

HRV POST

Weekly Newsletter

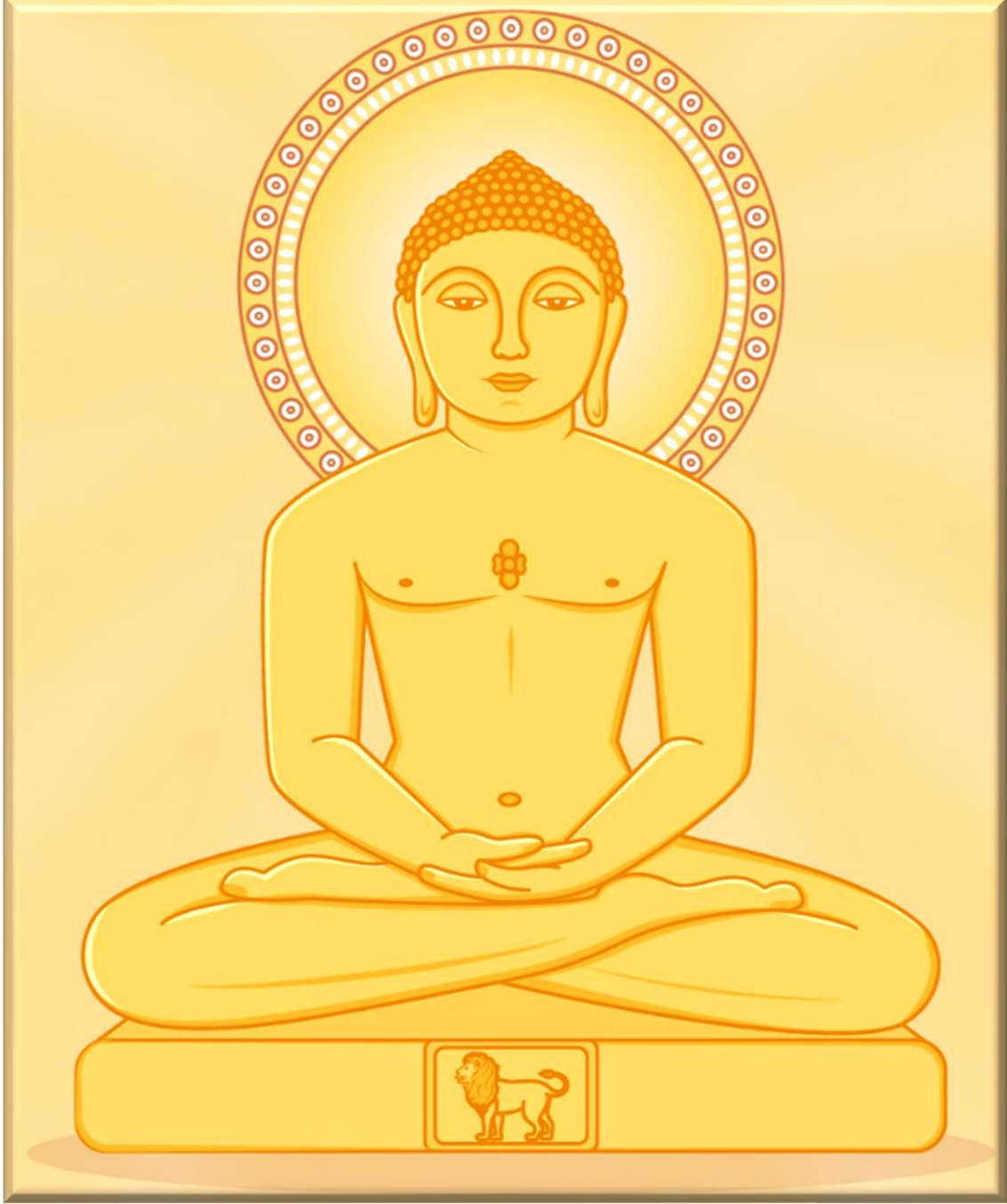
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Readership @ LinkedIn
crossed 1200 last week....
Thanks for your
Patronage

HR Vidyalaya

HIRE TO RETIRE SOLUTIONS
HR VIDYALAYA CORPORATE SERVICES LLP

எச் ஆர் வித்யாலயா
கார்ப்பரேட் சர்வீசஸ்
எல் எல் பி



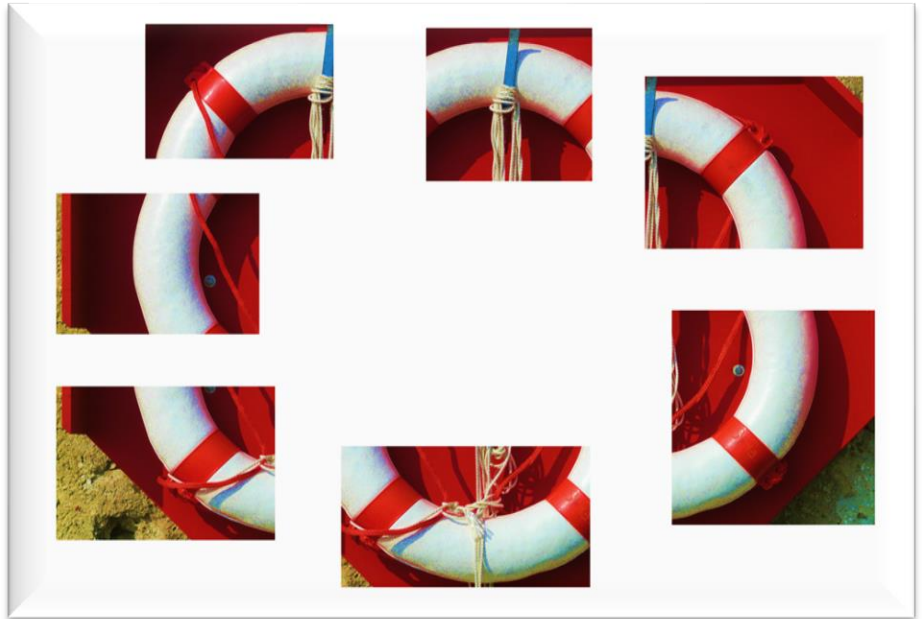
Pic courtesy: Bank of Baroda

May this Auspicious Day of Mahavir Jayanti bring
Industrial Peace, Harmony, and Happiness to
All.

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Sometimes (especially during **Adversity** in the Business), the **Distribution** is a Futile Exercise....
Just think... this is Salary Increment period...



An Analogy

One at a time will save all.....(at first, choose the one who is important to your Business...)

This may be OK in Corporate dealing.... But, in real-life scenario, you may have to choose/save the one who is more vulnerable to stay in water...at first)

Direction by
Hon'ble, Justice Hima Kohli and Hon'ble Justice Ahsanuddin Amanullah
on 09th April, 2024....
In Aureliano Fernandes vs. The State of Goa & Ors... Hon'ble Apex Court

1. Despite specific directions issued by this Court in para 77 of the judgment dated 12th May, 2023, passed in Civil Appeal No.2482 of 2014, affidavits are still awaited from the Union of India, most of the State Governments / Union Territories as also from the other agencies. We may note that it is now almost a year since the said directions were issued by this Court for strict compliances.
2. Having regard to the import of this matter, it is deemed appropriate to appoint Ms. Padma Priya, learned counsel as Amicus Curiae to assist the Court.
3. The Registry shall communicate this order to the learned Amicus Curiae and furnish all the affidavits filed so far by the State Governments/Union Territories and Union of India along with a copy of the judgment dated 12th May, 2023 passed by this Court in Civil Appeal No.2482 of 2014 to enable her to collate the affidavits, file a status report and assist the Court on the next date of hearing.
4. In the meantime, directions are issued to the Chief Secretaries of all the State Governments/Union Territories and the Secretaries of the concerned ministries of the Union of India who have not filed any affidavit so far, to complete the exercise as directed by this Court and file appropriate affidavits within four weeks.
5. List on 09th July, 2024, at the top of the Board

Get Ready Employers.....

What was the directions on 12th May 2023 by the Hon'ble Court? Among others in Para 77 of the Judgment,

O. DIRECTIONS..... 77. To fulfil the promise that the PoSH Act holds out to working women all over the country, it is deemed appropriate to issue the following directions :

(ii) It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned Authority/Functionary/Organisation/Institution/Body, as the case may be. The information furnished shall also be updated from time to time.

(iii) A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level **(including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals)**, by **Universities, colleges**, Training Centres and **educational institutions** and by government and private hospitals/nursing homes.

(iv) Immediate and effective steps shall be taken by the authorities/ **managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.**

(v) The authorities/**management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.**

Pari Materia.... (of the same matter; on the same subject)

Definition: it means when two provisions of two different statutes deal with the same subject matter and form part of the same subject matter.

This doctrine gives all regulations concerning labour, administrative authorities, or taxation, inter alia, others can be used to analyse the regulations attached to the same genre.

1. Where a term is used without definition in one Act, but is defined in another Act which is in Pari Materia with the First Act, the definition may be treated as applicable to the use of the term in the First Act. This may be done even where the definition is contained in a later Act.
2. Pari Materia will be used only when the subject matter of the statutes is similar. The principal underlying the treatment of the Acts which are in Pari Materia is based on the idea that there is continuity of legislative approach in such Acts, and common terminology.

For example, there are some contract workers working in a factory. The Principal Employer (factory) says that there is no direct relationship of employer and employee between the contract workers and the Principal Employer (factory). In such a situation, we can refer to the definition of “worker” as defined under Section 2 (1) of Factories Act, 1948 which reads as follows:

“Worker” means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process

The above definition of “worker” even includes a contract worker who is a worker for the purpose and also under Factories Act, 1948. If the factory could be an establishment, can we say that the workers in such factory cannot be covered under Payment of Gratuity Act, 1972? While defining the term employee worker, resource could be taken to other statute like Employees Provident Fund and Misc. Provisions Act, 1952 [Section 2 (f)]. Both the enactments include contract workers within the purview of “employee”. This being so, it cannot be said that contract workers are not eligible to get gratuity. The fact being that if the contract labourers are eligible to be covered under Provident Funds and Misc. Provisions Act, 1952, as to how such contract labourers could not be covered under Payment of Gratuity Act, 1972... (courtesy: Mr.Ajaya Kumar Samantaray, Ex-CLC(Central))

Non application: In the case of Employees State Insurance Corp v S.M Sriramulu Naidu it was said that the doctrine of pari materia has not been used to say that the Factory and Employees State Insurance Acts are, in pari materia, they were passed in the same year and both of them profit from the wagers. The Court stated that the Factory Act was necessarily covered by the control of the factory and worker safety, people who are employed in manufacturing or any work subsidiary to that. As a result, they couldn't be of the same kind.

**Do You use “Boiler Plate Language”
in the Contractual Agreement (Offer / Appointment letter)
for all types of Persons engaged in your Organization?**

It is dangerous.... Use specific Language for Specific persons....

Meaning of Boiler Plate Language: Boilerplate language is standardized text that can be used repeatedly in similar documents without major changes.... This may be useful in ensuring the efficiency and standardization of any contract between employer and the person engaged in. But it needs to be Personalised in case of different types of persons engaged in different categories of employment.

For eg. You are not required to use the same, voluminous agreement clauses when you are engaging a entry-level person.

Notwithstanding, you can't either use a simple agreement with less clauses for Senior level resource or any person who is going to occupy sensitive positions in your organization.

Advantages:

1. It can save time and money (not to waste resources to draft afresh everytime)
2. Boilerplate can help in preventing errors in the contracts (as it was already vetted)
3. Standardized formats provide consistency

Examples

1. Personal Loan / Credit Card applications
2. Housing Loans
3. Legal contracts

Biggest Disadvantages are:

- It is not tailormade to individuals (entry level employee, Supervisor/TL, Middle Manager, Senior Management Employees, Directors, etc.)
- Boilerplate language (contracts) usually favour the person executing the contract (Employer)

In US, many companies, use the above in different way:

1. All Employment agreements will be person specific and will have certain conditions with respect to the position the person is going to hold (For eg. NDA, Non-compete, Non-Solicit, Data Security, etc.)
2. The above is included in a Boilerplate Language template which shall not be altered, at any cost.

Indiscipline types

Misconduct, Inefficiency, Insubordination, Malfeasance, any other unacceptable employee conduct... Action as follows...

