



# THE LABOURTORIALS<sup>®</sup>

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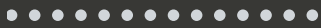
Monthly updates on Industrial and Labour Laws

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(COMBO)



PC: hindustantimes

## Word of the month:



### ATTRITION-

A term used to describe voluntary and involuntary terminations, deaths, and employee retirements that result in a reduction to the employer's physical workforce.

Few most common reasons of attrition are:

- Unfair pay
- Inability to grow and develop careers
- Lack of work-life balance
- Lack of employee recognition and awards
- Poor management
- Poor work conditions
- Lack of benefits

## KEY HIGHLIGHTS

### LATEST FROM THE SUPREME COURT OF INDIA

- ESIC not applicable on conveyance allowance.
- During probation, employer can terminate service of employee without notice if there is suppression of material facts: Supreme Court

### LATEST FROM THE HIGH COURTS

- A lawful claim under Employee's Compensation Act must not be defeated due to hyper-technical view of the delay in filing: Delhi High Court

### LATEST FROM THE CENTRAL GOVERNMENT

- Order of extension of limitation period of appeal u/s 45AA of the ESI Act.
- ESIC directs appellate authority not to remand back appeals.

### LATEST FROM THE STATE GOVERNMENTS

- Revised rates of Minimum wages.
- State Govts. and UTs have announced list of holidays for the financial year 2022.

# LATEST FROM THE SUPREME COURT OF INDIA

## **ESIC not applicable on conveyance allowance.**

The Hon'ble Supreme Court in the matter of ESIC v. M/S Texmo Industries held that the **payment of Conveyance Allowance does not fall under the definition of term "wages"** as defined in section 2(22) of the ESI Act. **The judgement holds good w.e.f. 08/03/2021.**

[Click here](#) to read the Circular issued by the ESIC along with the judgment passed by the Hon'ble SC.

## **Contract Workers will be Treated as Employees of Principal Employer in absence of Registration Certificate or Labour Licence Under Contract Labour Act.**

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

## **Compensation for disability cannot be reduced on ground that WHO norms don't apply to India: Supreme Court**

The present appeal is directed against an order passed by the High Court of Karnataka, Bench at Dharwad, on 27.03.2018, whereby an Award passed by the Commissioner under the Employees' Compensation Act, 1923, awarding a sum of Rs. 5,46,711/- along with interest at the rate of 6% was modified to that of Rs. 1,47,124/- along with interest at the rate of 12%.

The Award was modified keeping in view the fact that the disability suffered by the appellant, as assessed by the Commissioner, is not 45%, but 15% and, therefore, the High Court reduced the amount of compensation awarded.

The sole reasoning given by the High Court to reject the medical evidence is that the Doctor has assessed the disability as per the norms of World Health Organisation [WHO] and such norms emanate from socio-economic factors that operate in advanced countries and not in the country like India.

The Hon'ble Court held that "we find that the entire reasoning of the High Court suffers from patent illegality. As per Dr. Sangayya, the disability of 45% was assessed after going through ALMCOI and WHO manuals. **Such medical studies are not restricted to the advanced countries**

**but in respect of the entire world. Therefore, reducing the extent of disability on the ground that the WHO norms are for the advanced countries and not in respect of India, is patently not sustainable.**

Consequently, the impugned order passed by the High Court dated 27.03.2018 is set aside to the extent of disability assessed at 15% and the Award of Rs. 5,46,711/- made by the Commissioner on the basis of 45% disability suffered by the appellant is restored.

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

## During probation, employer can terminate service of employee without notice if there is suppression of material facts: Supreme Court

The appellant herein, was selected and appointed as Sub-Inspector in Delhi Police Service. While undergoing course, respondents received a complaint stating that the appellant was a deserter from the Army and after he deserted Army in 1992, he was declared as an absconder. An enquiry was conducted and it was confirmed that the appellant was a deserter from the Army w.e.f. 31.07.1993. Further, in the attestation form which was duly filled by the appellant in his own handwriting at the time of entry into service, he has mentioned as Not Applicable (NA). It is the case of the respondents that though the appellant has joined Army service in 1992, he has not disclosed about his earlier employment in Army and suppressed the said information in the attestation form in column No.10 by not furnishing correct information. During the probation period, respondents have terminated the service of the appellant by order dated 14.08.1996.



The Supreme Court of India | PC: dailypioneer.com

The Hon'ble Court held that **“before the declaration of probation, on the ground that the appellant has not disclosed particulars of earlier employment, it is always open for the respondents to terminate his temporary service without issuing any notice.”**

The Court further relied on AVATAR SINGH V. UNION OF INDIA & ORS. wherein Para 32 read as under:-

“32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty-bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his

services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.”

**Click here** to read the judgment.

## Appeal against Compensation Commissioner award maintainable only on a substantial question of law: Supreme Court

The SC recently held that **an appeal under Section 30 of the Employees Compensation Act of 1923 against an award passed by the Compensation Commissioner is maintainable only on a substantial question of law** (Mayan v. Mustafa and Another).

We find that the HC should not have interfered in an appeal filed against the award of the Compensation Commissioner dealing with the injury of amputation of leg

suffered by the appellant during the course of employment. The High Court should have the heart to alleviate the loss suffered by the appellant but the order passed by the High Court shows total non-application of mind without any compassion to set aside an award of grant of compensation on account of loss of a limb on wholly untenable ground of lack of territorial jurisdiction. The appellant was a resident of Sriram Nagar, Thiruvaiyaru Town and

Thanjavour District, falling within the jurisdiction of Trichirapalli, thus even legally the jurisdiction was that of Compensation Commissioner under Section 21(1)(b) of the Employees Compensation Act, 1923. In view thereof, we allow the present appeal and set aside the order passed by the High Court and restore the order of the Compensation Commissioner. [Click here](#) to read the judgment.

## LATEST FROM THE HIGH COURTS

### A lawful claim under Employee's Compensation Act must not be defeated due to hyper-technical view of the delay in filing: Delhi High Court

The Hon'ble Court in Late Mohd. Asif through his mother legal heir Shabnam v. Shahid Khan & Anr held that **"the Employee Compensation Act is a beneficial legislation for the purposes of providing some respite to the family of the deceased who passes away in an accident at the working place. On a hyper-**

**technical view of delay in filing application for restoration, a lawful claim should not be permitted to be defeated.** Reference may be had to the judgment of the SC in Manoharan vs. Sivarajan (2014) 4 SCC 163 wherein the Supreme Court has held that refusing to condone the delay can result in a meritorious claim being thrown out at

the threshold and cause justice to be defeated." It further held that "not filing an application within time is a plausible one." Hence, in view of the above, the Hon'ble Court condoned the delay in filing the application for restoration of the claim. [Click here](#) to read the judgment.

# LATEST FROM THE CENTRAL GOVERNMENT

## Order of extension of limitation period of appeal u/s 45AA of the ESI Act.

ESIC vide Circular dated 22.12.2021 has **extended the limitation period of all the appeals filed under section 45AA of the ESI Act** as per the Order of the Supreme Court of India passed on 03.09.2021 vide M.A No. 665 of 2021 wherein the following directions were passed:

- In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

- In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

- The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the..

- ...Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

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

## ESIC directs appellate authority not to remand back appeals.

The Employees State Insurance Corporation vide circular dated 01.12.2021 has issued direction to appellate authority under section 45AA of the ESI Act to not to remand back appeals filed against assessments back to authorized officers. **The appellate authority shall pass well-reasoned orders** based on available information produced by employers filing appeal against assessment.

This is in light of receipt of many complaints against appellate authorities for remanding back appeals filed against assessments back to authorized officers because of which the employers have to suffer unnecessarily.

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

## Notice to link ESIC insurance number of the insured person with EPFO UAN - ESIC

MOLE has decided to link ESIC insurance number of insured person with their EPFOs Universal Account Number (UAN), a 12 digit identification number allotted by EPFO.

EPFO members with Authorised Aadhaar & Bank details seeded against their UAN can submit their PF withdrawals/settlements/transfer requests. A provision has been made in ESI portal where the employer can enter the UAN of IPs through the module. Once it is entered in the system, the same can be verified with EPFO.

[Click here](#) to read the Circular,

## FOR YOUR INFORMATION!

- Government of India has conveyed the approval of the Central government under the para 60(1) of Employees Provident Fund Scheme, 1952 to **credit interest@ 8.50% for the year 2020-21 to the account of each member of the EPF scheme** as per the provisions under para 60 of EPF Scheme, 1952.
- In the new Form 11, EPFO has added a new validation point at Serial No.12 asking employees **to confirm whether he/she was EPF/EPF member on or before Sep'2014 and if he/she has withdrawn this amount or not.** This will help to maintain membership correctly in EPFO records which are not happening as of now.

[Click here](#) to read more.

- The EPFO has advised all regional provident fund commissioners in charge of regional offices under their jurisdiction to take immediate steps for **coverage of Contractual/ daily wage employees** engaged by the Government, Public, Autonomous, Statutory Bodies, etc. under the EPF & MP Act so that objectives of the Act are met in true spirit.

[Click here](#) to read more.

## LATEST FROM THE STATE GOVERNMENTS

### REVISED MINIMUM WAGES

S.NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Odisha	01.11.2021	<a href="#">Government Notification</a>
2.	Kerela	October 2021	<a href="#">Government Notification</a>
3.	NCT of Delhi	01.10.2021	<a href="#">Government Notification</a>
4.	Assam	01.01.2021	<a href="#">Government Notification</a>
5.	Punjab	01.09.2020	<a href="#">Government Notification</a>
6.	Tripura	01.10.2021	<a href="#">Government Notification</a>

### Haryana State Employment of Local Candidates Act, 2020 commences w.e.f. 15-1-2022.

The Govt. of Haryana has notified that **Haryana State Employment of Local Candidates Act, 2020 shall commence w.e.f the 15th day of January, 2022.**

The Act provides that every employer shall register employees receiving gross monthly salary/wages not more than Rs. 50,000/- on the designated portal.

Every employer shall employ 75% of the local candidates with respect to such posts where the gross monthly salary/wages are not more than Rs. 50,000/-.

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

### Delhi Shops and Establishments (Amendment) Rules, 2021.

The Labour Department of Delhi has published the Delhi Shops and Establishments (Amendment) Rules, 2021.

As per the amendment under rule 3, the occupier of the establishment, within 90 days of the commencement of work of his establishment **shall apply for the registration online on the Shop and Establishment Portal of Labour Department.**

On submission of the application, the registration certificate shall be generated online in Form C.

Further, the occupier shall notify any change in respect of any information under section 5 (1) of the Act within 30 days after such change has taken place, online, on the same Portal.

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

## LIST OF HOLIDAYS

State Govts. and UTs have announced list of holidays for the financial year 2022. Click the links below to read the government notification.

STATES/UTs	GOVERNMENT NOTIFICATION
Tamil Nadu	<a href="#">Government Notification</a>
Kerela	<a href="#">Government Notification</a>
Karnataka	<a href="#">Government Notification</a>
Madhya Pradesh	<a href="#">Government Notification</a>
Maharashtra	<a href="#">Government Notification</a>
Telangana	<a href="#">Government Notification</a>
NCT of Delhi	<a href="#">Government Notification</a>
Uttarakhand	<a href="#">Government Notification</a>
Jharkhand	<a href="#">Government Notification</a>
Chandigarh	<a href="#">Government Notification</a>
Haryana	<a href="#">Government Notification</a>
Puducherry	<a href="#">Government Notification</a>
Jammu and Kashmir	<a href="#">Government Notification</a>
Manipur	<a href="#">Government Notification</a>
Tripura	<a href="#">Government Notification</a>
Arunachal Pradesh	<a href="#">Government Notification</a>
Nagaland	<a href="#">Government Notification</a>
Ladakh	<a href="#">Government Notification</a>

**Notification regarding Constitution of State Level committee for Unorganized workers - Govt. of Telangana**

[Click here](#) to read more,

**Amended notification of the Telangana Child Labour (Prohibition and Regulation) (Amendment) Rules, 2021.**

[Click here](#) to read more,

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- Handling of court cases under all the labour statutes before Labour Inspectors, Officers, Commissioners, Tribunals, District Courts as well as High Court and Supreme Court; and
- Providing time to time consultancy on all labor-related matters.

