

# **P K Chopra & Co.**

**—Chartered Accountants—**



## ***Compliance Audit***

## Introduction

Compliance audit is an assessment to check whether the provisions of the applicable laws, rules and regulations made are complied with various orders and instructions issued by the competent authority. This audit by its nature promotes accountability, good governance and transparency as it is concerned with reporting deviations, identifying weaknesses and assessing propriety.

Essentially, compliance auditing review checks whether a company or organization is in line with the correct regulations. For example, financial institutions and freelancers like banks, freelance accountants, and financial advisors as well as certain solicitors and other consultants need to be updated with the rules and regulations governing their industries.

Requirements and regulations will differ from country to country and industry to industry. Many governments put compliance requirements in place to protect both industries and their consumers.

In short, the auditor's report determines whether the company or an organization is in compliance with the applicable rules.



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A company which has been incorporated in India must ensure compliance with the Companies Act, 2013.

- The Companies Act, 2013 regulates appointment, qualification, remuneration, and retirement of directors of the Company.
- Aspects such as how to conduct Board Meetings and Shareholders Meetings.
- The preparation and presentation of annual accounts and the regular maintenance of books of accounts.
- The Companies Act has also inserted the **CSR (Corporate Social Responsibility) provisions** in the Companies Act, 2013. Now, under provisions contained in the Corporate Social Responsibility, companies are obligated to make the contribution in certain philanthropic activities. Companies must adhere to the CSR criteria and undertake CSR activities in the financial year.

There are various compliances which a company registered in India must follow, depending on the criteria mentioned below



# Secretarial Audit

## Introduction

- Secretarial Audit is a compliance audit u/s sec 204
- A part of total compliance management in an organization.
- An effective tool for corporate compliance management.
- Helps to detect noncompliance and to take corrective measures.

**Secretarial Audit is a process** to check compliance with the provisions of various laws and rules/regulations/procedures, maintenance of books, records etc., done by an independent professional. It is to ensure that all legal and procedural requirements are complied with the due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws.X

## Applicability

The mandatory provisions relating to applicability of secretarial audit are as explained below

- Every Listed Company.
- Every public company having –
  - Paid up share capital > Rs. 50 crore, or
  - Turnover > Rs. 250 crore

If anyone meets the above criteria then secretarial audit is mandatory.

Moreover, in a move aimed at boosting the ease of doing business, the threshold for paid up capital at which private companies are required to employ a company secretary is Rs 10 crore.

Now, private companies with total outstanding debt of Rs 100 crore or more to banks and financial institutions will now have to submit a secretarial audit report to the government, according to a latest rule notified by MCA.

A practicing Company Secretary has been recognized to conduct a secretarial audit.

## Factories Act, 1948

The Factories Act, 1948 is a social act which was passed to strengthen the position of workers, who are working in the factories across the country.

The main objective of this act is not only to ensure adequate safety measures but also to promote the health and welfare of labors working in factories.

Hence, the statutory factory compliance audit is conducted in factories to regulate the safety, health, licensing, working hours, annual leave, minimum wages, and so on.

Applicable to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

### Licensing Compliance

The occupier of the factory is required to get the permission from the State Government or the Chief Inspector in writing for the site at which factory is to be situated.

And to get a license, the occupier must send the notice under section 7 of the act to the Chief Inspector, at least 15 days before he begins to use the premises as a factory.

### Compliance

- Filing annual returns in Form 21 (by Jan 15) and half yearly returns in Form 22 (by July 15) to Chief Inspector/ Director of competent authority
- Intimation of the list of holidays for next year to Director/ Chief Inspector of Factories by Nov 30.
- Filing annual return of accidents in Form 31 (by Jan 31<sup>st</sup>)



## Working Hours of Adults

### Weekly Hours

- Any adult worker should not be allowed to work in a factory for more than 48 hours a week.

### Weekly Holidays

- No worker should be made to work for continuously 10 days without any holiday. No worker should work on the first day of the week unless he has or will have a holiday on one of the 3 days immediately before or after the said day

### Compensatory Holidays

- If a worker is deprived of any of the weekly holidays, he should be allowed take that holiday in that month or within the two months immediately following that month.

### Daily Hours

- No worker should be allowed to work in a day more than 9 hours a day. (Subject to the previous approval of Chief Inspector)

### Intervals for Rest

- The working hours of an adult worker should be set in a way that he doesn't work for more than 5 hours without taking an interval for rest of at least half an hour.

### Spread over

- The working periods of an adult worker in a factory shall be arranged in such a manner that they do not work for more than ten and a half hours a day including the intervals for rest.

### Extra Wages for Overtime

- If any worker works for more than 48 hours in any week, he should be entitled to wages at the rate of twice his ordinary rate of wages.

## Annual Leave with Wages

**Annual Leave with Wages**– Every worker who has worked for 240 days or more in a factory in a year should be allowed to have leaves with wages in the subsequent year.

**Wage during Leave Period**– A worker who has taken leave under section 79 or 80 of the act, shall be entitled to wages at a rate equal to the daily average of his total earnings for the day during the month immediately preceding his leave.

**Payment in advance in Certain Cases**– A worker who has been allowed leave for less than four days, in the case of an adult, and five days, in the case of a child, should, before his leave begins, be paid the wages due for the period of the leave allowed.

Offence	Penalties
For contravention of the provisions of the Act or Rules	Imprisonment upto 2 years or fine upto Rs. 100,000 or both
On continuation of contravention	Rs. 1,000 per day
On contravention of Chapter IV pertaining to safety or dangerous operations	Not less than Rs. 25,000 in case of death Not less than Rs. 5,000 in case of serious injuries
Subsequent contravention of some provisions	Imprisonment upto 3 years or fine not less than Rs. 10,000 which may extent to Rs. 200,000
Obstructing Inspectors	Imprisonment upto 6 months or fine uptoRs. 10,000 or both
Wrongful disclosing result pertaining to results of analysis	Imprisonment upto 6 months or fine uptoRs. 10,000 or both
For contravention of the provisions of sec 41B, 41C and 41H pertaining to compulsory disclosure of information by occupier, specific responsibility of occupier or right of workers to work imminent danger	Imprisonment upto 7 years or fine uptoRs. 200,000 On continuation fine @ Rs. 5,000 per day Imprisonment of 10 years when contravention continues for one year.

## Payment of Wages Act, 1936

### **Purpose & Object**

The Payment of Wages Act, 1936 has been enacted to regulate the payment of wages of certain specified classes of workers. The Act provides for prompt and effectual remedy to the workers against illegal and unjustified deductions from their wages. Further, the Act also seeks to ensure timely payment of wages to workers and prescribes mode of payment of wages to the employed persons.

### **Applicability**

- Payment of Wages Act, 1936 is a central legislation & extends to whole of India.
- It applies to all persons employed, whether directly or through contractors, in a factory or certain specified industrial or other establishments.
- Applicable on employees drawing wages up-to 6,500/- per month.

### **Person Responsible for Payment**

- In case of factories, person named as manager under the provisions of Factories Act, 1948;
- In case of industrial or other establishments, person responsible for supervision and control of the industrial or other establishments;
- In case of railways, the railway administration and the person nominated by railway administration for the local area concerned;
- In case of contractor, person designated by contractor.

### **Key Compliance**

- It is applicable to Factories, Industrial Establishment, Air transport services, inland vessels etc
- It regulates payment of wages of certain classes of employed persons
- Payment of wages
  - if less than 1000 workmen are employed- before expiry of 7th day after last day of wage period
  - If more than 1000 workmen are employed- before expiry of 10th day after last day of wage period

## Payment of Wages Act, 1936

### Statutory Registers & Records

- Register of wages, fine, damage, deductions & advances
- Register of Fines
- Register of Deductions for damage or loss
- Register of Wages

It is mandatory for the employer to carefully comply with his obligations under the Act in order to prevent himself from being punished under section 20 of the Act. The duties of the employers that were discussed above have significantly curbed the exploitation of the workers employed in the industries. The workers are now in a better position in comparison to the earlier situations of the workers. Though we have come a long way, still there is a need to fully execute, implement and keep a check on the employer in order to ensure the objectives of the Act.

### Penalty for offences under the Act

If the person responsible for the payment of wages to an employed person contravenes any of the provisions, he shall be punishable with fine of atleast Rs. 200 which may extend to Rs. 5,000.



## The Minimum Wages Act, 1948

### **Purpose & Object**

The Minimum Wages Act, 1948 has been enacted to provide the minimum wages in certain specified employments. The Minimum Wages Act binds the employers to pay the minimum wages fixed under the Act from time to time. Under the provisions of the Act both the Central and State Government have authority to fix, review, revise and enforce the minimum wages to workers employed in scheduled employment under their respective jurisdictions.

### **Applicability of the Act**

The Minimum of Wages Act applies to the following entities:

- It applies to all over India except Jammu and Kashmir.
- It applies to any employment if it employs 1000 employees in the respective state.
- It does not apply to any employees in any undertaking owned by the Central government or of the federal railway, except with the consent of the central government.

### **Wages under Section 2 of the Act**

Wages means all remuneration, capable of being represented in money. It covers house rent allowance but does not include the following:

- Value of house accommodation, the supply of electricity, water, medical attendance.
- Value of any other amenity provided is excluded by Government order.
- Any contribution to the pension fund, provident fund or insurance.
- Allowance for travelling.
- Special expenses acquired by the nature of employment.
- Gratuity is payable on discharge.

## The Minimum Wages Act, 1948

### **Fixation and Revision of Minimum Wages**

The minimum rates of wages will be reviewed or revised, for every five years, by the appropriate government.

The appropriate government can add any **employment**, to the schedule (part-I or part – II), wherein one thousand or more employees are found working.

Different minimum rates of wages can be fixed for different scheduled employments/ different classes of work /different localities.

### **Minimum Rates of Wages**

Any minimum rate of wages fixed or updated by the appropriate Government in respect of scheduled employments under section 3 consists of:

- The basic rate of wages and a special allowance which varies with the cost of living index.
- The basic rate of wages with or without allowance for the cost of living allowance based on the cost of living index number.

All inclusive rate is allowing for the basic rate of wages with the cost of living allowance and cash value of concessional supply of materials.

### **Penalties**

a. Payment of wages less than the minimum wages to the laborer falling within the ambit of scheduled employment is an offence as per Section 22 of the Act. The Amendment has sought enhancement of punishment for this offence. The term of punishment has now been increased from 6 months to 3 years. The amount of maximum fine which may be imposed has also been increased from INR 500 to INR 50,000.

b. Under Section 22A of the Act prescribes general punishment for the contravention of the Act where no other penalty has been prescribed. In such cases the penalty in the Act is only fine which may extend upto INR 500. However, after the amendment, the penalty will include imprisonment for a term of 1 year and/ or a fine which shall extend upto INR 20,000.

## The Equal Remuneration Act, 1976

The chief motive of the Equal Remuneration Act 1976 is to provide payment of remuneration to men and women on a uniform basis. In order to avoid discrimination against women and to treat the women in a fair and just manner, this act is brought into force.

### Provisions of the Act

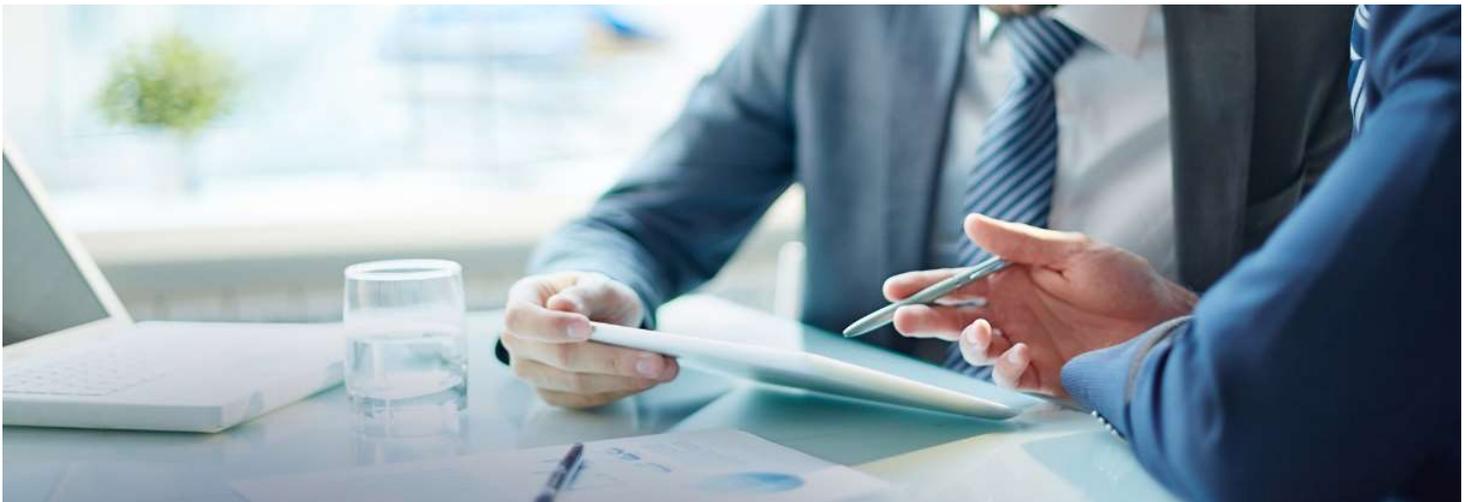
Every employer covered under this act shall pay the employees remuneration in cash/kind at a rate which shall not be less favorable to the other gender if the work is the same or of similar nature.

Same work or work of similar nature would mean if the work is performed under similar conditions either by a man or woman it would require the same skill, effort and responsibility. If there are any differences in the skill, effort and responsibility required from a man when compared to a woman the same is not important to the employment.

- No employer shall be allowed to reduce the remuneration of any worker in order to comply with the provisions of this act.
- In case the remuneration payable before the commencement of this act was different due to discrimination then going forward the higher(in case of two rates) or highest(in case of more than two rates) rate shall be payable. However the same shall not apply to the remuneration payable for the services rendered before the commencement of the act
- While employees are recruited for work which is the same or of similar nature no discrimination shall be directed towards women unless any law prohibits the same. This provision is also extended to activities after recruitment i.e. promotion, training or transfer. The reservations made towards Scheduled Castes or Scheduled Tribes, ex-servicemen, retrenched employees or any other class or category of persons will not be affected by this provision.

## The Equal Remuneration Act, 1976

4. An advisory committee shall be formed which shall consist of 10 members half of which shall be women and the committee shall focus on providing its advice for increasing the employment opportunities for women, hours of work, nature of work and such other matters.
5. Every employer is required to maintain registers and other documents in relation to the workers employed by him.
6. The appropriate government shall appoint inspectors for the purpose of investigation of compliance with the provisions of this act.
7. The Inspector shall have the power:
  - To enter any building/ premises/ factory/ vessel
  - Require the production of documents
  - Take evidence from any person to confirm compliance of the act
  - Examine the employer/ agent/ servant



## The Equal Remuneration Act, 1976

Offence	Penalty
<p>Employer omits/fails to</p> <ul style="list-style-type: none"> <li>-maintain the register</li> <li>-produce the register and other relevant documents</li> <li>-give evidence</li> <li>-give any information</li> </ul>	<p>Maximum: Rs 10,000 OR Maximum Imprisonment: 1 month OR Both</p>
<p>Employer makes</p> <ul style="list-style-type: none"> <li>-any recruitment in contravention of the provisions of this act</li> <li>-any payment of remuneration at an unequal rate for the same work or work of similar nature</li> <li>-any discrimination between a man and a woman</li> <li>-an omission to carry out the directions made by the appropriate government.</li> </ul>	<p>Minimum: Rs 10,000 Maximum: Rs 20,000 OR Minimum Imprisonment:3 months Maximum Imprisonment:1 year OR Both Note: The maximum period of 1 year shall be replaced by 2 years for the 2nd, 3rd and 4th offence.</p>
<p>Failure to produce the register or any other document or to give any information to the Inspector</p>	<p>Maximum: Rs 500</p>

## The Industrial Employment (Standing Orders) Act, 1946

This Act requires employers in industrial establishments to formally define conditions of employment under them and submit draft standing orders to certifying Authority for its Certification. It applies to every industrial establishment wherein 100 (reduced to 50 by the Central Government in respect of the establishments for which it is the Appropriate Government) or more workmen are employed.

### Objective

- To provide regular standing orders for workers, factories, and working relationship.
- To ensure that the employee recognizes the terms and conditions of the employees and thus to minimize exploitation of the workers.
- To promote industrial peace and harmony by supporting fair industrial practices.

### Certification of Standing Orders

It is mandatory for every employer covered under the Industrial Employment (Standing Orders) Act to get standing orders certified by submitting five draft copies of the standing orders to the certifying officer such as labor commissioner or a regional labor commissioner and also includes any other officer appointed to perform the functions of certifying officer.



# The Industrial Employment (Standing Orders) Act, 1946

## Details Enclosed in Standing Orders

The particular information which is generally provided in the standing orders include:

- Workmen classification into categories such as permanent, temporary, on probation, etc.
- Method of informing the workmen about working hours, holidays, etc.
- Shift working.
- Temporary stoppages of work.
- Provisions concerning the termination of employment and the notice period.
- Actions/inactions which are treated as misconduct and the consequences for the fault.
- Grievance redressal mechanism in case of unjust or unfair treatment by the employer.
- Attendance marking system for workers.
- Employment termination and the notice thereof to be provided by both employer and the workers.
- Procedure for availing leave and encashment, accumulation of leaves.
- Workmen records and information, etc

## Penalty

If an employer defaults to submit draft standing orders or modifies his standing orders, then the concerned officer may impose a penalty which will be above Rs 5,000 (five thousand), and in the case of a continuation of offence may impose a fine which will be above Rs 200 (two hundred) for every day till the offence continues.

If the establishment does any act in violation of the standing orders after getting certified under this Act, then the employer will be punishable with the penalty of which will be more than Rs 100 (One hundred), and in the case of a continuation of offence may impose a fine of Rs 25 (twenty five) for every day till the offence continues.

## The Payment of Bonus Act, 1965

### Objectives of the Act

The payment of Bonus Act, 1965 aims to regulate the amount of bonus to be paid to the persons employed in establishments based on its profit and productivity. The act is applicable to the whole of India for all establishments which had twenty or more persons employed on any day during the year.

The objectives of the Bonus Act (Payment of bonus Act) are as follows:

- To impose a legal responsibility upon the employer of every establishment covered by the Act to pay the bonus to employees.
- To designate the minimum and maximum percentage of bonus.
- To prescribe the formula for calculating bonus.
- To provide redressal mechanism.

### Applicability of the Act

The Payment of Bonus Act applies to all the establishments which fall under any of the below listed:

- It applies to any factory or establishment which had twenty or more workers employed on any day during the year.
- The act does not apply to the non-profit making organizations.
- It is not applicable to establishments such as LIC, hospitals which are excluded under Section 32.
- It is not applicable to establishments where employees have signed an agreement with the employer.
- It is not applicable to establishments exempted by the appropriate government like sick units.

## The Payment of Bonus Act, 1965

### Payment of Minimum and Maximum Bonus

- The minimum bonus will be 8.33% of the salary during the year, or
  - 100 rupees will be given in case of employees above 15 years and sixty rupees in the case of employees below 15 years, whichever is higher.
- The maximum bonus is 20% of the salary during the accounting year.

### Timeline for Payment of Bonus

The payment of bonus should be paid in cash within eight months from the end of the accounting year or within a month from the date of enforcement of the act.

### Computation of Bonus

As per the Section 4 and Section 7 together with the Schedule 1 and two deal with the calculation of gross profit and available surplus out of which 67% in case of companies and 60% in other cases would be allocable surplus.

To compute the available surplus, following sums to be deductible from the gross profits:

- All direct taxes under Section 7
- The sums which are particularized in the schedule
- The allowance for investment or development in which the employer is allowed to deduct from his income under the Income Tax Act.

**Available Surplus = Gross Profit – (deduct) the following:**

- Depreciation is allowable in Section 32 of the Income-tax Act.
- Development Allowance.

# The Payment of Bonus Act, 1965

## Duties of the Employer

The following duties to be carried out by the employer:

- To estimate and pay the annual bonus as required under the Act.
- To maintain the following registers:
  - The register should show the computation of allocating surplus in respective Form.
  - The register should be maintained with the payment of the bonus to the employees.
  - The records should be maintained before inspection and such other information should be stored.

## Offences and Penalties

In case of violation of the provisions under the Act or rules, the penalty is imprisonment for six months or may impose fine of Rs.1000 or both.

In case of failure to comply with the directions or requisitions made, then the penalty is imprisonment for six months or may impose fine of Rs.1000 or both.

In case of offences by companies, firms, body corporate or association of individuals, its director, partner or a principal or officer responsible for the conduct of its business, should be deemed to be guilty of that offence, unless the person concerned proves that the crime was committed out of his knowledge or that he exercised all due diligence.

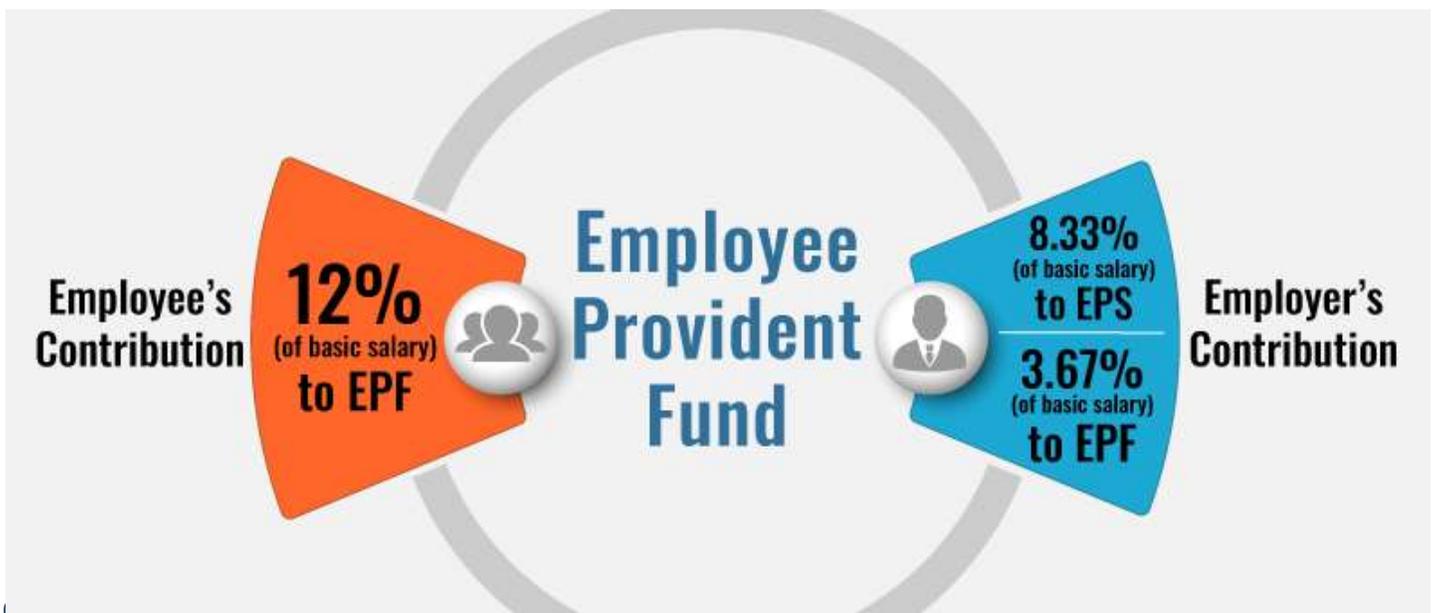
## The Employees Provident Fund and Miscellaneous Provisions Act, 1952

Provident fund is a welfare scheme for the benefits of the employees. Under this scheme both the employee & employer contribute their part but whole of the amount is deposited by the employer. Employer deducts the employee share from the salary of the employee. The interest earned on this investment is also credited in PF account of the employees. At the time of retirement, the accumulated amount is given to the employees, if certain conditions are satisfied.

### Applicability of the Act

It covers every establishment in which 20 or more persons are employed and certain organizations are covered, subject to certain conditions and exemptions even if they employ less than 20 persons each.

As per the rules, in EPF, employee whose 'pay' is more than Rs. 15,000 per month at the time of joining, is not eligible and is called non-eligible employee. Employees drawing less than Rs 15000 per month have to mandatorily become members of the EPF. However, an employee who is drawing 'pay' above prescribed limit (at present Rs 15,000) can become a member with permission of Assistant PF Commissioner, if he and his employer agree.



# The Employees Provident Fund and Misc. Provisions Act, 1952

## **Taxability of PF**

The EPF withdrawal is not taxable if one has completed at least five years of continuous service. If one has switched jobs in less than five years but transferred the EPF to the new employer, it will be counted as continuous service. Someone, for instance, works for 1.5 years and then joins another organization, he transfers his PF balance on to the new employer where he continues to work for 3.5 years. Taken together, it will be five continuous years of service for the employee.

Withdrawing the PF balance without completing five continuous years of service has tax implications. The total employer's contribution amount along with the interest earned will get taxable in the year of withdrawal. Also, the amount of deduction claimed under Section 80C on one's own contribution will be added to one's income in the year of withdrawal. In addition, the interest earned on one's own contribution will also be subjected to tax.

The government has also introduced Tax Deducted at Source (TDS) on PF withdrawals in order to discourage premature withdrawals and promote long-term savings.

## **PF Contribution Rate**

Contribution of PF paid by employer & employee is 12% (basic pay + dearness allowance + retaining allowance) Equal contribution is paid by the employer & employee. The establishment which employs less than 20 person shall be restricted to contribute 10% for both employee & employer contribution.

It is voluntary for the employees who drawn a salary less than 15000 per month to become the member of EPF. The employee who drawn a salary more than 15000 per month at the time of joining is not required to make PF contribution. If they want to become the member of EPF, then they become with the consent of the Employer & Assistant PF Commissioner.

## The Employees Provident Fund and Misc. Provisions Act, 1952

The entire 12% of your **contribution** goes into your **EPF** account along with 3.67% (out of 12%) from your employer, while the balance 8.33% from your employer's side is diverted to your EPS (Employee's Pension Scheme) and the balance goes into your **EPF** account.

### Penalty in payment of PF dues

Delay in deposit of P.F. dues attracts penal damages. Charges are levied by EPFO at the following rates:



No of months delayed	Penalty rate
Delay for up to 2 months	5% per annum
Delay ranging from 2 months to 4 months	10% per annum
Delay ranging from 4 months to 6 months	15% per annum
Delay exceeding 6 months	25% per annum (It may correspondingly go up to 100%)

# The Employees Compensation Act, 1923

The Objective of the Act is to provide for the payment of compensation by certain employers to their employees for injury caused to them by accident while in employment. If an employee contracts an occupational disease while in employment, it is also treated under the Act as injury caused by accident.

## Applicability

Every Employer

- Employing persons listed in Schedule II of the Act;
- Carrying on an occupation listed in Schedule III of the Act is liable to pay compensation under the Act.

Further, sec. 16 of the Apprentices Act extends the application of the Employees' Compensation Act to the Apprentices appointed under Apprentices Act, 1961 rendering the employers liable to pay compensation for any personal injury or accident arising out of and in the course of employment caused to the apprentices.

## Eligibility

Following persons are liable to receive compensation under the Act:-

1. Certain Railway Servants;
2. Persons listed in schedule II to the Act,
3. Persons employed in occupations listed in Schedule III to the Act.

## Injuries Compensated under the Act

Injuries compensated under the act are broadly classified into four groups

- I. Death,
- II. Permanent Total Disablement,
- III. Permanent partial disablement &
- IV. Temporary disablement whether total or partial
- V. Contracted an occupational disease.

The Act provides for different scales of compensation for different kinds of injuries.

## The Employees Compensation Act, 1923

As per the Employee's Compensation Act, an employer is liable to pay compensation of personal injury caused to an employee during an accident arising out of and in course of his/her employment. If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation under the provisions of the Act. The employer will not be liable to pay compensation when:

- An injury does not result in the total or partial disablement of the employee for more than 3 days;
- an injury doesn't result in death or permanent total disablement caused by an accident under the influence of drink or drugs.
- In case of accidents caused by wilful disobedience of the rules by the employee and wilful removal of safety guards, the employer is not liable to pay compensation.



# The Employees Compensation Act, 1923

## Amount of Compensation

**Sec.4 (a):-**The minimum ceiling limit of compensation for death is Rs 1,20,000/-

**Sec.4(b):-**The minimum ceiling limit of compensation for permanent total disablement is Rs 1,40,000/-

Where death of a workman results from the injury	An amount equal to 50% of the monthly wages of the injured workman multiplied by the relevant factor or an amount of Rs. 1,20,000, whichever is more
Where permanent total disablement results from the injury	An amount equal to 60% of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of, Rs. 1,40,000 whichever is more
Where permanent partial disablement results from the injury (injury listed in part II of schedule I)	% of loss of earning capacity that such % of compensation payable
Where temporary total/ partial disablement of a workman results from the injury	An amount equal to 25% of the monthly wages payable every half-month, The compensation is payable if the worker is disabled for more than three consecutive days, maximum tenure for the compensation is five years

## The Employees Compensation Act, 1923

The Central government has changed the amount of wages to be considered for calculation of compensation to workers under the Employee's Compensation Act 1923 vide notification S.O.71 (E) dated **January 3, 2020**.

The amount of wages considered previously for the calculation of compensation was just Rs 8,000. Now, it will be Rs 15,000, according to the notification by the Ministry of Labor and Employment.

If a workman accepts compensation under the Act, he cannot file civil suit against employer for damages. If a workman has instituted claim for compensation before Commissioner for Workmen's Compensation, he cannot file a civil suit.

Principal Employer is liable to pay the amount of compensation for the injury suffered by workman employed through contractor, if the accident arises as a result of accident arising out of and during the course of employment.

The employee is eligible to get 'disablement benefit' only when the

injury arises out of and during the course of employment. Similarly, a workman is entitled to get compensation only if accident is 'arising out of and during the course of employment'.

### **Penalty for default**

(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount of the arrears, simple interest at the rate of twelve percent per annum on the amount due together with, if in the opinion of the Commissioner there is no justification for the delay, a further sum not exceeding fifty percent of such amount, shall be recovered from the employer by way of penalty.

# Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013

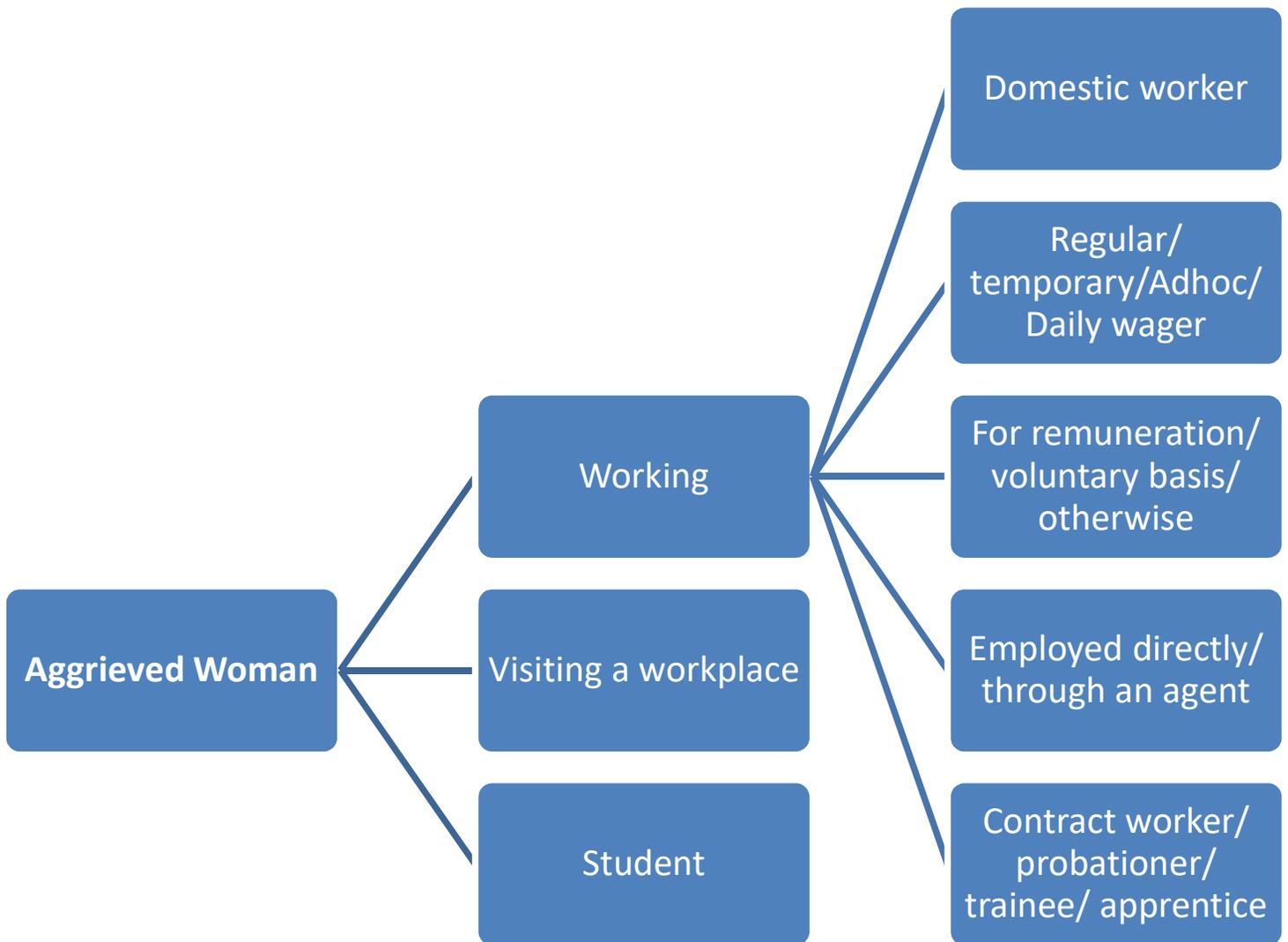
## **Objective of the Act**

The POSH Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment. While the statute aims at providing every woman (irrespective of her age or employment status) a safe, secure and dignified working environment, free from all forms of harassment, proper implementation of the provisions of the statute remains a challenge.

**Who is an Aggrieved Woman:** As per the POSH Act, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment. Given that the definition does not necessitate the woman to be an employee, even a customer/ client who may be sexually harassed at a workplace can claim protection under the POSH Act.



# Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013



**Covered bodies:** The POSH Act applies to both the organized and unorganized sectors in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.

The POSH Act further stipulates that a woman shall not be subjected to sexual harassment at her workplace. Accordingly, it may be noted that in order for a woman to claim protection under the POSH Act, the incident of sexual harassment should have taken place at the 'workplace'. The POSH Act protects only women and is not a gender-neutral legislation. Therefore, the safeguards under the POSH Act are not applicable to 'men victims.'

The Indian Ministry of Women and Child Development ("WCD") has launched an online complaint platform named "SHe-Box", which stands for "Sexual Harassment Electronic Box". SHe-Box has been introduced to allow female employees or visitors a platform to raise complaints of sexual harassment at the workplace. This facility has also been extended to private sector employees.

Indian Penal Code, 1860 Conduct that may be construed as sexual harassment not only violates the Prevention of Workplace Sexual Harassment Act, but also could constitute an offence under the IPC. Listed out below are the key offenses under the IPC that could be triggered in a case of sexual harassment.

Section #	Offence	Punishment	Cognizable/ Non-Cognizable
354	<p>Outraging the modesty of a woman</p> <p>Assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that modesty would be outraged.</p>	<p>Simple/Rigorous Imprisonment for a term which shall not be less than one year but which may extend to five years; and fine</p>	Cognizable
354-A	<p>Sexual harassment by a man</p> <p>i. Physical contact and advances involving unwelcome and explicit sexual overtures;</p> <p>ii. Demand or request for sexual favors.</p> <p>iii. Showing pornography against the will of a woman; or</p> <p>iv. making sexually coloured remarks.</p>	<p>Offences (i), (ii) and (iii) are punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.</p> <p>Offence (iv) is punishable with simple/ rigorous imprisonment for a term which may extend to one year, or with fine, or with both.</p>	Cognizable
354-B	<p>Assault or use of criminal force to woman with intent to disrobe</p> <p>Assault or use of criminal force to any woman or abetment of such act with the intention of disrobing or compelling her to be naked.</p>	<p>Simple/Rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and fine.</p>	Cognizable

354-C	<p>Voyeurism</p> <p>Watching, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image.</p>	<p>First conviction: Simple/ Rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years, and fine. Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and fine.</p>	Cognizable
354-D	<p>Stalking</p> <p>Following a woman and contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or Monitoring the use by a woman of the internet, email or any other form of electronic communication.</p>	<p>First conviction: Simple/ Rigorous imprisonment for a term which may extend to three years, and fine; Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which may extend to five years and fine.</p>	Cognizable
509	<p>Insulting the modesty of a woman</p> <p>Uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman.</p>	<p>Simple imprisonment for a term which may extend to three years, and fine.</p>	Cognizable

## About Us

We at PKC come up with the best practices in each sector, so that, the country as such benefits from our efforts. We are currently in the process of documenting our best practices and understanding of the various sectors to put them up online and thereby contribute to the nation's and people's developmental efforts. PKC has over the 54 years+ experience in auditing has developed an efficient procedure for auditing, which is in line with the Sections 2, 3 and 4 of the *“Terms of Reference for an Expenditure Verification of a Grant Contract – External Action of the European Union”*.

PKC has satellite units in Bangalore, Chandigarh, Chennai, and Gurgaon. It is an India-based professional services firm that focuses as much on its services. For over 5 decades we have been actively catering to small, medium-sized and big companies across the world. Our clients range from a wide range of industries and sectors, and we are certified members of most of the renowned global accountancy bodies.

We endeavour to set high performance standards within the consulting industry. We also aim at creating a highly efficient networking and distribution system for wider access to markets. This requires advanced techniques for gathering market information and consumer surveys.

**PK Chopra & Company** also assists its foreign clients for establishing their business operations across India by helping them in liaison office management





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