of Common Wealth Trust India Limited vs Labour Commissioner (2009 (1) LLN 693 Kerala).

- ✘ You all know that as per “Section 25F of Provisions of Industrial Disputes Act, 1947 – The mandatory conditions of Retrenchment – no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until he has been paid at the time of the retrenchment, (i) One months notice or wages in lieu of period of notice and (ii) compensation which shall be equivalent to 15 days’ average pay for every completed years of service or any part thereof in excess of six months
- ✘ What you also must know is “Under section 10(10B) of Income Tax Act, 1961, the retrenchment compensation given to a workman (as defined in the ID Act) is exempt to the extent of the least of the following (anything more is taxable):

- HR-V **Amount calculated u/s 25 of ID Act**
- HR-V **Amount actually received as compensation**
- HR-V **Rs.5,00,000**

**RETRENCHMENT
COMPENSATION and TDS**

Where a Gap (in Performance) is identified, it is suggested to analyse the Root Cause, than immediately Determining to Train or Enhance with skill programs. Why?

<u>Identified Reason</u>	<u>Action to be taken</u>
It may be a mismatch in Talent & Job	Move to the right job /department best suitable for the employee
Provision of poor infrastructure or support provided to execute the job	An appropriate infra/tool (or) support team, is to be made available
No clarity in accountability to the job - Roles and Responsibilities	Clear distribution of roles and its responsibilities to be earmarked
Processes / SLA / TAT are vague	Develop metrics & get them trained

Hence, an analysis and apt changes may be helpful. Other options include,

- (1) On-the-Job training
- (2) Mentoring through Job-shadowing
- (3) Role swapping
- (4) Self study modules are made available to enhance the skills



A Tag Line (from Mahakavi Bharathi) which made us successful in bringing up this Organization

பல வேடிக்கை மனிதரைப் போல

"நான் வீழ்வேன் என்று நினைத்தாயோ?"

Did you think that I would fall like a preposterous individual?