

Compliance under NEW LABOUR CODES

SA 250

"Consideration of Laws and
Regulations in an Audit of Financial
Statements,"

SA 250

It doesn't mandate compliance with specific laws, but it requires auditors to assess whether non-compliance might affect the financial statements. The auditor's role is to determine if management's compliance with laws and regulations is essential for the accuracy and reliability of the financial statements.

Auditor's Responsibility:

The auditor must consider whether non-compliance might have a material effect on the financial statements. This involves understanding the relevant laws and regulations, identifying potential areas of non-compliance, and performing procedures to obtain sufficient evidence.

Reporting:

If the auditor identifies potential non-compliance that could materially affect the financial statements, they may need to report it to management, those charged with governance, or governing authorities, depending on the circumstances.

Major labour laws –pre labour codes

- The Factories Act, 1948
- **The Payment of Wages Act, 1936**
- The Minimum Wages Act, 1948
- **The Payment of Bonus Act, 1965**
- **The Payment of Gratuity Act, 1972**
- The Contract Labour (Regulation and Abolition) Act, 1970
- The Maternity Benefit Act, 1961
- The Shops and Establishments Act (State-wise)
- The Trade Unions Act, 1926
- **Employees Provident Fund and Miscellaneous Provisions Act 1952**
- **Employees State Insurance 1948**

New Codes

- The Code on Wages, 2019
- The Industrial Relations Code, 2020
- The Code on Social Security, 2020
- The Occupational Safety, Health and Working Conditions Code, 2020

Four Pillars of reform



The Four pillars of reform

Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act, etc.	Code on Wages, 2019
Industrial Disputes Act, Trade Unions Act, etc.	Industrial Relations Code, 2020
EPF Act, ESI Act, Gratuity, Maternity Benefit Act, etc.	Code on Social Security, 2020
Factories Act, Contract Labour Act, etc.	Occupational Safety, Health & Working Conditions Code, 2020

CODE ON WAGES 2019

The Code of wages 2019

- The Code of wages regulates the manner in which wages are paid to employees or workers, either directly or indirectly.
- It was enacted specifically to safeguard employees from unlawful wage deductions and prevent delays in wage payment.
- The ultimate concern regarding safeguarding workers' rights

Applicability of old payment of wages act.


- Any factory
- Railway and their contractors
- Tramway or motor transport carrying passengers or goods
- Air transport other than Government
- Dock, wharf or jetty
- Inland water vessels
- Mine, quarry or oil field
- Plantation
- Workshop for manufacturing
- Construction, development and maintenance of building, road, bridges or canals etc
- Any other establishment notified by the Central Government

Applicability as per Code of wages

- To All Establishments
- Establishment means any place where any industry, trade, business, manufacture or occupation is carried on and includes Government establishments
- **Employer employs one or more employees**
- Apprentices – individuals covered under the Apprentices Act are excluded

Object of wage code

Payment of Wages

A close-up photograph showing two hands exchanging a stack of US dollar bills. The hands are positioned in the center of the frame, with one hand holding the stack and the other hand reaching in to take a bill. The background is dark and out of focus. The text "Payment of Wages" is overlaid in white, bold, sans-serif font across the middle of the image.

Object of wage code

- The fair distribution of wages to employees earning wages ~~below Rs.24,000 per month~~ below Rs.24,000 per month and protects their rights.
- Pay salary before 7th of next month
- Daily wages on same day
- Weekly wages on the end of week
- On termination – within 2 days



Minimum Wages

The Minimum Wages Act, 1948

- Ensures statutory minimum wage payment across scheduled employments

Minimum Wage fixed by Keralam Government

- Minimum Rate of wage shall be fixed on a day basis following few criteria

Minimum Wage criteria

- Standard working class family = Worker+Spouse+two children = three adult consumption
- A net intake of 2700 calories per day per consumption unit
- 66 meters cloth per year per family
- Housing rent expenditure 10% of Food and cloth expenditure
- Fuel, electricity and other misc expenses constitute 20% of minimum wage
- Expenditure for education of children , medical requirement, recreation, expenditure on contingencies to constitute 25% of minimum wages

Fixation of minimum wages

- Once rate is fixed it is divided by 8 then multiply with 26 to reach minimum wage per month
- Kerala is divided into three category area – Municipal corporation, municipality and rural area
- Categorize the occupation into four – unskilled, skilled, semi skilled and highly skilled

Fixation of DA

- Dearness allowance payable
- from every April to September shall be computed in accordance with the average of consumer price index for the previous October to March
- from every October to March shall be computed in accordance with the average of Consumer Price Index for the previous April to September.

Notification- minimum wages

- <https://lc.kerala.gov.in/en/minimum-wage-notifications>
- <https://karmikaspandana.karnataka.gov.in/58/minimum-wages-rates-for-the-year-2024-25/en>

MS for Software companies

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II. Dearness Allowance

In addition to the basic rate of wages, all the employees shall be eligible for Dearness Allowance calculated on the basis of the Consumer Price Index published for the concerned District Head Quarters of the Department of Economics and Statistics at the rate of ₹ 26 (Rupees Twenty Six only) for monthly waged employees and ₹1 (Rupee One only) for daily waged employees respectively, for every point in excess of 300 points of the latest Consumer Price Index Number in the series 1998-99=100.

III. Service Weightage

For every five years of completed or to be completed service in an establishment or under an employer, an annual increment at the rate next to the pay scale fixed in the new scale of pay shall be paid as service weightage to the employee concerned.

If an employee reaches the maximum of the eligible scale of pay, such employee shall be paid an annual increment prescribed for the higher time scale in the scale of pay assigned to the corresponding category for every subsequent years.

IV. Other Conditions

1. In case the employees of any Establishment/Industry are at present getting higher wages than the minimum wages fixed as per this notification, they shall continue to be entitled to get such higher rates.
2. If any category of employees are not included in the post/category shown in the Schedule, they shall be eligible for the basic wages prescribed for the employees of the equivalent post/category.
3. The daily wages in respect of the category of employees for whom monthly wages is fixed in this notification will be calculated by dividing the total monthly wages eligible for that post by 26 and the Monthly Wages of the daily waged employees will be calculated by multiplying the daily wages by 26.

By order of the Governor,
SATYAJEET RAJAN,
Additional Chief Secretary to Government.

This is a digitally signed Gazette.
Authenticity may be verified through <https://compos.kerala.gov.in/>



Wages

- Means all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied, where fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes:-

Wages includes

- Basic pay
- DA
- Retaining allowance, if any

Wages does not include

- Bonus
- Employer's Contribution to PF, ESI and interest thereon
- Any conveyance allowance / travelling concession
- HRA
- OT allowance
- Any commission payable to the employee
- Any gratuity
- Any retrenchment compensation or ex- gratia

50 : 50 Rule



50 : 50 Rule

- If total of the items mentioned in previous slide except gratuity or retrenchment compensation exceeds 50 percent of the total remuneration, then the excess shall be considered as wages

50% Rule

- The New Definition of "Wages"
 - The 50% Rule: Basic pay + Dearness Allowance (DA) must now constitute at least 50% of the total remuneration.
 - Take-home Salary: For many employees, this means a lower take-home salary because higher basic pay leads to higher PF and Gratuity deductions.
 - Retirement Benefits: While current spending power might dip, the long-term social security corpus (PF and Gratuity) will increase significantly.

Audit points

- Is minimum wages applicable to the establishment complied ?
- Is Basic+DA is equal or greater than 50% of total remuneration payable to employees ?

Main features of the Act

- Central and state government shall fix a minimum wages based on cost of living of workers
- Wages includes remuneration and other mode of compensations for work
- Discrimination is prohibited between male / female worker
- Minimum wages are revised from time to time
- When employee works more than the fixed time, then overtime shall be paid
- Penalty and punishment if minimum wages is not paid

Maximum deduction

- Upto 75% of wages deductions are made partially or wholly for payment relating to cooperative societies.
- 50% of wages in other cases

Various allowable deductions

- Imposition of fines as per the provisions of the Act
- Deductions for damage or loss of goods caused due to negligence of the employees
- Deductions for absence from duty
- Deductions for house accommodation provided by the employer or any housing authority
- Deductions of income tax payable by the employees
- Deductions for payments made to a provident fund

Not considered as deduction

- Demotion of the worker
- Suspension of the worker
- Pause of increment of worker
- Promotion stoppage of the worker

Fine imposed by employer

- An employer can **impose fines on workers only with an order** from the **State Government**.
- The employer should exhibit a notice specifying the acts and omissions of the employee for which fine is imposed.
- The employee must be given an **opportunity to provide clarification** and underlying reasons for the acts and omissions for which the fine is imposed.
- The total amount of fine **should not exceed 3%** of the employee's wage for a wage period.
- The fine cannot be imposed on any employed person aged below 15 years.
- Fines should not be recovered in **installments or after the expiry of 90 days** from the day of imposing fines.
- All fines collected from workers should be utilised for purposes **beneficial to the employees** of the establishment.

Claim by employee

- An employee can **raise a claim arising out of deductions** from wages or due to **delayed payment of wages and penalties** against the employer either in person himself/herself or through a legal practitioner or an official of a registered trade union authorised in writing to act on the employee's behalf or any Inspector under this Act.



The Payment of Bonus Act, 1965

- Bonus payment to employees based on profits or productivity

Payment of Bonus

- ~~Every Factory~~
- ~~Every other~~ Establishments in which twenty or more persons are/ were employed on any day during an accounting year
- An employee works for at least 30 days in an accounting year.

Minimum Bonus

- **8.33** per cent of wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year

Maximum Bonus

- **20 per cent** of wage earned by the employee during the accounting year.

Allocable surplus

- Allocable Surplus
 - 60% of available surplus – in banking company
 - 67% of available surplus – Company other than a banking company

Available Surplus

- Gross profit of the accounting year (-)
 - Depreciation as per Income Tax Act
 - Amount of development rebate, investment allowance, development allowance allowable as per Income tax act.
 - Any income tax payable for that year
 - Any sum specified in ~~Third Schedule~~ Rules
 - Eg: Dividend payable on preference shares
 - 8.5% of paid up share capital of the company / others
 - 6% on the reserve at the beginning of the year of the company

Allocable surplus

- Available surplus = Rs. 50,00,000
- Allocable surplus = Rs. 50,00,000 * 67%
 - = 33,50,000
- Total Salary for the year = Rs. 4,00,00,000
- Bonus payable 8.33% = 33,32,000
- Bonus payable = Rs. 33,50,000
- Maximum payable 20%

Allocable surplus

- Available surplus = Rs. 25,00,000
- Allocable surplus = Rs. 25,00,000 * 67%
 - = 16,75,000
- Total Salary for the year = Rs. 4,00,00,000
- Bonus payable 8.33% = 33,32,000
- Shortfall of allocable surplus = 16,57,000

Allocable surplus Yr -1

- Available surplus = Rs. 25,00,000
- Allocable surplus = Rs. 25,00,000 * 67%
 - = Rs. 16,75,000
- Total Salary for the year = Rs. 4,00,00,000
- Bonus payable 8.33% = Rs. 33,32,000
- Shortfall of allocable surplus = Rs, 16,57,000

Allocable surplus – Yr 2

- Available surplus = Rs. 50,00,000
- Allocable surplus = Rs. 50,00,000 * 67%
 - = Rs. 33,50,000
- Total Salary for the year = Rs. 4,00,00,000
- Bonus payable 8.33% = Rs. 33,32,000
- Bonus payable = Rs. 33,32,000

- Allocable surplus shortfall Yr1 = Rs. 16,57,000
- CY excess (33,50,000-33,32,000) =Rs. 18,000
- Balance allocable surplus shortfall = Rs. 16,39,000

Allocable surplus – Yr 3

- Available surplus = Rs. 100,00,000
- Allocable surplus = Rs. 100,00,000 * 67%
 - = Rs. 67,00,000
- Allocable surplus shortfall = Rs. 16,39,000
- Adjusted Allocable surplus = Rs. 50,61,000

- Total Salary for the year = Rs. 4,00,00,000
- Bonus payable 8.33% = Rs. 33,32,000
- Bonus maximum 20% =Rs. 80,00,000
- Bonus payable = Rs. 50,61,000

- Allocable surplus shortfall Yr1 = Nil

Allocable surplus – Yr 4

- Available surplus = Rs. 200,00,000
- Allocable surplus = Rs. 100,00,000 * 67%
 - = Rs. 1,34,,00,000
- Allocable surplus shortfall = Nil
- Adjusted Allocable surplus = Rs. 1,34,00,000

- Total Salary for the year = Rs. 4,00,00,000
- Bonus payable 8.33% = Rs. 33,32,000
- Bonus maximum 20% =Rs. 80,00,000
- Bonus payable = Rs. 80,00,000

- Allocable surplus carry forward = Rs. 54,00,000 to next four years

Set on and set off of allocable surplus

- If allocable surplus exceeds the maximum bonus payable, then the excess, shall subject to a limit of 20% of the total salary or wage of that accounting year, be carried forward upto inclusive of fourth accounting year.
- If there is no allocable surplus at the time of payment of minimum bonus, then the shortfall , shall be carried forward for set off upto inclusive of fourth accounting year.

Payment of maximum bonus

- If the allocable surplus exceeds the amount of minimum bonus payable to the employees, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of **twenty per cent.** of such salary or wage.

Time limit for payment of bonus

- where there is a dispute regarding payment of bonus pending before any authority, within a month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute
- in any other case, within a period of eight months from the close of the accounting year (ie within 30th November)

Disqualification for bonus

Worker is dismissed from service due to:-

- Fraud
- riotous or violent behaviour while on the premises of the establishment; or
- theft, misappropriation or sabotage of any property of the establishment

Act not to apply to certain classes of employees

- Employees of insurance companies including LIC
- Seamen
- Employers registered under the Dock Workers (Regulation of Employment) Act, 1948
- Employees of Central, State and Local authorities
- Indian Red Cross Society, Universities and other educational institutions
- Institutions established not for purposes of profit
- RBI , IFCL, IDBI, etc
- Employees in inland water transport establishment operating on routes passing through other countries

The "First Five Years" Rule

- For the first **five accounting years** following the year in which the employer begins selling goods or rendering services, a bonus is **only payable** if the establishment derives a **profit** in that specific year.

The "First Five Years" Rule

- If there is no profit – No minimum bonus payable
- If there is a profit – Bonus as per Code Formula

New Units of Existing Companies

- If an existing company sets up a **new department, undertaking, or branch**, that specific new unit is also entitled to this five-year exemption, provided it is not just a "reconstruction" of an old business or a shift of an existing unit.

Audit check list for bonus

- Check Applicability of bonus provisions
- Calculate Allocable surplus as per the provisions
- Verify the total bonus payable with allocable surplus
- Verify employee wise bonus calculation on a sample basis – eligibility, salary components, computation of bonus
- Ensure 50% rule is met (Bonus is payable on wages not on total remuneration)

Penalties for offences

- No minimum wages paid – Rs. 50,000 fine
- Found again guilty within 5 years – Rs.1 Lakh / Imprisonment upto 3 months or both
- Found guilty of any other provision – Rs. 20,000 fine
- Found again guilty within 5 years – Rs.40,000 / Imprisonment upto 1 months or both
- Non maintenance / improper maintenance of records – Rs. 10,000 fine

The Code On Social Security, 2020

SOCIAL SECURITY

HEALTH

Code on Social Security

- Replaces PF and ESI Acts
- Main change 50% of the total remuneration
- It increases PF liability
- New code is applicable to all establishments having 20 or more employees
- Voluntary coverage – if employer and employee agrees

Employees Provident Fund

~~Employees Provident Fund and
Miscellaneous Provisions Act
1952~~

Chapter III – Employees' Provident Fund

- - Understanding PF as a statutory social security benefit
- - Role of PF in retirement planning, employee welfare, and tax savings

Definition of employee 2(26)

- Employee means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any person'
 - (i) employed by or through a contractor in or in connection with the work of the establishment.
 - Engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment.

Non Applicability of chapter III

- Any co-operative society employing less than 50 persons and working without the aid of power.
- Any Central or State Government establishments where employees are entitled for the contributory provident fund or old age pension as per Government Rules

Applicability of EPF

- Every establishment in which 20 or more employees are employed

Contribution Structure

- - Employer & employee: 12% each of “Wages”

Contribution

- Employer -12%
- Employee – 12%
- Salary limit - upto Rs. 15,000 mandatory
- Increase take home salary

Exemption for New Joiners

- If a person joins a new job with a starting salary **above ₹15,000** and they have **never** been a member of the EPFO before, they are technically "exempt."
- They are not legally required to join the PF scheme, though they can choose to join voluntarily.

The "Once a Member, Always a Member" Rule

- The exemption **does not apply** if you were already a PF member at a previous job.
- If your salary was ₹12,000 at your last job (making you a PF member) and your new salary is ₹25,000, you **cannot** claim an exemption. You must continue your PF membership because you are already in the system.

Contribution on the "Ceiling" vs. "Actuals"

- For those earning above ₹15,000, employers often use the limit to cap their costs:
- An employer can choose to restrict the PF contribution to 12% of the ₹15,000 limit (i.e., ₹1,800/month), even if the employee earns ₹1,00,000
- **Actual Contribution:** Alternatively, the employer and employee can mutually agree to contribute 12% of the actual higher salary

Current status

- **Current Status:** The **Union Budget 2026** (presented in February) maintained the limit at ₹15,000, but the Ministry of Labour is currently reviewing a proposal to hike this ceiling to **₹21,000 or even ₹25,000**

Contribution Allocation

- Wealth Creation
- Pension
- Life Insurance

Allocation of contributions

Employee Contribution 12%  100% to EPF

&

Employer Contribution (out of 12%)



Allocation of contributions

Total Contribution -24%

EPF - (12% + 3.67% from 12%) =
15.67% (Wealth Creation)

EPS (8.33% from 12%) =
8.33% (Pension Corpus)

Total **24%**

Administration charges and (EDLI)Contribution to Insurance

- 0.5% each
- Employer Contribution

Salary is Rs. 50 000 per month

- Employer and Employee contribution – 12% of Rs. 15,000 only Rs. 1,800/- each
- Total contribution Rs.3600
- Calculate Contributions allocation

Salary is Rs. 50 000 per month

- Employee contribution – 12% of Rs. 15,000 =1,800 to EPF
- Employer Contrn. 3.67% of Rs. 15,000 Rs. 550 to EPF
- Tot contrn. to EPF Rs. 2350
- Employer Contr. To EPS 8.33%
 - **8.33% of Rs. 15000 = Rs. 1250 to EPS**

Total contrn to EPF Rs. 1,800+550+1250= 2,350

Total contrn to EPS Rs. 1,250

Total Rs. 3,600

Salary is Rs. 50 000 per month

- Employer and Employee contribution – 12% of Rs. 50,000 Rs. 6,000/- each
- Total contribution Rs.12,000
- Calculate Contributions allocation

Salary is Rs. 50 000 per month

- Employee contribution – 12% of Rs. 50,000 =6000 to EPF
- Employer Contn. 3.67% of Rs. 50,000 Rs. 1835 to EPF
- Tot contn. to EPF Rs. 7835
- Employer Contr. 8.33%
 - 8.33% of Rs. 15000 = Rs. 1250 to EPS
 - 8.33% of Rs. 35000 = Rs. 2915 to EPF

Total contn to EPF Rs. $6000+1835+2915= 10,750$

Total contn to EPS Rs. 1,250

Total Rs. 12.000



Draft Challan List:

No draft ECR challan details found.

In-Process Challan List:

One item found.1

TRRN	Wage Month	ECR Type	Upload Date	Status	A/C 1	A/C 2	A/C 10	A/C 21	A/C 22	Total Amt.	Receipt File	Payment
2732505009227	APR-2025	ECR	15-MAY-2025 11:53	Payment Failed. ...	61,233	1,874	28,741	1,874	0	93,722		Pay

Recent Challans:

10 items found, displaying all items.1

TRRN	Wage Month	ECR Type	Upload Date	Status	A/C 1	A/C 2	A/C 10	A/C 21	A/C 22	Total Amt.	CRN	Challan Receipt	Payment Receipt

Activate Windows
Go to Settings to activate Windows.

Various heads in chalan

- A/c. 01 – Contribution to PF
- A/c. 02 – Administration charges
- A/c. 10 - Contribution to EPS
- A/c. 21 - Employees Deposit Linked Insurance
- A/c. 22 – EDLI administrative charges (0%)

Duties of Employer

- File return within 15 days of the end of the previous month
- NIL return if no employees
- File details of new employees within 15 days of the end of the previous month
- Every contractor to submit details of deduction of his workers to the employer within 7 days from the end of the previous month

Withdrawals and Advances

- - Full withdrawal: Retirement, permanent settlement abroad, unemployment (2 months)
- - Partial withdrawal: Housing, medical, marriage, education
- - Taxability: Exempt if 5 years of continuous service

Employees Pension Scheme

- Eligibility 10 years Contribution to EPFO
- At the age of 58
- Reduced pension 50 to 57 age
- Average salary for last 12 months * No. of year in service /70
- Max pensionable salary Rs. 15000 / month

Type of Pension

- Member Pension
- Widow Pension
- Child Pension
- Orphan Pension
- Reduced Pension

Employees Deposit Linked Insurance Scheme

- Insurance cover provided by EPFO
- Maximum benefit Rs. 7 Lakhs
- Minimum benefit Rs. 2.5 Lakhs
- Basic Salary upto Rs. 15,000
- Claim 35 times average monthly salary for the last 12 months
- Bonus of Rs. 1.75 Lakhs available
- Contribution 0.5 % of wages or max Rs. 75 per month

Total Cost

Contribution	Employee	Employer
EPF	12% of Basic+ DA	3.67% of Basic + DA
EPS	Nil	8.33% of Basic + DA
EDLI	Nil	0.5% of Basic +DA (Max 75)
Administration charges		0.5% of Basic +DA
Total	12%	13%

Penal Provisions

- - Interest under Sec 7Q (12% p.a. for delays)
- - Damages under Sec 14B (up to 100% of arrears)
- - Prosecution provisions and compounding of offences

Conclusion & Recommendations

- - Ensure employer compliance, employee education
- - Monitor EPFO updates and digitization changes

Compliance check

- - Check PF wages 50% Rule
- - Check all employees are covered
- - If not covered obtain reason for the same
- - Check the computation of PF salary
- - Check time of filing of return within due date or not
- - Check time of payment within due date or not

Employees' State Insurance



1. Introduction

- - ESI Act provides socio-economic protection to workers
- - Covers sickness, maternity, disability, and employment injury

2. Legal Framework

- -Administered by Employees' State Insurance Corporation (ESIC)
- - Governed by Ministry of Labour and Employment

3. Applicability

- - Applicable to establishments with ≥ 10 employees (20 in some states)
- Even single employee is covered if notified by the Government
- - Covers employees earning up to ₹21,000/month (₹25,000 for persons with disability)

4. Contributions

- - Employer: 3.25% of wages
- - Employee: 0.75% of wages
- - Paid to ESIC within 15 days of the end of the month

5. Wages

- Wages as per New Rule 50: 50

6. Contribution period

- - 6 months
- If remuneration goes beyond the maximum limit, still contribution shall be paid till the end of contribution period on total wages
- Contribution period April to Sep and Oct to March

Example

- An employee gets wages of Rs. 19,000 till May 2026
- In June his wage increased to Rs. 23,000
- ESI contribution shall be made till September 2026
- From June onwards for wages of Rs. 23,000

7. Benefits Provided

- Cash benefits
 - Sickness,
 - maternity,
 - temporary and permanent disablement,
 - funeral expense,
 - rehabilitation allowance,
 - vocational rehabilitation,
 - Medical benefit (for employee and dependents)
- - Non cash benefits through medical care.

8. Compliance Requirements

- - Monthly returns
- - Maintain registers: attendance, wages, accidents
- - ESI registration mandatory within 15 days of applicability

9. Penalties for Non-Compliance

- - Interest @ 12% p.a. for delayed payment
- - Penalties: ₹5,000–₹25,000 and possible imprisonment

Gratuity



Payment of Gratuity

- Applicable to
 - every factory, mine, oilfield, plantation, port and railway company
 - every shop or establishment where 10 or more persons are employed on a single day in the preceding 12 calendar months

Applicability continues

- A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten

Liability of gratuity

- Gratuity shall be payable to an employee on the termination of his employment after he has rendered **continuous service** for not less than **five years**,
- - (a) on his superannuation,
- or (b) on his retirement or resignation,
- or (c) on his death or disablement due to accident or disease:
- ***or (d) on termination of his contract period under fixed term employment.***
- Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment:

Reduced period of service

- In case of working journalist 5 years reduced to 3 years
- For FTE, one year completion is mandatory

Continuous service

- Under Section 54 of the Code on Social Security, 2020, "continuous service" is defined as **uninterrupted service**, which specifically accounts for periods where employees were absent due to reasons beyond their control. It includes service that may have been interrupted by:-
 - Sickness, accident, or authorized leave
 - Absence from duty (not treated as a break in service by the employer).
 - Lay-offs, strikes, or lock-outs that are not illegal.
 - Cessation of work not due to the employee's fault.

Concept of 4 years and 240 days

The "240 days" rule remains a key "deeming" provision to ensure employees are not unfairly denied benefits. The Code stipulates that if an employee (not in a seasonal establishment) is not in continuous service for a full year, they shall still be **deemed** to be in continuous service if they have actually worked for at least

- **240 days** in the preceding 12 months (in most establishments).
- **190 days** in the preceding 12 months (for employees working below ground in a mine or in an establishment that works less than 6 days a week).

Amount of gratuity

- For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of **fifteen days wages** based on the rate of **wages last drawn** by the employee (15/26)
- In the case of a piece-rated employee, daily wages shall be computed on the **average** of the total wages received by him for a period of **three months** immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.
- In the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity **at the rate of seven days wages for each season**

Provision for gratuity

- **Actuarial valuation** of gratuity is a process that estimates the financial liability of an organization has towards future gratuity payments to employees.
- It involves projecting future payouts based on factors like employee tenure, salary growth, and attrition rates, and then calculating the present value of those future payments.
- This valuation helps organizations comply with accounting standards, allocate funds appropriately, and ensure they can meet their future gratuity obligations.

Gratuity insurance

- Section 57 of the SS code mandates obtain insurance cover for gratuity
- Kerala Government yet to issue a specific notification
- Voluntary selection of Approved Gratuity Fund/ purchase Group Gratuity Insurance from LIC or other IRDAI approved insurers

Maternity Benefits

The Maternity Benefit Act, 1961

- Apply to
 - to every establishment being a factory, mine or plantation including any such establishments belonging to Government.
 - to every shop and establishment in which 10 or more employees are employed or were employed, on any day of the preceding 12 months or such other shop or establishment notified by the appropriate Government
- Paid leave and benefits for female employees during maternity

Prohibition of work

- No employer shall knowingly employ a woman in any establishment during the six months immediately following the day of her delivery, mis-carriage or medical termination of pregnancy
- No woman shall work in any establishment during the six months immediately following the day of her delivery, mis-carriage or medical termination of pregnancy

Wages during maternity leave

- Average daily wages is payable
- The average daily wage is calculated based on the wages payable to employee for the days she actually worked during the **three calendar months** immediately preceding the date from which she take her leave

Eligibility

- Must have worked for at least **80 days** in the 12 months immediately preceding the expected delivery date.

Duration of paid leave

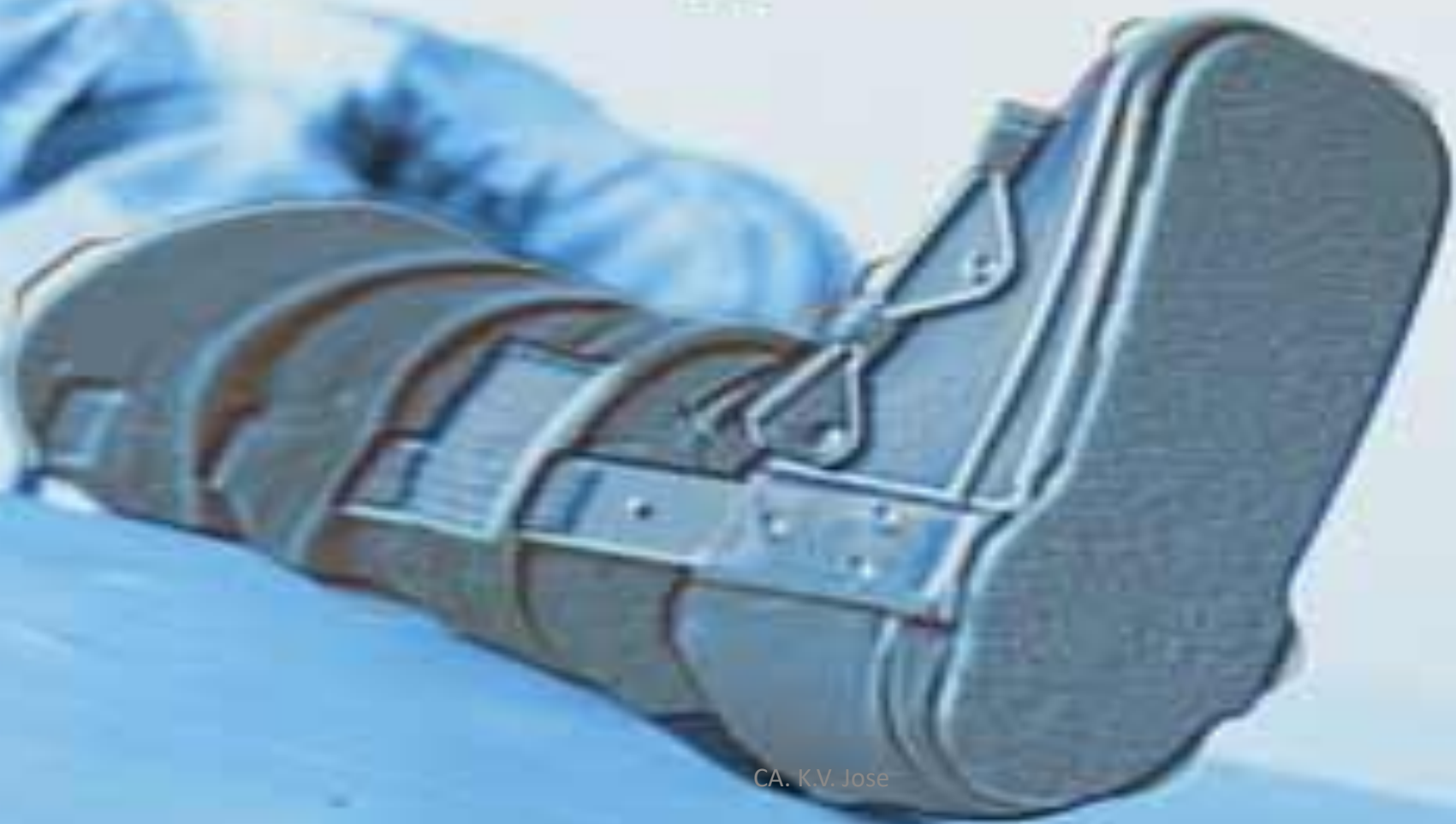
- 1st/2nd Child – 26 Week paid leave
- 3rd Child onwards – 12 Weeks paid leave
- Adoptive/Commissioning Mothers – 12 Weeks paid leave from the date of handover

Other benefits

- Medical bonus of Rs. 3,500
- Mandatory creche facility for establishments with 50 or more employees

Employees Compensation

Workers Compensation



Employee's compensation

- Applies to the employers and employees to whom Chapter IV of SS code does not apply

Employee's compensation

- Applies to the employers and employees to whom Chapter IV of SS code does not apply
- Chapter IV deals with Employees State Insurance
- Employee's compensation applicable to those employer or employees who are out side ESI

The ESIC Pays:

- **Temporary Disablement Benefit (TDB):** Continuous cash payments (approx. 90% of wages) as long as the disability lasts
- **Permanent Disablement Benefit (PDB):** A monthly pension for life based on the extent of the loss of earning capacity
- **Dependents' Benefit:** If the accident is fatal, the spouse and children receive a monthly pension
- **Medical Expenses:** Full medical care at ESI hospitals or tie-up hospitals (no upper limit on cost)

The Employer Pays:

- **Nothing directly** to the employee for the injury
- **Exception:** The employer must provide **Immediate First Aid** and may be liable if they were negligent in registering the employee or failed to pay ESI contributions on time

When is the Employer still liable?

- **The "Exempt" Employee:** If an employee's salary is above the ESI limit (**over ₹21,000/month**), they are not covered by ESI. For them, the **Employer is 100% liable** to pay the lump-sum compensation under the Employees' Compensation rule.

When is the Employer still liable?

- **Non-Compliance:** If an accident happens and employer has not registered the worker or hasn't paid their ESI premiums, the ESIC will pay the worker but will **recover the entire amount from employer** as arrears of land revenue.

When is the Employer still liable?

- **Accidents Outside Work:** If the injury did not happen "in the course of employment" (e.g., a personal accident at home), neither ESI (for compensation) nor the Compensation Act applies.

Amount of compensation u/s 76 of SS code

- Death – 50% of Monthly wages multiplied with relevant factor specified in Code's Sixth Schedule. (For age 16 – 228.54, 17 – 227.49, 65 or more – 99.37)
- Permanent Disablement – 60% of the monthly wages multiplied with relevant factor
- Permanent Partial Disablement – A percentage of the compensation for permanent disablement, proportionate to the loss of earning capacity (as specified in Fourth schedule or assessed by medical practitioner

Schedules to SS Code

- First – Eligibility
- Second – List of persons who are employees
- Third – List of occupational diseases
- Fourth – List of injuries deemed to result in permanent total/ partial disablement
- Fifth – Matters that may be provided for in the schemes
- Sixth – Factors for compensation
- Seventh – Classification of aggregators

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Monthly wages

- Where employee is in continuous service for more than 12 months then average monthly wages $\frac{1}{12}$ of one year wages
- If the employee is worked in less than one month, then similar employee paid by employer for last 12 months / no employee is employed then employee of the similar employment in same locality
- In other cases, monthly wage is the thirty times of the daily wages arrived by total days of continuous work / number of days

Social Security and cess in respect of Building and Other Construction Workers



Applicability

- Every establishment which falls under the building and other construction work.
- Residential houses construction cost above Rs. 50 Lakhs
- All Commercial buildings

Rate of cess

- **1% of the total cost of construction** (excluding the cost of the land)
- **Maximum Limit:** The Code allows the Central Government to notify a rate up to 2%, but it is currently maintained at 1% in Kerala

Collection and Utilization

- The cess is collected by the **Kerala Building and Other Construction Workers Welfare Board (KBOCWWB)**.
- **Source of Funds:** Roughly 60–70% of the Board's total revenue comes from this 1% cess on residential and commercial project

Purpose of fund

- The funds are strictly earmarked for the welfare of registered construction workers, providing:
- **Pension:** Monthly pension (currently approximately **₹1,600/month** for eligible workers)
- **Medical Aid:** Assistance for surgeries and fatal diseases (up to ₹50,000)
- **Maternity Benefits:** ₹15,000 for female workers
- **Education/Marriage Loans:** Financial support for the workers' children.

Self-Assessment and Penalties

- **Advance Payment:** Employers/Owners must calculate and pay the cess in advance (usually at the time of obtaining the building permit or within 30 days of completion)
- **Interest on Delay:** If employer fail to pay the cess within the specified time, employer is liable to pay interest at **2% per month** for every month of delay
- **Appeals:** If employer disagrees with an assessment (e.g., the cost of construction estimated by the Labor Officer), employer can appeal to the designated Appellate Authority within the State Labor Department

Social security for unorganized workers



SWIGGY



Social security for unorganized workers

- Creation of a "Social Security Fund"
- **Funding:** This fund is built through contributions from the Central Government, State Governments, and in the case of gig/platform workers, a 1–2% fee on the turnover of aggregators (like Zomato, Ola, or Amazon)
- **Purpose:** The fund is used to finance various welfare schemes so that these workers don't have to rely solely on their daily earnings for emergencies

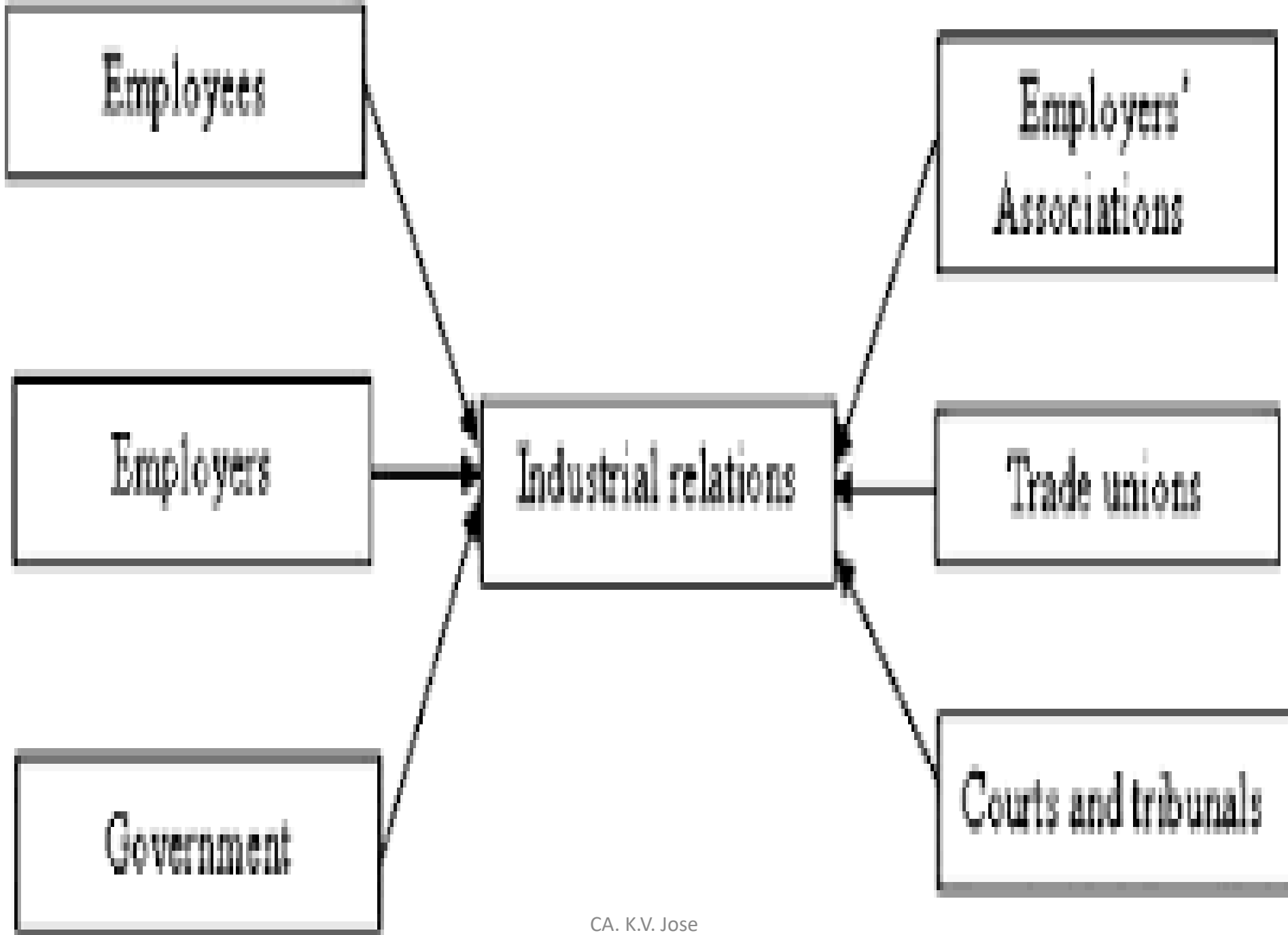
Specific Welfare Schemes

- **Life and Disability Cover:** Compensation for the family in case of death or permanent disability of the breadwinner,
- **Health and Maternity Benefits:** Access to medical facilities and financial assistance during pregnancy (often delivered via the ESI network)
- **Old Age Protection:** Pension schemes to ensure income after the age of 60 (like the *PM Shram Yogi Maan-Dhan*)
- **Education:** Financial support for the education of the workers' children.

Mandatory Registration (e-Shram)

- **Aadhaar-Based:** Workers must register themselves on a national database (widely known as the **e-Shram portal**)
- **Portability:** Once registered, a worker gets a Universal Account Number (UAN). This allows them to claim benefits even if they migrate from Kerala to another state for work

THE INDUSTRIAL REACTIONS CODE 2020



Contents

- Trade Unions
- Standing Orders
- Mechanism for resolutions of Industrial disputes
- Strikes and lock outs
- Lay-off, retrenchment and closure
- Unfair labour practices
- Offences and penalties

The Rise of the "Negotiating Union"

- Under the **Industrial Relations Code, 2020**, the era of multiple unions causing gridlock is ending.
- **The 51% Rule:** If a single trade union has more than 51% of workers as members, they are the **sole** negotiating body.
- **Negotiating Council:** If no union hits 51%, a council is formed with representatives from any union having at least 20% membership.
- **Strike Notice:** Strikes are now much harder to organize. Workers must give a **14-day notice**, and strikes are prohibited while proceedings are pending before a Tribunal.

THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2020

**Protecting people
from workplace
health risks**
Occupational Hygiene

**Managing health
of workers**
*Occupational
Health*

**Promoting
healthy lifestyle
choices**
Wellbeing

Applicability

- Any place where any industry, trade, business, manufacturing, or occupation is carried on with **10 or more workers**.

Applicability

- Any place where any industry, trade, business, manufacturing, or occupation is carried on with **10 or more workers**.
- **Service Sector:** Establishments engaged in trade, business, or service operations.

Hazardous Activities:

- The Code includes an **enabling provision** that allows the government to extend its applicability to **any establishment**, even if it has **fewer than 10 employees** (or even one), if it carries out hazardous or life-threatening occupations

Contract Labour:

- The Code applies to establishments (including those of the Central or State Governments) that engage **50 or more** contract workers through a contractor.

Exclusions:

- Generally the offices of the Central or State Government are excluded from many operational provisions, **except** where they act as a principal employer for contract
- Any ship of war of any nationality

Is this applicable to CA firms

Is this applicable to CA firms

- YES

Is Articles to be counted

Is Articles to be counted

- Yes
- **Not Apprentices under the Act:** CA Articled Assistants are governed by the *Chartered Accountants Act, 1949* and the *Chartered Accountants Regulations, 1988*. They are not considered "apprentices" under the *Apprenticeship Act, 1961*.

Section 6 – Duty of employer

- Maintain a Hazard-Free Workplace
- Compliance with Standards comply with the **occupational safety and health standards** declared by the government under section 18
- Provide a Safe Environment
- Provide annual health examination
- Issue a letter of appointment to each employee
- No charge on employee for safety measures

Health, safety and working conditions

Responsibility of employer

- Cleanliness and hygiene
- Ventilation, temperature and humidity
- Environment free from dust, noxious gas, fumes and other impurities
- Potable drinking water
- Adequate standards to prevent adequate overcrowding
- Adequate lighting

Health, safety and working conditions

Responsibility of employer

- Sufficient arrangement for latrine and urinal accommodation to male, female and transgender employee separately and maintaining hygiene therein
- Effective arrangement for treatment of waste and effluents

Welfare provisions

- Adequate and suitable facilities for washing to male and female employees separately
- Bathing places and locker rooms for male, female and transgender employees separately
- Place of keeping clothing not worn during working hours and for the drying of wet clothing (hotel industries etc)
- Sitting arrangements for all employees obliged to work in a standing positions (textile shops etc)
- Canteen facility if number of employees are more than 100

Welfare provisions

- Adequate first aid boxes
- Any other welfare measures determined by Central Government

Hours of work and annual leave with wages

- Eight hours per day
- No work for more than six days in any one week
- Extra wage for extra work+

Annual leave with wages

- Streamlined for employee friendly and uniform across different types of establishments
- Conditions:-
 - Worked for more than 180 days (~~240 days~~) in a calendar year
 - One day leave for every twenty days of work
 - Any period of lay offs, maternity leave, annual leave will be counted for 180 days but will not be counted for earned leave
 - Any holiday between the leave availed will be excluded

Carry forward and accumulation of leaves

- Employees are allowed to accumulate and carry forward leaves of up to **30 days** to the succeeding calendar year
- If an employee has accumulated leave beyond this limit, they may be entitled to encash the excess.

Kerala Shops Act Rule

- the *Kerala Shops and Commercial Establishments Act* has governed leave entitlements
 - 12 days of earned leave,
 - 12 days of casual leave,
 - 12 days of sick leave annually after 12 months of continuous service

Which one applies? (The "Superior Benefit" Principle)

- When a Central law and a State law overlap, the principle generally applied is that the **more beneficial provision for the employee** prevails.

Beneficial to employees

Because the OSH Code is a central piece of legislation that has been in force since November 2025, establishments in Kerala must ensure their internal policies are compliant with both

Leave Type	Source	Current Status
Annual Leave Eligibility	OSH Code (Central)	180 days (More beneficial/Easier to qualify than the old 240-day standard).
Leave Types & Quantum	Kerala Shops Act (State)	Provides specific mandates for Earned, Casual, and Sick leave (12 days each).

Kerala Shop and Establishment Act

- is **not subsumed** by the new Labour Codes. It remains a valid and enforceable state legislation.

State vs. Central Legislation

- **Constituent Lists:** Labour matters fall under the **Concurrent List** of the Indian Constitution, meaning both the Central and State governments can legislate on them
- **Scope of Subsuming:** The four new Labour Codes (Wages, Industrial Relations, Social Security, and OSH) were designed to consolidate and replace **29 specific Central legislations** (such as the Factories Act, the Payment of Wages Act, etc.)

State Act

- The new Labour Codes do **not** repeal state-level "Shops and Establishments Acts."
- Therefore, the Kerala Shops and Commercial Establishments Act, 1960, remains the primary law governing working conditions, holidays, and registration for commercial establishments in Kerala

The Current "Dual" Regulatory Environment

- Since November 2025, employers in Kerala must navigate a landscape where both the new Central Codes and the existing State Act apply

The Current "Dual" Regulatory Environment

- **What the OSH Code covers:** The OSH Code sets broad, national-level standards for safety, health, and general working conditions. It acts as an overarching framework
- **What the Kerala Shops Act covers:** It continues to regulate the specific "day-to-day" operations for shops and commercial establishments in Kerala, such as:
 - Opening and closing hours.
 - Specific daily/weekly hours of work and rest intervals.
 - State-specific registration processes.
 - Specific types of leave (Casual, Earned, Sick) and local festival holidays

Recent Evidence of State Authority

- Even after the implementation of the new Labour Codes, the Government of Kerala continues to actively manage and amend the **Kerala Shops and Commercial Establishments Rules**. As recently as **February 4, 2026**, the Kerala government issued a notification (G.O(P) No. 12/2026/LBR) amending the fee structure for registration certificates under the 1960 Act.
- This confirms that the State Government is continuing to administer and update its own Shops and Establishments framework

"TABLE

If the number of employees proposed to be employed on any day during the year for which the registration certificate is required or renewed is,-

	Rupees
(a) nil	70
(b) Workers up to 5	135
(c) Workers from 6 to 10	265
(d) Workers from 11 to 20	525
(e) Workers from 21 to 30	790
(f) Workers from 31 to 50	1,315
(g) Workers from 51 to 100	2,625
(h) above 100	5,250".

What about CA firm

- Need to register under OSH Code, 2020 ?
- Need to register under Shop and Establishment Act ?

Ramanathan vs. State of Kerala (1991)

- The Kerala High Court held that the office of a Chartered Accountant **cannot be termed a "commercial establishment"** as defined under the 1960 Act
- a profession is distinct from a trade or business. The practice of a CA relies on **intellectual skill, professional knowledge, and specialized services** rather than commercial exploitation or the profit-oriented trade of goods/services

Current Practical Reality

- **Judicial Precedent:** The *Ramanathan* judgment remains a strong legal precedent in Kerala, supporting the argument that professional firms are not "commercial establishments."

Current Practical Reality

- **Administrative Expectation:** In practice, the Labour Department in many jurisdictions often adopts a broad interpretation of "establishment" for the sake of enforcing general labour welfare protections (like the payment of wages, working hours, and registers).
- Many CA firms, to avoid ongoing administrative disputes with local labour inspectors and to ensure their employees are formally covered under state-level welfare schemes, choose to register voluntarily.

Current Practical Reality

- **Modern Regulatory Context:** With the implementation of the new **Occupational Safety, Health and Working Conditions (OSH) Code, 2020**, the focus has shifted.
- Since the OSH Code has a broader definition of "establishment" that encompasses almost all commercial or professional office activities employing 10 or more workers, the debate over "commercial establishment" status under the old 1960 State Act is becoming less relevant for registration purposes.
- **You are likely required to register under the new OSH Code regardless of the status under the 1960 State Act..**

Recommendation

- **If you employ 10 or more employees:** You are almost certainly required to register under the **OSH Code, 2020** through the central electronic portal. This is a mandatory national requirement that supersedes many of the older, localized disputes.
- **If you have fewer than 10 people:** You may lean on the *Ramanathan* judgment to argue that your professional office is not a commercial establishment under the Kerala Act. However, be prepared for local Labour Officers to take a different, more "welfare-oriented" view.

THANK YOU

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