



# THE LABOURTORIALS

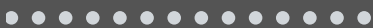
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Monthly updates on Industrial and Labour Laws

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## Word of the month:



**COMPLIANCE-** Conformity;  
accordance

## LABOUR LAW COMPLIANCE-

Adherence to laws, court decisions, regulations, executive orders, and other legal mandates governing affirmative action and equal employment opportunity.

At present there are several statutes for the labour force, of which the responsibility for timely compliance is upon the employer, occupier or the manager of the establishment.

## KEY HIGHLIGHTS

### LATEST FROM THE SUPREME COURT OF INDIA.

- Candidate suppressing information cannot claim the right to continue in service.
- Retired employee can file case for pension at place where he belongs.

### LATEST FROM THE HIGH COURTS

- Delhi HC directs Centre, Delhi Govt to consider PIL seeking paid menstrual leaves.
- Pension is neither bounty nor charity but an indefeasible right of an employee: Karnataka HC

### LATEST FROM THE CENTRAL GOVT.

- Ministry of labour and employment welcomes comments and suggestions of the public on two Labour Codes.

### LATEST FROM THE STATE GOVT.

- Advisory regarding grant of quarantine leave to employees infected by Corona virus in Karnataka.

# LATEST FROM THE SUPREME COURT OF INDIA

## Candidate suppressing information cannot claim the right to continue in service.

The Court was dealing with a case involving an over-qualified candidate who had applied for a peon position at a bank while suppressing the fact that he was overqualified (**Chief Manager, Punjab National Bank & Anr. vs Amit Kumar Das**).

In the advertisement for the position, the eligibility criterion was 12th standard or equivalent. It was also stated that candidate should not be a graduate as on January 1, 2016. The respondent had applied for the post, but did not disclose in his application or a biodata that he was a graduate.

The respondent was selected and an order of appointment was issued. However, upon scrutiny, the suppression of fact came to light that he was graduate since 2014. His candidature was, therefore, cancelled.

The said Order was Challenged before the Odisha HC wherein Single Judge bench held that "

"... a candidate cannot be denied the appointment solely on the ground that he is possessing higher qualification."

On appeal, a Division Bench of the High Court also upheld the order.

This order was challenged before the Supreme Court wherein it was noted that **it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post.**

The Bench further observed that "... qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or

utility of such prescription of qualifications..."

As such, the Bench said,

"High Court ought not to have allowed the writ petition when **it was a clear case of suppression of material fact** by the original writ petitioner. An employee is expected to give a correct information as to his qualification. The original writ petitioner failed to do so. He was in fact over-qualified and therefore ineligible to apply for the job. **In fact, by such conduct on the part of the respondent-original writ petitioner, one another righteous candidate has suffered for his mischievous act.**"

Stating so the Hon'ble SC set aside the order of the High Court of Orissa.

[Click here](#) to view the judgment.



## Retired employee can file case for pension at place where he belongs.

In **Shanti Devi alias Shanti Mishra v. Union of India**, the Hon'ble Supreme Court of India stated that "Mishra had opted for receiving his pension in State Bank of India, Darbhanga, State of Bihar, which was his native place, from where he was drawing his pension regularly for the last 08 years, stoppage of pension gave a cause of action, which arose at the place where the petitioner was continuously receiving the pension."

Moreover, it was held, "A retired employee, who is receiving pension, cannot be asked to go to another court to file the writ petition, when he has a cause of action for filing a writ petition in Patna High Court.

Thus, the orders of the High Court were set aside, and the writ petition filed by the employee stands revived.

[Click here](#) to view the judgment.

# LATEST FROM THE HIGH COURTS

## Delhi HC directs Centre, Delhi Govt to consider PIL seeking paid menstrual leaves.

The Delhi High Court directed the Central and Delhi governments to consider as representation, a petition seeking paid leave for women employees under the government, including daily wage and contractual workers, during their menstruation period (**Delhi Labour Union vs UOI & Anr**).

The Delhi Labour Union (petitioner) also sought separate and clean toilet facilities, periodic rests and free sanitary napkins for women employees.

The petitioner stated that while female employees form a significant part of the workforce in the offices and establishments of the Central and Delhi governments, very little recognition is given to the "emotional, physical, hormonal and physiological trauma" that these employees undergo during menstruation.

The ignorance and inaction in



providing facilities to menstruating employees, the petitioner argued, is in violation of Article 14, 21 and 42 of the Constitution of India.

"Menstruating employees form a separate class owing to their biological necessities and differences with other employees. Such practice of the Respondents is discriminatory and violative of

Right to Equality and protection of laws guaranteed by the Constitution to these workers," it was submitted.

It was also stated that under Articles 15(3) and Article 42 of the Constitution, the authorities are empowered to make special provisions for women at the workspace.

[Click here](#) to read the Order.

## Pension is neither bounty nor charity but an indefeasible right of an employee: Karnataka HC



The Karnataka HC in a recent case stated that "The deprivation of even a part of this amount cannot be accepted, except in accordance with law, as pension is neither a bounty, charity or a gratuitous payment but an indefeasible right of an employee in terms of the Rules. Terminal benefits will enable a retired employee to live a life free from want, with decency, independence and self-respect.

Depriving such right to livelihood, will leave a pensioner fall on the thorns of life and bleed,"

The High Court made these observations while coming to the rescue of a retired employee of the State-owned Karnataka Power Transmission Corporation Limited (KPTCL), who was denied terminal benefits even after 21 years of retirement.

[Click here](#) to view the judgment.

# LATEST FROM THE CENTRAL GOVERNMENT

## Ministry of labour and employment welcomes comments and suggestions of the public on two Codes.

The MOLE vide its notification dated 13th November, 2020 has released the draft rules under the Code on Social Security and the Code on Occupational Safety, Health and Working condition. The Ministry has invited Objections and suggestions from the public within 45 days.

### Draft rules under the Code on Social Security:



- The employer seeking registration for an establishment not already registered shall apply electronically in the Form available on the Shram Suvidha Portal.
- Any registration made or deemed to have been made shall expire, after twenty-four months from the date of registration, in case no compliance on that registration number is made by the employer.
- A copy of the certificate of registration shall be displayed at the conspicuous places at the premises where the work is being carried out.
- An insured woman and an Insured Person in respect of his wife shall be paid a sum of Rs. 7500/- per case as medical bonus on account of confinement expenses: Provided that the confinement occurs at a place where necessary medical facilities under the ESI Scheme are not available and the confinement expenses shall be paid for two confinements only.
- A person shall be qualified to claim disablement benefits for temporary disablement for not less than three days (excluding the day of the accident) for the period of such disablement sustained as an employee under the Code.
- A woman employed in an establishment and entitled to maternity benefit shall give notice to her employer in Form-XI.

### Draft rules under the Code on Occupational Safety, Health and Working conditions:



- The Rules empower the state govt to exempt any new factory from the provisions of the Code.
- The employer seeking registration for an establishment not already registered shall apply electronically in Form-I on the Shram Suvidha Portal.
- The certificate of registration shall be issued in Form-II electronically.
- The COR shall be non-transferable and a copy shall be displayed in the premises of the establishment at the conspicuous place.
- The employer shall, within thirty days of the commencement and completion of any work, intimate to the Inspector-cum-Facilitator, the actual date of the commencement, completion of work and cessation of establishment, as the case may be, in Form-IV electronically and the same shall be auto-shared to EPFO and ESIC.
- Every employer of factory, dock, mine and building or other construction work shall arrange to conduct free of cost, medical examination for every worker annually i.e. within 120 days from the commencement of the every calendar year who has completed 45 years of age.
- Where in an establishment which is factory, dock work, mines, building or other construction, an accident occurs which results in the death of any person, the employer or occupier or manager shall forthwith send a notice electronically.
- No worker shall be required or allowed to work in an establishment for more than 48 hours in any week and the spread over shall not be for more than 12 hours in a day.



# LATEST FROM THE STATE GOVERNMENTS

## LABOUR LAW COMPLIANCE IN TIMES OF CORONAVIRUS

### Advisory regarding grant of quarantine leave to employees infected by Corona virus in Karnataka.

The Labour Dept. Govt. of Karnataka vide Notification dated 6th Nov. 2020 has issued below advisory to employers of all public or private companies in the state:-

- The period of Quarantine of employees infected by Coronavirus shall not be treated as unauthorised absence.
- Employers advised to enable the employees infected by Corona virus to utilize leaves under their Quota for the period of quarantine.
- The employees who are not coming under the purview of ESIC, even if they are not entitled for leave, if infected by the corona virus, taking in

to consideration the larger interest of society, to be granted leave as available/possible, in term of their employment to undergo quarantine .

- In case of employees who are infected by Corona Virus and do not have leave in their account, employers advised to facilitate transfer of leave from the account of other Employees and enable them to undergo the quarantine.
- Incase Employee who do not have leave under their quota and when it is already fully utilized, employers advised to provide for advance leave which the Employees are eligible to avail in the future.

- When the Employers are unable to grant leave on their own initiative to Employees and such Employees do not have any kind of leave under their Quota, both Employer and Employees to consult with each other regarding granting of special leaves for the period and come to an amicable solution.

Hence, employers in Karnataka are advised to follow the guidelines in order to ensure maximum containment of COVID-19 and the utmost safety of all employees at their establishments.

[Click here](#) to view notification.

### Gujarat govt. has directed all the factories registered under the Act to pay overtime wages.

The Honourable Supreme Court of India has quashed the Gujarat government's notification exempting industries in the state from certain provisions of the Factories Act, 1948 relating to the payment of overtime wages, weekly hours, daily hours, intervals, etc on grounds of Covid-19 pandemic-induced lockdown restrictions. In accordance with the Supreme Court order, the Government of Gujarat vide notification has directed all factories registered under the Factories Act 1948 to pay overtime wages to all eligible workers who have been working since the issuance of the said notification.

[Click here](#) to view notification.



## EASE OF DOING BUSINESS

### State Governments issue the criteria for recognition of third-party agencies under the Third-Party certification/Audit Scheme.

The **Haryana** Labour Department has notified the criteria for recognition of third-party agencies/individuals under the Third-Party certification/Audit Scheme along with the list of the safety auditors/institutions. This is in furtherance of the third-party certification/Audit Scheme implemented since 2016 with an aim to simplify the Business Regulations, to facilitate the Entrepreneurs for making the compliance of the provisions of the Labour Laws and to curtail the unnecessary visits of the

Inspecting officers. The criteria provide or academic qualifications, age limit, conflict of interest etc. The Validity of such Certificate of Recognition shall be valid for two years from the date of issue. Similarly, the Government of **Madhya Pradesh** has also introduced third-party certifier certificate under the Factories Act. The Govt. of **Rajasthan** calls it "The Rajasthan Third Party Factory Inspection Scheme" Further, The State Government of Madhya Pradesh inserted a new rule 123-A which grants a third

party certificate in which a Labour Commissioner, may recognize any person or an institution, who is recognised by the Chief Inspector of Factories as Competent Person or Institute to inspect dangerous machines, hoist and lift, lifting machines and lifting tools and pressure vessels, as third party certifier for third party inspection. The person who is willing to perform such function shall have to apply online to the Labour Commissioner for recognition as third party certifier in Form 36-B or 36-C as the case may be.

## ONLINE COMPLIANCE

The Department of Labour of the Government of Punjab has issued a notification approving the maintenance of registers in electronic form under various labour laws and regulations. This notification is in line with a series of measures undertaken to improve the 'Ease of Doing Business'.

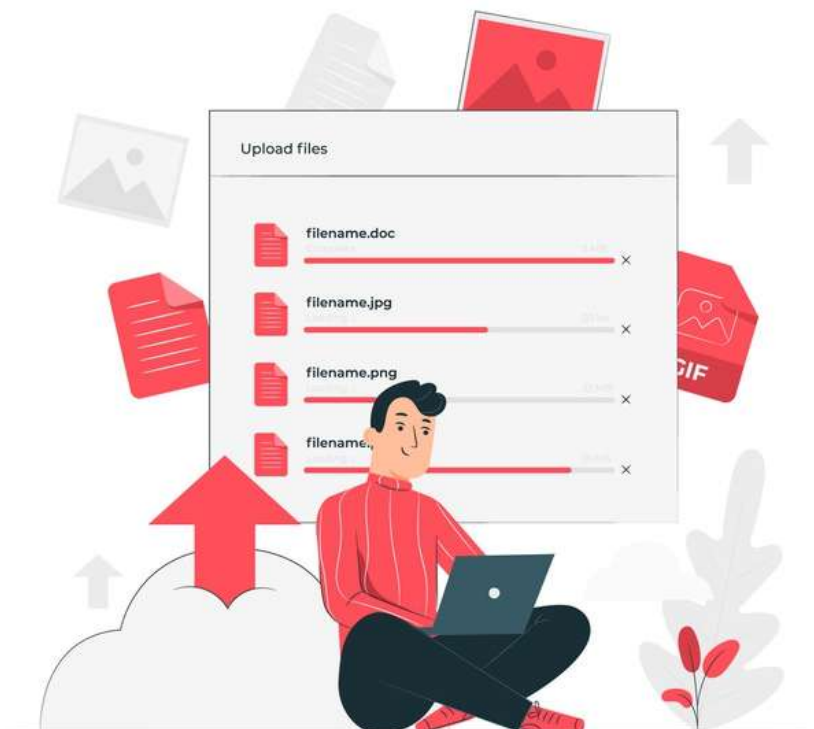
[Click here](#) to view notification.

The Govt. of Madhya Pradesh has published the draft Amendment for Madhya Pradesh Factories Rules, 1962 which provides that the license for factories under the Act shall now be granted in Online Form No.3.

[Click here](#) to view notification.

Also, the Govt. of Madhya Pradesh introduces Renewal of license through "Shram Seva Portal" under Inter-State Migrant Workmen Act, 1979.

[Click here](#) to view notification.



## OTHER UPDATES

### The Puducherry Child Labour (Prohibition and Regulation) (Amendment) Rules, 2020.

The Puducherry Child Labour (Prohibition and Regulation) (Amendment) Rules, 2020 directs the government to ensure that the children and adolescents are not employed or permitted to work in any occupation or process. Also, the government shall arrange public awareness campaigns using folk and traditional media and mass media.

The Government shall promote through appropriate method the inclusion of the provisions of the Act in learning material and syllabus in school education.

Further a child in a day, without affecting his school education, shall help his family enterprise, subject to the condition that such help shall not be in any hazardous occupation and shall not perform any tasks during the



Courtesy: India TV News

school hours and between 7.00 p.m. and 8.00 a.m.

All persons including School Teachers and representatives from School Management Committee, Child protection Committee, Panchayat or

Municipality, shall be sensitized to file complaint in the event that any of the students in their respective Schools is not employed in contravention to the provisions of the Act.

[Click here](#) to view notification.

### The Factories (Bihar Amendment) Act, 2020

The Government of Bihar vide notification dated 18 November 2020 has amended the Factories Act applicable to Bihar. The amendment has empowered the State Government to exempt any new factory or class or description of news factories which are established and whose commercial production start, from all or any of the provisions of this Act for a period of one thousand days from the date on which such commercial production start, in order to create more economic activities and employment opportunities.

[Click here](#) to view notification.

### EPFO: Pensioners Life Certificate now available Online

The Jeevan Pramaan/Life Certificate is now available Online or at the nearest Post offices. The Senior citizens need not go to the bank for submission of Jeevan Praman every year in November/ December. They can just login to the website <https://jeevanpraman.gov.in> and after feeding some basic information they can obtain their Life Certificates.

The facility can also be availed at the nearest Pension disbursing banks, post offices and Common Service Centers.

[Click here](#) to view notification.

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# Everything is important

## PEOPLE MAKE A COMPANY, A COMPANY MAKES PEOPLE.

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 letters, Court cases, HR compliance audit etc .

P.K AGARWAL AND ASSOCIATES

