

# THE LABOURTORIALS

P. K. AGARWAL & ASSOCIATES 9999009685

#### Monthly updates on Industrial and Labour Laws

OCT. 2020 ISSUE NO. 3



# Other great reads:

LATEST FROM
 THE SUPREME

- COURT OF INDIA. • LATEST FROM
- LATEST FROM THE HIGH COURTS.
- UPDATES FROM CENTRAL GOVT.
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## Historic "Game Changer" as Government notifies three labour codes.

The Acts of Parliament including the Code on Industrial Relations, the Social Security Code and the Code on Occupational Safety, Health and Working Condition which shall bring all workers under some form of social security, provide much-needed flexibility to the employers to hire and downsize the workforce received assent of the President on 28th September, 2020 and have been thereby published. While the Code on Wages has already received assent of the President in August, 2019.

Talking to PTI, Labour Minister Santosh Gangwar said, "Government is doing all efforts to complete the labour reforms by implementing all four labour codes by December this year... The draft rules of the three codes are likely to be circulated by the first week of November for feedback."

Thereafter, these four codes would become the law of land to complete game-changing labour reforms in the country. The government aims to catapult India to among the top 10 countries in the World Bank's ease of doing business rankings with the comprehensive labour reforms.

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# SC quashes Gujarat govt.'s notification extending work hours under the Factories Act without Overtime pay.

The three judge Bench held that the pandemic is not a " public emergency" within the meaning of Section 5 of the Factories Act threatening security of the country. Hence, it cannot be a reason to do away with statutory provisions that provide dignity and rights for workers such as provisions relating to daily working hours, weekly working hours, intervals for rest and spread overs of adult workers as well as from payment of overtime wages at double rates viz. Sec. 59. <u>Click here</u> to read the judgment.

### LATEST FROM THE SUPREME COURT OF INDIA

## The extension of limitation period ordered due to COVID-19 does not apply to statutory period for condoning delay.

The Supreme Court on 18th September, 2020 said that the order passed by it in March this year extending the period of limitation on account of the COVID-19 pandemic would not be applicable to "the time period up to which delay can be condoned" under discretion provided for by a statute.

The Bench headed by CJI SA Bobde and comprising Justices AS Bopanna and V Ramasubramanian held, "What was extended by the above order of this Court was only "the period of limitation" and not the period up to which delay can be condoned in exercise of discretion conferred by the statute"

The Court further said that the phrase "prescribed period" which appears throughout in the Limitation Act cannot be construed to mean anything other than limitation period.

This ruling came from the Court in an appeal against the decision of the NCLAT where an application seeking condonation of delay was rejected and the appeal before NCLAT was dismissed as being barred by limitation. The appellant in the instant case had moved the NCLAT in appeal in July, 2020 while the period of limitation stood lapsed on 2nd February, 2020. As per the Act, court can further condone delay up to 45 days which expired on 18th March, 2020. The Hon'ble court in its suo moto Writ



The Supreme Court of India (Photo | PTI)

Petition (Civil) No.3 of 2020 extended period of limitation till further orders effective from 15th march, 2020.

The Hon'ble court giving out an extensive interpretation to "the period of limitation said that" it is the period of limitation which expired on 2nd February which can be covered under the order so passed and not the " period upto which delay can be condoned upon the discretion of the court i.e. the period extended till 18th march " which is covered by the order dated 23rd for extension in period of limitation.

The Supreme Court's judgment ruled

that, "The order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is **Vigilantibus Non Dormientibus Jura Subveniunt** which means that the law will assist only those who are vigilant about their rights and not those who sleep over them."

Click here to read judgment.

# Who is liable to pay compensation to employee with expired driver's license in an accident?

The Apex Court on 23rd September, 2020 held that liability for compensation cannot be fastened on an insurance company when the driver of a vehicle involved in an accident does not have a valid driving licence (**Beli Ram v. Rajinder Kumar and anr**).

In this case, the Respondent was gainfully employed with the Appellant and had suffered 20 per cent permanent disability after meeting with an accident while driving a truck owned by his employer. The Court however observed, "**We are of**  the view that once the basic care of verifying the driving licence has to be taken by the employer, though a detailed enquiry may not be necessary, the owner of the vehicle would know the validity of the driving licence as is set out in the licence itself. It cannot be said that thereafter he can wash his hands off the responsibility of not checking up whether the driver has renewed the licence."

Having said so, the Court also underlined that the claimant in the case that is the

workman who suffered disability, was negligent to the extent of not renewing the licence. However, the case before the Court was that of the Workmen's Compensation Act and not that of the Motor Vehicles Act, the Court added.

The Court finally held that the insurance company cannot be held liable in case there has been breach of insurance policy and the owner or the insured would have the responsibility to ensure that all regulations are followed. <u>Click here</u> to read the judgment.









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### LATEST FROM THE HIGH COURTS

A writ petition relating to an industrial dispute to be listed only if it discloses 'exceptional circumstances': says Delhi HC



Representative Image (Photo | JagranJosh)

The Delhi High Court has stated that a writ petition relating to an industrial dispute shall not be listed unless it discloses 'exceptional circumstances' in the synopsis and in its opening paragraphs. (**PTI Employees Union vs PTI**). The Court has ordered that subject to the approval of Chief Justice, the Registry may incorporate a column in the checklist on "Whether the writ petitioner has an alternative remedy? If so, disclose the 'Exceptional circumstances' which may warrant the exercise of writ jurisdiction in the Synopsis as well as in the opening paras of the writ petition?"

The order was passed in writ petitions challenging the retrenchment of 297 employees by Press Trust of India (PTI) in September 2018.

It was further held that the actions of PTI in respect of employer-employee relationship could not be tested under writ jurisdiction when the retrenched employees have statutory remedy under the Industrial Disputes Act.

Relying on the judgments passed by the

Supreme Court, the HC reiterated that unless exceptional circumstances are made out, writ petition under Article 226 of the Constitution should not be entertained when a statutory remedy is available.

In reference to the facts of the present case, the HC also held that disputed questions of fact are required to be adjudicated by the Industrial Tribunal on the basis of the evidence led by the parties and not directly by way of a writ petition. <u>**Click here**</u> to read the judgment.

### **OTHER ADJUDICATING AUTHORITIES**

Power to attach and sell property for nonappearance is subject to limitations: Central Provident Fund Commissioner.

The Central Provident Fund Commissioner issued an order dated 14th September, 2020 stating that Power to make attachments of unlimited value or to freeze operation of bank accounts, in proceedings under section 7A of the EPF & MP Act, is not relatable to any provision of

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the Act or Code of Civil Procedure. Such actions are evidently illegal and amount to blatant misuse of the authority besides causing unwarranted harassment to the employers concerned.

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**<u>Click here</u>** to read the order.

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### **UPDATES FROM THE CENTRAL GOVERNMENT**

#### **Online Grievance Handling by EPFO**

There is news of relief for employees working in factories, companies and organizations. They have been given an online option to file provident fund related complaints. An e-inspection complaint portal has been launched by the department. The offended employee will lodge his complaint and the officer of the department and the inspector will not go to the office of the concerned company to investigate. Instead, based on the complaint, the company concerned will ask for the documents online and resolve them online. Complete information about the troubleshooting process will continue to reach the plaintiff on mobile. On the initiative of the Central Government, a facility online facility has been launched on the e-inspection portal for complaints of PF affiliation.

#### **EPFO:**

- EPF interest rate for 2019-20 to be paid in 2 instalments -- 8.15% first and 0.35% in December.
- The Board enhanced the Upper celing of Assurance benefit from Existing 6 Lakhs to 7 Lakhs to for supporting deceased families of EPF Subscribers.

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🥮 epfindia.gov.in 🕕 @socialepfo 🝳 @socialepfo 🧕 Employees' Provident Fund Organisation



#### Govt. issued guidelines for pre mature retirement of the public servants in 50-55 age group or completion of 30 years of service.

To ensure more efficiency and speed in the functioning of the Central government, the Ministry of Personnel, Public Crievances and Pensions has consolidated guidelines on premature retirement of government employees and clarified that a regular review will be done of government servants in the age group of 50 to 55 years or who have completed 30 years of service. <u>Click here</u> to read guidelines.

#### ESIC issues instructions for submission of claims for Unemployment Benefit under Atal Bimit Kalyan Yojana.

ESIC has issued instructions for submission of claims by the affected workers to claim relief under recently expanded Atal Beemit Kalyan Yojna in which relief is to be paid to to those ESI members who lost their job. Claims to get the relief can be made online at website **www.esic.in** along with submission of the physical claim with an affidavit, photocopy of Aadhaar Card and Bank Account details to the designated ESIC Branch Office by post or in person.

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Click here to read the report.

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### LATEST FROM THE STATE GOVERNMENTS

#### **REVISED RATES OF MINIMUM WAGES**

Several State Governments have revised Variable Dearness Allowance (VDA) resulting in overall increase in the rates of Minimum wages given to different categories of employees. The chart hereunder shows the states issuing notices to amend VDA and the dates from which these rates are retrospectively coming in effect.

S.NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Assam	01.01.2020	Government Notification
2.	Bihar	01.10.2020	Government Notification
3.	Jharkhand	01.04.2020	Government Notification
4.	Uttar Pradesh (Engineering sector)	01.01.2020	Government Notification
5.	Haryana	01.01.2020	Government Notification
6.	Madhya Pradesh	01.10.2020	Government Notification
7.	Gujarat	01.10.2020	Government Notification

#### Circular on timely payment of wages by employers in Daman and Diu & Dadra and Nagar Haveli

The Union Territory Administration of Daman and Diu & Dadra and Nagar Haveli has directed all Industries to pay the wages to every person employed in their establishments only by cheque or by crediting wages in the Bank Account of the Employees. Therefore, the authority may take strict action against employers in Daman and Diu & Dadra and Nagar Haveli on non-compliance of directions as mentioned.

**<u>Click here</u>** to view notification.

#### The govt. of J&K revises the rate of interest on general provident fund.

The Government of Jammu and Kashmir vide its notification dated 9th September 2020 has revised the rate of interest on the General Provident Fund. The revised rate of interest for the 4th quarter of the year 2019-2020 (January 01, 2020, to March 31, 2020) shall be 7.9% and for the 1st and 2nd quarter the rate of interest shall be 7.1%. <u>Click here</u> to view notification.





Online Payment

#### The Industrial Employment (Standing Orders) Himachal Pradesh (Amendment) Rules, 2020.

The Covernment of Himachal Pradesh notifies The Industrial Employment (Standing Orders) Himachal Pradesh (Amendment) Rules, 2020 wherein Section 3A has been inserted which provides that no employer of an industrial establishment shall convert the posts of the permanent workmen existing in his industrial establishment on the date of commencement of the Industrial Employment (Standing Orders) Himachal Pradesh (Amendment) Rules, 2019, as fixed term employment thereafter.

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<u>Click here</u> to view notification.

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#### **UPDATES ON EASE OF DOING BUSINESS : POST-LOCKDOWN EFFECTS**

#### The Maharashtra State Tax On Professions, Trades, Callings, And Employments (Amendment) Act, 2020

The Govt. of Maharashtra, Finance Department vide Gazette notification has repealed the Ordinance 2020 dated 22nd July 2020 with The Act abovementioned. It amends section 5(3A) which provides that a company incorporated under the provision of Companies Act 2013 shall obtain the certificate of enrollment and certificate of registration under the Maharashtra Professional Tax Act.

Further, provision to Section 6(1) states that employer so registered shall, after the commencement of his liability to pay tax, furnish a return in such form, such period, and by such date as may be prescribed.

<u>Click here</u> to view notification.

## The Tripura Industrial Disputes (Second Amendment) Ordinance, 2020

The abovementioned ordinance provides that the any dispute between that workmen and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be raised before conciliation officer Within a period of one year from the date of such discharge dismissal, retrenchment or termination.

The Act also introduces compounding of certain offences related to retrenchment, lockouts strikes, etc.

Further, it gives power to the state govt. to exempt certain industrial establishment from the applicability of the act for one thousand days from the date of its establishment. **Click here** to view notification.

# States introduce online system of automatic licensing, registration and renewals.

The Governments of <u>Karnataka</u> and <u>Telangana</u>, in order to enhance Ease of Doing Business in the States, have ordered that henceforth, renewal procedures for Certificates / Registration / Licenses for establishments shall be in an auto-renewal system upon prescribed online payment of fees under certain acts such as Licenses under the Contract Labour (Regulation and Abolition) Act 1970 and the Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979. The Karnataka govt. has also extended the benefits to License under the Factories Act, 1948 and Registration under the Shops and Commercial Establishments Act, 1961.

#### SOP for registration of guest workers details in "Covid-19 Jagratha" portal for containment of Covid-19 – Govt. of Kerela.

Covt. of Kerala vide order dated 14.09.2020 issues quarantine norms and SOP for registration of the guest workers and other specialized workers visiting the Kerala from other states in the covid19jagratha portal to ensure proper quarantine of the Guest/ specialized/ essential workers visiting the state. <u>Click here</u> to view notification.

#### TN extends the period of renewal of registration for workers working under Tamil Nadu Construction Workers Welfare Board.

The State Covernment vide its notification dated 4th September 2020 has extended the period of renewal up to 31st December 2020 for workers whom the date of renewal falling between 1st March 2020 to 31st December 2020 (or till the lockdown is over) as one-time relaxation and also extended the cut-off date for submission of life certificate by the pensioners up to 31st December 2020.

The Above extension has been granted based on the representation received from the board secretaries and this extension is applicable for workers registered under Tamil Nadu Construction Workers Welfare Board and Tamil Nadu Manual Workers Social Security and Welfare Board. <u>Click here</u> to view notification.



New Normal at work









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### FROM THE VAULT

#### Perhaps a revolution as 29 legislations consolidate to 4 Labour codes !



#### ACTS REPEALED

- The Payment of Wages Act, 1936
- The Minimum Wages Act, 1948
- The Payment of Bonus Act, 1965
- The Equal Remuneration Act, 1976

#### **KEY HIGHLIGHTS**

- Applies to all establishments.
- Prohibits gender discrimination even in recruitment and conditions of employment.
- Central government shall fix floor wage for different geographical areas
- No State Government can fix the minimum wage below the floor wage.
- Minimum wage to be revised every 5 years; However, DA shall continue to revise periodically.
- Extensive definition of 'Wages'.
- Scope of the term 'employee' now includes the persons engaged in supervisory managerial and administrative work.
- Payment of wages in current coin or currency notes or by cheque or bank transfer as notified.
- Inspector becomes Inspector-cum- Facilitator, obligated to give advice to employers & workers relating to compliance.
- Disqualification from bonus if the employee has been dismissed from service on the ground of conviction of sexual harassment.
- Period of limitation for filing claims by a worker has been enhanced to three years.
- Enhanced penalties.



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### ACTS REPEALED

- The Trade Unions Act, 1926
- The Industrial Employment (Standing orders) Act, 1946
- The Industrial Disputes Act, 1947

#### **KEY HIGHLIGHTS**

- Extensive definition of 'Industry'.
- Definition of 'Industrial Dispute' expanded to include dispute arising out of discharge, dismissal, retrenchment or termination of workers.
- 'Strike' to include- the concerted casual leave on a given day by 50% or more workers employed in an industry.
- Definition of 'worker' now includes working journalists, sale promotion employees and persons employed in supervisory roles (drawing wages less than Rs. 18,000 p.m.)
- Code incorporates 'fixed term employment'.
- Definition of 'employer' to include contractor and legal representative of a deceased employer.
- Threshold workers limit for framing standing orders increased to 300 workers from existing limit of 100 workers.
- If employer adopts the Model Standing Orders of the Govt. then it shall deemed to be certified. Otherwise the industrial establishment may seek certification of only those clauses which are different from the model standing orders.
- 14 days Notice period for strikes and lockouts applicable to all establishments.
- Validity of notice of strike extended to 60 days from the existing 6 weeks.
- Threshold employee limit for prior government permission for retrenchment, lay-off and closure increased to 300 workers .
- Constitution of National Industrial Tribunals and Industrial Tribunals for adjudication of industrial dispute. Transfer of pending cases to these tribunals.
- Voluntary reference to arbitration allowed.
- Compounding of offences at the sum of 50 % in cases of offences punishable with fine and 75% in cases of offences punishable to imprisonment and fine.
- Introduction of Negotiating council.
- Acts amounting to Unfair Labour Practices extensively provided in Schedule II of the Code.
- Enhanced penalties.



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# THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

#### ACTS REPEALED

- The Factories Act, 1948
- The Plantations Labour Act, 1951
- The Mines Act, 1952
- The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
- The Working Journalists (Fixation of Rates of Wages) Act, 1958
- The Motor Transport Workers Act, 1961
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Sales Promotion Employees (Conditions of Service) Act, 1976
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Act, 1981
- The Dock Workers (Safety, Health and Welfare) Act, 1986
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

#### **KEY HIGHLIGHTS**

- Registration, renewals, licensing, etc. though electronic mode.
- All establishments having ten or more workers shall register under the Code.
- All provisions of the Code in respect of factories, except registration, the threshold fixed is 20 workers in a factory (with aid of power) and 40 workers (without aid of power).
- Applicability of provisions related to Contract Labour on threshold limit of 50 or more workers.
- 'Working Journalists include journalists working in electronic media such as in e-paper establishment or in radio or in other media.
- Appointment letter to be issued mandatorily. Also, every employee who has not been issued such appointment letter before commencement of this code shall be issued the same within three months of the commencement.
- Annual health examination or test free of costs.
- Encashment of leaves after carry forward of 30 leaves.
- To employ women in all establishments for all types of work. They can also work at night, i.e. between 7 PM- 6 AM subject to the conditions relating to safety, holiday, working hours and their consent.
- "common license" for factory, contract labour and beedi and cigar establishments and to introduce the concept of a single all India license for a period of five years to engage the contract labour.
- Migrant worker can avails Public Distribution System benefits in native state or destination state where he is employed.

# THE CODE ON SOCIAL SECURITY, 2020

#### ACTS REPEALED

- The Employees' Compensation Act, 1923
- The Employees' State Insurance Act, 1948
- The Employees Provident Fund and Miscellaneous
   Provisions Act, 1952
- The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959
- The Maternity Benefit Act, 1961
- The Payment of Gratuity Act, 1972
- The Cine Workers Welfare Fund Act, 1981
- The Building and Other Construction Workers Welfare Cess Act, 1996
- The Unorganised Workers' Social Security Act, 2008

#### **KEY HIGHLIGHTS**

- Code extends the protection of welfare measures to 'gig' workers, 'platform workers' and 'unorganised workers'.
- Code introduces concept of aggregators- " a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider".
- Specifies their roles to fund schemes for 'gig' workers, 'platform workers' and 'unorganised workers'.
- Code defines 'Social Security'.
- Definition of 'inter-state Migrant workers' expanded to include self- employed persons.
- EPF applicable to all establishments with 20 or more employees.
- Appeal for EPF can only be filed on depositing 25% of the amount due from him as decided by the authority.
- ESI applicable to all establishments with 10 or more employees. Gig workers, platform workers & unorganised workers also brought under the purview of ESI.
- Building and other construction works of less than 50 lakhs exempted.
- Fixed term employee or deceased employee to be paid gratuity on pro- rata basis.
- Working journalists and sale promotion employees to be paid gratuity on continuous service for three years.
- Aadhar Number mandatory for availing benefits under the Code.
- Code empowers Central govt. to defer application of the provisions of the code for three months in cases of disaster, pandemic or endemic.
- Establishment of ESI Courts. Seperate authorities to decide matters related to Gratuity.

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Enhanced penalties.





# Coronavirus taught Multinationals to keep their pride and prejudice aside.

In this new normal, the companies are fostering over wellbeing of their employees. Big multinationals have come up with their own ways to keep employees' mental, physical and social wellbeing at utmost priority.

### Sony Pictures Networks introduces mandatory leaves

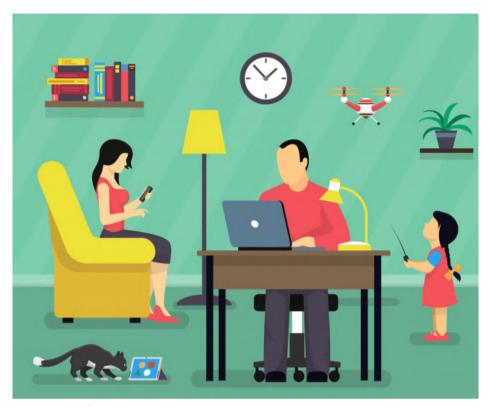
Sony Pictures Networks India (SPN) on 30th August announced the launch of its umbrella employee wellbeing brand, ACE: Act. Care. Engage.

Since the advent of the lockdown, surveys revealed a disconnect among employees and stretched working hours. Employees also demanded solutions for seamless connectivity and collaboration, and respite from the reality of working stretched hours.

То address these concerns. SPN introduced Mandies: emplovees are compulsorily required to take 3 leaves per quarter in a calendar year. SPN also introduced Zero Hours - scheduled organizational downtime for focused work. With organization-wide an scheduled "Zero Hour" between 2-3 pm every day, and the avoidance of meetings post 6 pm as well as weekends, employees have quickly picked the pace of collaborating efficiently during work hours.

#### Coogle introduces a three-day (Friday, Saturday, Sunday) weekend for employee

After extending its work-from-home model until 2021 summer, the tech giant, Google has now introduced a three-day weekend to ensure employees' well-being during the Coronavirus pandemic. It aims to make sure that employees are maintaining their peace of mind and not letting the work taking a toll over them,



Work from home | New normal

The company will encourage all the employees (even interns) to take that extra day off and ask managers to support their teams for the same.

This definitely is cool move on the part of Google, considering the not-so-productive and overburdened work-from-home days people have been facing for more than 7 months now.

### Companies introduce wellbeing sessions

To make WFH transition smooth, companies are putting in place guidelines to maintain productivity and ensure worklife balance.

Some like Pidilite have introduced digital etiquette, a fixed lunch break and defined start and end time.

Others such as Deloitte has come up with emotional wellbeing sessions.

This has created quite a stir on social media, with employees of other companies wanting the same protocol to be followed by their employers.

The MNC's accepted that their teams whether employees, workmen or outsourced are the ones to be credited for surviving through the pandemic. The immense hard work, optimistic approach and team work is the reason why their companies have been able to survive through this major economic downfall where hundreds of business were shut.

The Management strives through the formula that "Genius begins great work; labour alone finishes them".

**Sources:** SightsIn Plus and The Economic Times.

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" PLEASURE IN THE JOB PUTS PERFECTION IN THE WORK "

- ARISTOTLE



#### **P.K AGARWAL AND ASSOCIATES**

P.K. Agarwal & Associates deals in :

- Apprentices Act
- Contract Labour (R&A) Act
- Employees' Compensation Act
- EPF & MP Act
- Employee State Insurance Act
- Factories Act
- Industrial Disputes Act,
- Industrial Employment (Standing Orders) Act
- Maternity Benefit Act
- Minimum Wages Act
- Payment of Bonus Act
- Payment of Gratuity Act
- Payment of Wages Act
- Sexual Harassment of Woman at Workplace (Prevention, Prohibition & Redressal) Act
- Trade Union Act, and
- all other labour related statutes.

Drafting of Appointment Letters, Agreements, Charge sheets, Domestic Enquiry, Notices, Office Orders , Warning, Court cases, HR compliance audit etc.



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