THE LABOURTORIALS

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS



PC | Indiaspend | Mint | Low stagnating female Labour-force oarticipation in India

STATUTORY BONUS

Statutory Bonus under
Payment of Bonus Act has
to be paid within 8 months
from closing of
accounting year. Diwali,
therefore, is the best time
to disburse statutory
bonus as reward to
employees for their hard
work and to meet the
expenses of festivities.
(Scroll down to pg. 13 for
more details)

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- When can two establishments be clubbed together for EPF Act coverage? Supreme Court explains.
- Advocates cannot claim Right of legal representation under Industrial Disputes Act.

LATEST FROM THE HIGH COURTS

- Employer liable to compensate for driver's death due to accident caused by his suffering heart attack while driving: Kerala High Court
- Employer cannot 'Hire and Fire' even if employee is accused of misconduct sans fair opportunity of hearing: Rajasthan High Court.

LATEST FROM THE CENTRAL GOVERNMENT

• Instruction regarding enhancement of the limit for Non-claiming of Interest for delayed payment of contribution-ESIC.

LATEST FROM THE STATE GOVERNMENTS

• Revised Minimum Wages.

LATEST FROM THE SUPREME COURT OF INDIA

When can two establishments be clubbed together for EPF Act coverage? Supreme Court explains.

In the present case, both the Institutes were being run by the same Society i.e., Ideal Fine Arts Society. While one institute named the Ideal Institute was set up in the year 1965, whereas the other one i.e., the Arts College (the appellant) was set up around after 20 years i.e, in the year 1985-86. If the employees employed in both the institutes are added, the total number of employees would be 26, which will be sufficient for coverage in terms of Section 1(3)(b) of the EPF Act, which stipulates that an institute employing 20 or more persons is liable to be covered under the provisions of the EPF Act w.e.f. March 01, Moreover, both the 1988. institutes were being run in the same campus.

To begin with, the Court highlighted that under the provisions of the EPF Act, if any establishment employs 20 or more persons, the same shall be covered under the provisions of the EPF Act for grant of various benefits thereunder to the employees working there.

Moving forward, the Court also

narrowed the issue raised in the present appeal and clarified that the same is not regarding the calculation of dues under the EPF Act, rather it is regarding the coverage of the EPF Act by clubbing of two Institutes.

It thereafter relied upon several precedents that laid down the law regarding the adjudicated issue. These decisions included Associated Cement Co. v. Workmen, AIR 1960 SC 56. wherein it was opined that it is impossible to lay down any one test as absolute and invariable for all cases to determine the issue regarding clubbing of two establishments for the purpose of coverage under the EPF Act. The real purpose is to find out true relations between the establishments and finally opine thereon. In one case, **'unity** of ownership, management and control' may be an important test whereas in another 'functional integrity' or unity' 'general may be **important.** There can also be a case where the test can be of the 'unity of employment'.

The Court also placed its reliance upon Noor Niwas Nursery Public School v. Regional Provident Fund Commissioner and others, (2001) 1 SCC 1 wherein it was held that no straight jacket formula or test can be laid down for the purpose of clubbing of the two establishments and coverage under the EPF Act.

After perusing various orders and documents produced on record, the Court was of the opinion that the appellant had taken the case very casually. At the foremost, the Court observed that after the inspection of the institute, report was submitted by the Enforcement Officer on July 01, 2003, wherein it was stated that the establishment would covered under the he provisions of the EPF Act.

The coverage was confirmed vide order dated August 12, 2003. At this, the Court pointed out that both these orders were not challenged by the appellant. It is only after the order was passed by the Commissioner on September













Contd. ...

23, 2005, under Section 7-A of the EPF Act, that the proceedings were initiated.

When the matter travelled to the Tribunal, therein it was recorded that the onus to prove that the employees were less than exclusion of the applicability Act before **EPF** Commissioner, was on the appellant and the appellant had failed to discharge the same. Thus, it did not interfere with the order of the commissioner.

At the end, the Court opined

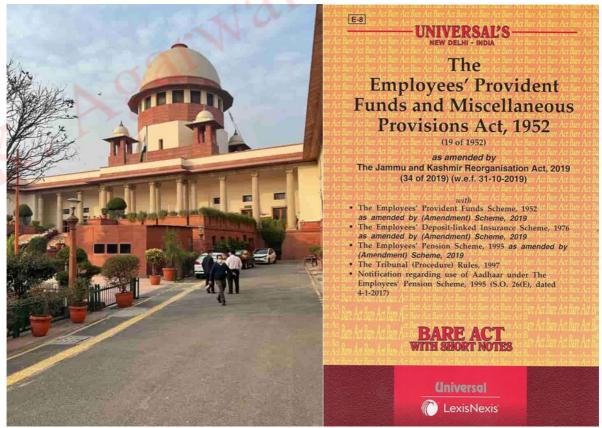
that the documents produced by the appellant themselves show that it is not an independent establishment but an arm of the society.

Pertinently, one of the documents was letter dated 09.12.1987 from the University Grants Commission conveying the Registrar, Gulbarga University, Gulbarga, about the inclusion of the appellant college in the list of the approved colleges under the non-Government colleges, teaching upto Bachelor's degree. The name of the college was mentioned as 'The Ideal |

Fine Arts Society's College of Visual Art'.

It is in this context, the Court held that "the College is nothing but an extended arm of the Society", while refusing to accept the appellant's contentions and dismissing the appeal. [M/S Mathosri Manikbai Kothari College Of Visual Arts V. The Assistant Provident Fund Commissioner].

<u>Click here</u> to read Judgement.



PC | The Supreme Court of India | EPF Act | India Legal | Amazon.in











Advocates cannot claim Right of legal representation under Industrial Disputes Act.

The issue that arose before the bench was whether the provisions of the Industrial Disputes Act, dealing with the aspects of representation by either of the parties through a specific lawyer and limitation put thereon, needs to be re-looked.

It may be noted that as per Section 36 of the Industrial Disputes Act, a workman who is a party to a dispute shall be entitled to be represented by any member of a registered trade union. Section 36(4) of the Act adds that in any proceeding before a labour Court or tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the court they are appearing before.

In Paradip Port Trust, Paradip vs. Their Workmen (1977) 2 SCC 339, the Supreme Court had clarified the application of this provision and held that legal practitioners who were

officers of companies or corporations and not actively practicing as advocates could still represent the entities in legal matters.

The court observed that Section 30 would not come into force and emphasized that the Industrial Disputes Act was a special law focused on labour welfare and representation before adjudicatory authorities. This special act would thus take precedence over the Advocates Act, which was a general law governing the appearance of lawyers in various forums. The court applied the legal principle that "general laws do not derogate from special ones" and concluded that the Advocates Act was unlikely to affect the special provisions of the Industrial Disputes Act. [Thyssen Krupp Industries India Private Limited & Ors v. Suresh Maruti Chougule & Ors.]

Click here to read Judgment.

LATEST FROM THE HIGH COURTS

Unauthorised absence from work considered 'non-duty' for all purposes except Pension, including seniority: Kerala High Court.

The Kerala High Court held the treatment of unauthorised absence as "non-duty for all purposes except pension" has a clear implication: it cannot be counted for seniority.

The Court on an examination of the provisions of Fundamental Rules and Supplementary Rules, Central Civil Service (Pension Rules), 1972 **stated that when a period of unauthorized absence** was treated as non-duty for all purposes,

except pension, such period will not be a break in service for the purpose of pension and the officer will not lose his lien in the post. It further noted that such a period of unauthorized absence cannot be treated as duty for any other purpose including seniority. [Viju P Varghese v The Cochin Port Trust]











Employer liable to compensate for driver's death due to accident caused by his suffering heart attack while driving: Kerala High Court

The Kerala High Court by relying upon the Apex Court decision in Param Pal Singh v. National Insurance Co. Ltd and another (2013) held that the death of a driver due to heart attack would amount to an accident arising out of and in the course of his employment as drivers were subjected to long years of stress and strain.

The appellant wife and daughter of the deceased employee has approached the High Court under Section 30 of the Employees Compensation Act, 1923 challenging the order by passed **Employees** Compensation Commissioner (Industrial Tribunal), Thrissur. The deceased employee died on February 01, 2006 due to heart attack while driving a taxi car. The appellants approached the **Employees** Compensation Commissioner for compensation from the owner of the taxi car (1st respondent) and the insurer (2nd respondent). It was contended that the death was caused due to heart attack and not in an accident arising out of and in the course of the employment. The Employees Compensation Commissioner stated appellants were unable to prove that death was caused



PC | The Kerala High Court | Curly Tales

in the course of his employment.

The Court found that the deceased suffered heart attack while driving the car which resulted in the accident of his car hitting an electric post. It noted that if there was no heart attack, then there would have been no accident also. It noted that the Apex Court in Param Pal Singh (supra) held that an employee was liable to be compensated for his death due to heart attack even when he was not driving the vehicle. The Court noted that in the present facts of the case, the employee was driving the taxi car while he collapsed due to heart attack which resulted in the accident causing his death.

The Court also noted that

Employees Compensation Act social was a legislation, intended to compensate employees and thus has to be interpreted for the benefit of the employees. It held that be there must causal relationship between the accident and the employment. It further stated that if the accident occurred due to a risk which was incidental to the employment, then such accident can be said to be one arising out of and in the course of employment.

On the basis of the above observations, the Court held that the family of the deceased employee was liable to be compensated. [Leela v M.K. Sukumaran]











Contracts of employment not specifically enforceable when there is no element of statutory governance: Madhya Pradesh High Court.

The Madhya Pradesh High Court made an observation that when contracts of employment are governed purely by the terms of the contract without any element of statutory governance, such contracts that determine the relationship between the master and the servant are not specifically enforceable.

In State Bank of India v. S.M. Goyal, the apex court had reiterated that **even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance.** In such instances, the court will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement, with a very few exceptions.

The petitioner was appointed as samooh prerak in Rewa for a period of one year in 2015. On 07/03/2020, the petitioner was transferred from Rewa to Bhind. The petitioner employee challenged the transfer order in the High Court as a result of which its operation was stayed until 30/09/2020. On 30/09/2020, the petitioner's representation against the transfer order was decided by the respondent authorities as per the direction of the High Court and it was rejected. This decision by the respondent authorities was again challenged by the employee before the High Court via another writ petition. The said writ petition got dismissed on 27/02/2021. Later, when the petitioner tried to rejoin as samooh prerak as per the transfer order, the respondents refused to allow the same.

Aggrieved by the act of the authorities, the petitioner employee again preferred another writ petition before the High Court. The court directed the respondents to consider the reinstatement of the petitioner if there is no other legal impediment. On 30/11/2021, the respondents passed another order stating that the contractual agreement has come to an end as per clause 17 of the Contract since the petitioner has remained unauthorizedly absent for months. Challenging the said orders of the respondents, the petitioner sought a direction in the nature of certiorari to quash the same and a direction in the nature of mandamus to reinstate the petitioner in service with arrears of salary, continuity in service etc.

The High Court concluded that the apex court decision has already established that the contractual appointee has very limited rights to ask for continuation of service when the relationship between the master and the servant is purely contractual and lacks any statutory governance. Considering the fact that the petitioner employee failed to demonstrate reasons for his prolonged absence from the workplace, contrary to Clause 17 of the Contract that governs the employer-employee relationship, respondents have the committed any error inputting an end to the stint of the petitioner as 'samooh prerak', the court added. [Sudheer Kumar Sharma v. The State Of Madhya Pradesh Through The **Principal** Secretary Panchayat And Rural Development **Department & Ors.**]











Employer cannot 'Hire and Fire' even if employee is accused of misconduct sans fair opportunity of hearing: Rajasthan High Court.

The Rajasthan High Court set aside an order issued by the State Government that dismissed a Physical Education Teacher (PET) from service allegedly for furnishing a forged sports certificate for getting appointment, on the ground that the said teacher was not given any notice of charge-sheet and there was no enquiry conducted against him.

The Court observed: "Passing an order which affects a person, without giving him an opportunity of being heard would be held to be vitiated as being contrary to principles of **natural justice**. If the safeguards provided by Article 311 of the Constitution are not to be words rendered illusory, the "reasonable opportunity" must be deemed to mean a real and adequate opportunity which is not merely nominal or a shame one. It is well settled principle of law that an order of removal from service which denied the person reasonable opportunity of defending himself in disregard of protection afforded by Article 311(2) of the **Constitution**, is a nullity and non-existent in the eves of law."

It was highlighted by the Court that no notice or charge sheet was served upon the petitioner and no documents were supplied to the petitioner to seek his explanation that the sports certificates furnished by him were fake and fabricated.

The Court further noted that the petitioner was a permanent government employee and he has constitutional safeguard and protection under Article 311(2) of the Constitution of India, as such it was absolutely imperative on the part of the respondents to give him an opportunity to defend his proposed dismissal from service, which was not given to the petitioner.

Thus, the Court set aside the impugned dismissal order and granted liberty to the respondents to hold fresh enquiry against the petitioner, in accordance with law and conclude the same within six months. [Sanjay Dadich v. The State of Rajasthan & Ors.]

Click here to read Judgment.

Establishments under fold of ESI Act obliged to make contributions even if number of employees fall below specified limit: Jharkhand High Court.

The Jharkhand High Court reiterated that if an organization is covered under the Employees' State Insurance Corporation Act, 1948, the number of employees working there is irrelevant, and such establishments are obligated to deposit employee subscriptions to contribute to the ESI fund. This would ensure the fulfillment of the Act's purpose, which is to provide beneficial measures in cases of sickness, maternity, employment injuries, and related matters, the Court said. [Beldih Club Jamshedpur vs. The State of Jharkhand and Others]



PC | The Jharkhand High Court | Hindustan Times

<u>Click here</u> to read Judgment.











Municipal Corporation to pay Rs. 1 Lakh for illegally terminating charge clerk: Madhya Pradesh High Court.

The Madhya Pradesh High Court has imposed a cost of Rs. One Lakh on Indore Municipal Corporation for falsely foisting the blame on a Charge Clerk for not preparing the chargesheet against a beldar.

The Bench noticed that the disciplinary action taken against the charge clerk was merely a ploy to save the image of Municipal Corporation in the public.

The court observed that the Department cannot unevenly place the blame on the petitioner clerk when the Commissioner is primarily the competent authority to take disciplinary action, followed by the Superintendent. The

authority to draft and frame charges always lies with the Disciplinary Authority or such authority as delegated by the Disciplinary Authority. The responsibility to draft charges and submit the note sheet, by no stretch of imagination, can be attributed to a clerk like the terminated petitioner, the court observed.

The Court observed that a charge clerk is only responsible for maintaining the file and recording the documents for the concerned office, the court was puzzled by the arguments advanced by the respondents to the contrary. A charge clerk has no say in initiating proceedings against a delinquent employee or placing

the charge-sheet before the competent authority, the court further clarified.

"The Enquiry Officer, Officer Disciplinary and Appellate Authority all have failed to appreciate that the in charge clerk is not supposed to write a note-sheet or take a decision for initiation of any it is for the enquiry, Superintendent or Disciplinary Authority to instruct him or dictate him the contents of note-sheet." [Mehfooj Khan v. State of Madhya Pradesh Through Principal Secretary, **Urban Administration And Housing Department & Ors.**]

Click here to read Judgment.

TRIVIA

The Gujarat High Court ruled that a chartered accountancy (CA) firm cannot be considered a shop or commercial establishment but is a professional establishment and its employees are thus not covered under the Employees' State Insurance (ESI) benefit scheme.

The dispute over the inclusion of employees of CA firms has been on for 8 years, when the Employees' State Insurance Corporation (ESIC) issued a recovery notice after assessment to an international professional services network, Deloitte Haskins & Sells.

Click here for reference.











Confirmation of order of reduction in basic pay imposed on "Tipsy" bus conductor who misbehaved with passengers: Karnataka High Court.

The Karnataka High Court has held that the Industrial Tribunal cannot modify the minor penalty of reduction of basic pay to the minimum, imposed on а tipsy bus conductor found to be misbehaving with passengers.

The Corporation had taken action after it was informed by passengers that the bus conductor on 11.06.2006 had consumed alcohol and was misbehaving with the passengers in the bus.'

He was subjected to a medical examination, and it was found that he had consumed alcohol.

The conductor questioned the order of punishment by raising a dispute, which came to be referred to the Tribunal. The Industrial Tribunal held that the domestic enquiry

conducted by the Corporation was fair and proper but modified the punishment order.

It said, "Some of the duties listed on the Bus Conductor are - checking tickets, providing information to passengers, assisting passengers boarding and alighting, maintaining order and discipline on the bus, counting fares and issuing tickets, and reporting any irregularities to the supervisor."

Further it observed "Overall, a good bus conductor should be dependable, friendly, helpful, and safety conscious. They should possess excellent communication skills, be trustworthy, and be physically fit enough to manage the demands of the job. The drivers and conductors must behave

courteously with passengers."

Then it said "But this is an interesting case of Tipsy Man who made travel a nightmarish experience for passengers. The charge was serious; while on duty, he was drunk and misbehaved with the passengers."

The Tribunal erred in modifying the minor penalty despite affirming the misconduct." It "The added managerial decision imposing a minor penalty is absolute and the same cannot be modified in the exercise of power under Section 11A of the Industrial Act." Disputes [Bengaluru Metropolitan **Transport** Corporation Limited And H B Siddarajaiah]

<u>Click here</u> to read Judgment.

Setting cut-off date for receiving enhanced pension benefits is illegal & arbitrary: Telangana High Court.

The Telangana High Court has scrapped the cutoff date set by the Telangana State Apex Cooperative Bank Ltd., for receiving enhanced pension benefits finding it illegal and arbitrary, and thus directed the Bank to make the amendment retrospective.

The court held that the cutoff date was without any rational basis and constituted an unreason-

-able classification and that the introduction of the date was a violation of Article 14 and ordered that the benefits of the enhanced pension scheme should be extended to all pensioners, irrespective of their retirement date. [T. Hemanth Kumar Vs. Telangana State Co-operative Bank]











LATEST FROM THE CENTRAL GOVERNMENTS

Circular regarding Aadhaar seeding in respect of Insured Persons and their family members -ESIC.

Despite of the instructions vide letters dated 20/06/2023, 17/07/2023 and 20/07/2023 wherein process of Aadhar seeding was circulated in detail for information and necessary action by all the field offices, it has been observed that the progress of Aadhar seeding is not satisfactory and the field offices are not able to achieve the daily targets fixed for them.

Therefore, the ESIC has decided to introduce biometric authentication in addition to OTP based authentication, for speeding up the Aadhaar seeding in respect of insured persons and their dependents.

Click here to read Circular.

Instruction regarding enhancement of the limit for Non-claiming of Interest for delayed payment of contribution-ESIC.

Considering the enhancement of the wage ceiling over the years, the administrative inconvenience and cost in the process of claiming interest and recovery, it has been decided that the interest payable due to delayed payment of contribution for any reason in any contribution period (taken as a whole), shall be enhanced from Rs. 100/- and the same which does not exceed Rs. 300/- may not be claimed. This instruction will come into force from 1st November, 2023.



PC | The ESIC | Employeeadda.com

Click here to read Circular.

Standard Operation Procedure for management of regulation of EPF exempted establishments - EPFO.



PC | The EPFO | Fortune India

The said SOP describes the process of compliance to be done by the exempted/relaxed establishments managing their own trust and the regulations thereof as per the conditions delineated in the statute.

Click here to read SOPs.











LATEST FROM THE STATE GOVERNMENTS

REVISED MINIMUM WAGES

Some states have revised the rates of Minimum wages in Scheduled employments. Click on the link below for updated rates.

S. NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Bihar	01.10.2023	Government Notification
2.	Chhattisgarh	01.10.2023 -	Government Notification
		31.03.2024	
3.	Odisha	01.10.2023	Government Notification
4.	Andhra Pradesh	01.10.2023	Government Notification
5.	Uttarakhand	01.10.2023 -	Government Notification
		31.03.2024	-c
6.	Rajasthan	01.10.2023 -	Government Notification
		30.09.2024	
7.	Punjab	01.09.2023	Government Notification
8.	N.C.T of Delhi	01.10.2023	Government Notification
9.	Jharkhand 🗼	01.10.2023	Government Notification
10.	Uttar Pradesh	01.10.2023 -	Government Notification
	(Workers employed in Hotels & Restaurants)	31.03.2024	

Notification regarding ESI coverage in all the areas of Nilgiris district of the State of Tamil Nadu and in certain districts of the State of Uttar Pradesh w.e.f 01/11/2023.

The provisions of the ESI Act, 1948 namely sections 38 to 43 and sections 45H of Chapter IV; sections 46 to 73 of Chapter V; sections 74, 75, sub-sections (2) to (4) of section 76, 80,82 and 83 of Chapter VI shall come into force in all the areas of Nilgiris district in addition to already notified areas in said district of State of Tamil

Nadu and in all the areas of Lalitpur, Kushinagar, Kaushambi, Budaun, Sultanpur, Deoria, Ballia, Jaunpur, Azamgarh, Baghpat, Chitrakoot, Sambhal and Ayodhya districts of the State of Uttar Pradesh.

Click here to read notification.









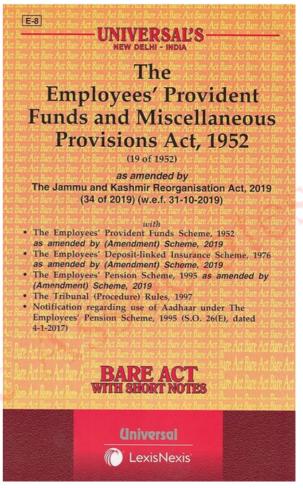


YOU MUST KNOW

ABOUT PAYMENT OF BONUS ACT, 1965

As per Section 19 of the Payment of Bonus Act, 1965, bonus becomes payable after eight months of the close of accounting year, however, it is customarily paid before Diwali as reward to employees for their hard work and to meet the expenses of festivities.

- Objective: An act to provide for the Payment
 of Bonus to persons employed in certain
 Establishments on the basis of profits or on
 the basis of production or productivity and
 for matters connected herewith.
- Applicability of the Act: This Act applies to every establishments where 20 or more persons are employed on any day during an accounting year.
- Eligibility for Bonus [Sec. 8]: An employee
 who has worked for atleast 30 working days
 in that year, shall be entitled for Payment of
 Bonus.
- Liability of Employer [Sec. 10 and 11]: The payment of minimum bonus @8.33% shall be payable and a maximum of 20% shall be payable.
- Wage/ Salary Ceiling: Employee drawing wages [Basic+DA] up to Rs 21,000 per month. However, for calculation purpose Rs 7,000 per month or the minimum wages of that particular category declared by State Government whichever is higher will be considered for bonus calculation.



PC | Payment of Bonus Act, 1965 | Amazon.in

- Disqualification for Payment of Bonus
 [Sec. 9]: An employee shall be disqualified
 from receiving the bonus, if he is dismissed
 from service for (i) Fraud; (ii) Riotous or
 violent behaviour while on premises of
 the establishment; or (iii) Theft,
 misappropriation or sabotage of any
 property of the establishment.
- Time Limit for Payment of Bonus [Sec. 19]: The Bonus shall be paid within 8 months from the close of the accounting year.











• Records & Registers:

- 1. Form A Register showing computation of the allocable surplus.
- 2. Form B Register showing the Set-On and Set-Off of the Allocable Surplus.
- 3. Form C Register showing details of amount of Bonus payable to the employees.
- 4. Form D Annual Return.
- 5. Abstract of the Act.

Method of Bonus Calculation:

- 1. Calculate Gross Profit in the manner specified in second schedule of the Act.
- 2. Calculate the Available surplus: Available Surplus = Gross Profit Depreciation admissible u/s 32 of the Income Tax Act Development rebate or investment or development allowance Direct Taxes Payable for the accounting year sums specified in third schedule of the Act.
- 3. Calculate the Allocable Surplus: Allocable Surplus = 60% of Available Surplus in normal.

- 4. **Set On and Set Off**: For calculating the amount of bonus in respect of an accounting year, Allocable Surplus is computed after considering the amount of set On and Set Off from the previous years, as per 4th schedule of the Act.
- 5. The Allocable Surplus so computed is distributed amongst the employees in proportion to salary or wages received by them during the relevant accounting year.
- Penal Provisions: For contravention of any provision under this Act, Imprisonment of upto 6 months and fine of upto Rs. 1000/- or both.

Contact your consultants and professionals for advice and calculation of bonus.

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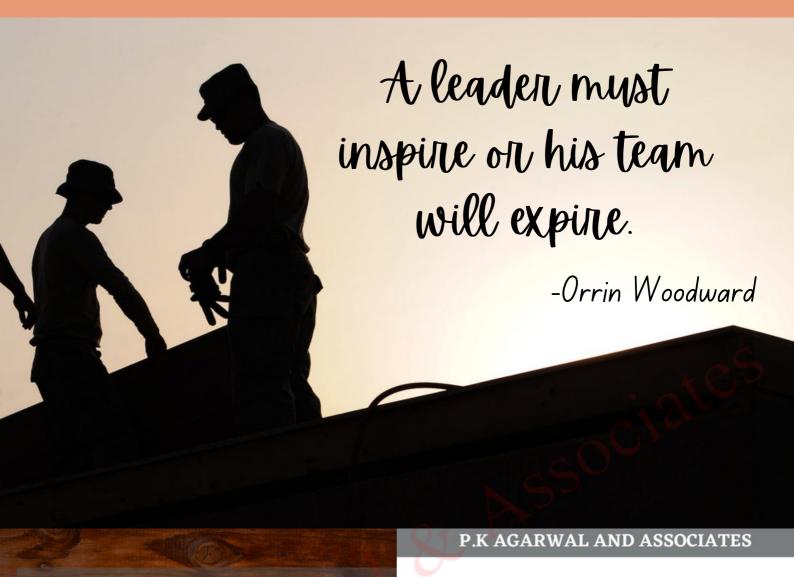












P.K. Agarwal & Associates deals in:

- Compliance under all labour related statutes;
- Drafting and vetting of appointment Letters, agreements, standing orders, notices, and such other documents required by the establishment in lieu of employer-employee relationship;
- 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.











