

# HRV POST

## WEEKLY NEWSLETTER

Advance Wishes



Photo courtesy: Canva

On this occasion of Ganesh Chaturthi, We wish Lord Ganesha visits your place with bags full of happiness, prosperity, affection, and peace..

Wishing you Happiness as big as Lord Ganesha's appetite...  
Trouble as small as his mouse... Life as long as his trunk...  
Moments as sweet as his laddus.

Happy Ganesh Chaturthi!

**With recent Judgment by Hon'ble Delhi High Court –  
A JUDGEMENT VALIDATED THE LEGALITY OF THE LOCK-IN PERIOD AND OTHER  
NEGATIVE COVENANTS DURING EMPLOYMENT**

**Ensure the Contractual agreement drafting between the Employer and the Employee is error free....some tips...**

- 1. No complicated or hi-fi language be used in the contract. As far as possible use only simple and clear language which can be understood by anyone.**
- 2. Never down templates and copy from such templates....no cut-paste-copy..... Do Customize the contract clauses, as required for the job and as per your Organization's culture**
- 3. Terms and conditions.... Always discuss before drafting. Discuss, negotiate and agree before drafting any specific or exclusive caluse.**
- 4. Clearly define roles of each party.**
- 5. Any vague or unclear or undefined terms will be challenging to both parties, which may lead to a dispute.Even if something does not go wrong....**
- 6. Have a checklist with points which may lead to challenges. Sometimes, for one person it may be fitting, but for others it may not.**
- 7. If required keep or ignore if not required, clauses like – Confidentiality, Non-compete, Non-solicitation, Intellectual Property, Data Protection, etc.**
- 8. Be clear on the such prohibitive covenants, which may be valid only during the period of employment, which cant be restricted post employment.**
- 9. During agreement period, everything will be rosy and honey-moon period may not long last. Hence utmost care shall be taken while draft employment contract.**
- 10. Be informed that, an employment contract agreement can't always be same or similar to every person engaged in your establishment.**

## Documents required for Establishment registration in any State (Maximum documents)

### Company related

1. Company PAN
2. Employer TAN
3. Incorporation Certificate
4. MOM
5. AOA
6. List of Directors
7. Form 32
8. Establishment Name Board
9. Consent letter if the premises is owned by any Directors/Partners
10. Lease or rental agreement
11. Property Tax remitted details

### Employer related

1. Employer/Partner Photo
2. Employer Partner AADHAR
3. Manager's details

### Employment related

1. Nature of Business
2. Date of commencement
3. Employee current head count – Male / Female
4. Weekly-off details
5. Opening & Closing Hours
6. Child labour declaration
7. Branches if any
8. Statutory Fee



### Pay subsistence allowance to managerial staff

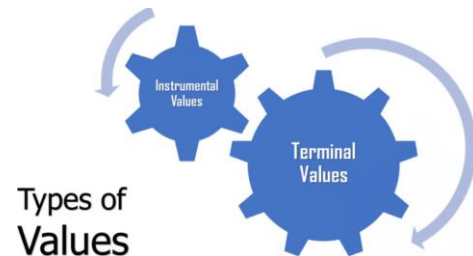
Is a managerial staff, who has been suspended from service, entitled to subsistence allowance? .....The First Bench of the Hon'ble Madras High Court ruled in affirmative when this question was raised. .... A suspended (later terminated) employee moved the Hon'ble High Court and an Hon'ble Single Judge in 2018 ordered payment of the allowance. Hence, the present appeal. ....Upholding the order, the bench, comprising Hon'ble Chief Justice AP Sahi and Hon'ble Justice Subramonium Prasad, said the contention that a Secretary or a Manager ceases to have the need of basics and continue to live at the bare minimum on being suspended cannot be accepted. The underlying principle for making payment of subsistence allowance is to allow an individual to sustain himself. In the present context of the suspension of an employee, one has to keep in mind that services of an employee have not been snapped and the employer-employee relationship during suspension, continues to subsist.

*Courtesy: New Indian Express, 11th February 2020*

## Types of Values

### Values play important role in our life under different type of Age/Situation and circumstances.

The values that are important to people tend to affect the Types of decisions they make, how they perceive their Environment, and their actual behaviors.



<b>Terminal Values</b>	<b>Instrumental Values</b>
<b>A comfortable life (a prosperous life)</b>	Ambitious (hardworking)
<b>An exciting life (a stimulating, active life)</b>	Broadminded (open-minded)
<b>A sense of accomplishment (lasting contribution)</b>	Capable (competent, efficient)
<b>A world of peace (free of war and conflict)</b>	Cheerful (light-hearted, joyful)
<b>A world of beauty (the beauty of nature and the arts)</b>	Clean (neat, tidy)
<b>Equality (brotherhood, equal opportunity for all)</b>	Courageous (standing up for your beliefs)
<b>Freedom (independence, free choice)</b>	Helpful (working for the welfare of others)
<b>Happiness (contentedness)</b>	Honest (sincere, truthful)
<b>Inner harmony (freedom from inner conflict)</b>	Imaginative (daring, creative)
<b>Mature love (sexual and spiritual intimacy)</b>	Independent (self-reliant, self-sufficient)
<b>Pleasure (an enjoyable, leisurely life)</b>	Logical (consistent, rational)
<b>Self-respect (self-esteem)</b>	Obedient (dutiful, respectful)
<b>Social recognition (respect, admiration)</b>	Polite (courteous, well-mannered)
<b>Wisdom (a mature understanding of life)</b>	Self-controlled (restrained, self-disciplined)

... Write-up courtesy by Mr.T.Muralidharan.... Seasoned Human Resources Professional.

## Penal Provisions under Code on OSH & WC

<u>Sl. No.</u>	<u>Provisions</u>	<u>Imprisonment / Fine</u>	<u>Section</u>
1	General penalty for Offences	Not less than Rs.2,00,000, but may extend upto Rs.3,00,000	94
2	Causing Obstruction to Chief Inspector / Inspector – cum-Facilitator	<ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>3 months</b> or</li> <li>2. A Fine which may extend upto <b>Rs.1,00,000</b> or</li> <li>3. Both</li> </ol> <p><u>For repeat conviction it is</u></p> <ol style="list-style-type: none"> <li>1. <b>Punishment for a term which may extend upto 6 months</b> or</li> <li>2. A Fine which may not be less than Rs.1,00,000 and may extend upto <b>Rs.2,00,000</b> or</li> <li>3. Both</li> </ol>	95
3	Non-Maintenance of Registers, Record and non-filing of Returns	<ul style="list-style-type: none"> <li>• Penalty which shall not be less than Rs.50,000 but which may extend to <b>Rs.1,00,000</b></li> <li>• For repeat conviction it is a Penalty which is not less than Rs.50,00 and may extend upto <b>Rs.2,00,000</b></li> </ul>	96
4	Contravention of any Provisions	<p>Penalty which shall not be less than Rs.50,000 but which may extend to <b>Rs.1,00,000</b></p> <p><u>For repeat conviction it is</u></p> <ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>3 months</b> or</li> <li>2. A Fine which may extend upto <b>Rs.2,00,000</b> or</li> <li>3. Both</li> </ol>	97
5	Falsification of Records	<ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto 3 months or</li> <li>2. A Fine which may extend upto Rs.1,00,000 or</li> <li>3. Both</li> </ol> <p><u>For repeat conviction it is</u></p> <ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>6 months</b> or</li> <li>2. A Fine which may not be less than Rs.1,00,000 and may extend upto <b>Rs.2,00,000</b> or</li> <li>3. Both</li> </ol>	98
6	Omission to furnish Plans	Penalty of not less than Rs.1 Lakh, which may extend upto Rs.2 Lakhs	99

7	Disclosure of information, contrary to provisions	<ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto 3 months or</li> <li>2. A Fine which may extend upto Rs.1,00,000 or</li> <li>3. Both</li> </ol>	100
8	Wrongfully disclosing results of analysis.	<ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>6 months</b> or</li> <li>2. A Fine which may not be less than Rs.50,000</li> <li>3. Both</li> </ol>	101
9	Contravention of Hazardous Process	<ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>2 years</b> or</li> <li>2. A Fine which may extend upto <b>Rs.5,00,000</b></li> </ol> <p><u>For repeat conviction it is</u></p> <ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>3 years</b> or</li> <li>2. A Fine which may extend upto <b>Rs.25,00,000</b> or</li> <li>3. Both</li> </ol>	102
10	Contravention of Safety provisions	<p><b>Death :</b></p> <ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>2 years</b> or</li> <li>2. A Fine which may extend upto <b>Rs.5,00,000</b></li> <li>3. Both</li> </ol> <p><b>Serious Bodily Injury :</b></p> <ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>1 year</b> or</li> <li>2. A Fine which may extend upto <b>Rs.2,00,000 ~ Rs.4,00,000</b></li> <li>3. Both</li> </ol> <p><u>For repeat conviction it is</u> <b>DOUBLE PUNISHMENT</b></p>	103
11	Contravention of Hazardous Special provisions	<ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>2 years</b> or</li> <li>2. A Fine which may extend upto <b>Rs.5,00,000</b></li> </ol>	104
12	Fails to appoint Manager to Factory	<ol style="list-style-type: none"> <li>1. Punishment for a term which may extend upto <b>3 months</b> or</li> <li>2. A Fine which may extend upto <b>Rs.1,00,000</b> or</li> <li>3. Both</li> </ol>	105

Where an employee is convicted of an offence punishable, the employer of the establishment shall not be deemed to be guilty of an offence in respect of that contravention unless it is proved that he failed to take all reasonable measures for its prevention.



**Laymen thoughts / queries..... (Labour Codes)**

1. With the Social Security code again stating that the eligibility for Payment of Gratuity is 5 years or more, whether the Judgments by various Hon'ble High Court's will apply (where it is stated that , a Continuous services of 4 years 240 days is also considered as eligibility for Payment of Gratuity)?
2. We as a Company have engaged few "Consultants" in various departments to support the Projects for a fixed term.....Also few "Consultants" in our Product Implementation and Research & Development, who would support the Core processes..... They will be engaged till the Projects get over or pre-determined period..... We use to engage them through a Contractual agreement for "a fixed period" ..... will they be covered as per the definition 2(o) of Industrial Relations Code, 2020 (Definition for Fixed Term Employment)?
3. Shops and Commercial establishments were covered under Shop and Establishments Act and respective State Rules..... but as per the definition of Establishment in OSH & WC Code (Section 2(1) (v) (i) it applicable to all including business, trade, etc. If those Shops and Establishments which have already obtained Registration Certificate under the Shop and Establishment Act (which is a standalone Regulatory Act which was not subsumed under any Labour Codes), do such Shops and Establishments need to again duplicate Registration under OSH & WC Code?

Understand that such Shop or Establishments whoever engages Contractors or Inter State migrants, need to obtain Registration under OSH & WC code, as those Acts are subsumed under this Act. (Section 3(1)(b))....Will this add more Regulation / administrative work for Shop and Commercial Establishments?

4. There is a Difference in Definition of Establishment & Factory (OSH & WC code)

An organization which is a manufacturing facility with 12 employees, is an Establishments as per the definition (Section 2(1) (v) (iii) of the Code).

It need to obtain Registration as per the Section 3(1) (b).....(deemed to have registered, if I had already registered, provided I need to inform such details to appropriate authority).....But I am not a Factory as per the Chapters Occupational Health, Safety and Working Conditions..... as per the definition of Factory

Section 2(1)(w) "factory" means any premises including the precincts thereof—

*(i) whereon **twenty or more workers** are working, or were working on anyday of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or (ii) whereon **forty or more workers** are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on*