

**EFI Announces its Flagship Event
"EFI National HRM Summit - 2017"
EFI announces its flagship event - "EFI National HRM
Summit" on 6 - 7 December, 2017 at Centrum, 1st Floor,
World Trade Centre I, Cuffe Parade, Mumbai 400005.**

The Theme of the Summit is

**"Sustainable Business Competitiveness through
Employee Relations".**

Sustainability has been a big challenge for businesses all over the world during last few years. Sustainability implies a strong long-term orientation. The notion of sustainability provides a way to assess societal challenges over a much broader time horizon. As a result, it promotes importance of interdisciplinary and trans-disciplinary practices. Maintaining sustainable competitiveness is utmost important, in which, employee participation is a key factor. Encouraging employees' engagement, recognizing their contribution encouraging relationship, help to improve productivity, which is helpful to maintain sustainable competitiveness.

Salient features of EFI national HRM Summit 2017 are -

- **Distribution of National Awards for Excellence in Employee Relations**
- **Business School Competition**

Govt to set up advisory board to fix national minimum wages

The government will set an advisory board to fix minimum wages for various sectors applicable across the country.

"The government would constitute an Advisory Board to fix the National Minimum Wages for employees and such wages differ and vary sectorally as well as regionally across the country as per requirements, skills and nature of jobs with the enforcement of proposed Labour Code on Wages 2017," R.K. Gupta, the joint secretary in the labour ministry, said in a statement.

Gupta also clarified that there will be quiet a few national minimum wages for different sectors and even for different regions.

Following enactment of Labour Code on Wages 2017 which is currently facing scrutiny from the Parliamentary Standing Committee, four labour laws relating to the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; the Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976 would be subsumed in one Labour Code on Wages 2017 and that current inspector raj would turn into a facilitator regime to help industry comply the new Code.

According to Anil Kumar Nayak, Chief labour commissioner (central), with proposed Labour Code on Wages 2017, getting implemented, harmonisation will take place in entire labour sector which would be win-win situation for all stakeholders in this segment.

Mint Dated : 27-09-2017

Trade Unions Reject the Wage Code Bill 2017

The Labour Ministry introduced the Code on Wages Bill 2017 in the Lok Sabha on August 10, with the ostensible aim of ensuring a statutory national minimum wage and other protections to all wage workers in the country.

The Code seeks to replace the four existing laws relating to wages - the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Payment of Bonus Act, 1965; and the Equal

Remuneration Act, 1976.

But the Bill is drawing strong opposition from trade unions across the country, which point out that it is actually diluting whatever pro-labour elements existed in the four earlier legislations.

The first obvious problem is that the Bill makes a mockery of the idea of a 'national minimum wage' by providing for different national minimum wages to be fixed for different states - instead of providing for a uniform national minimum wage for the entire country.

This is despite the Labour Ministry proclaiming its intention to improve the wage levels and ensure a minimum living standard to workers by fixing a national minimum wage, below which no state government can fix its minimum wage.

But Section 9(1) of the Bill states that 'different national minimum wage may be fixed for different states or different geographical areas'.

Hence, the 'national minimum wage' - even as the phrase is repeatedly used - is reduced to a 'state-level minimum wage'.

As the Centre for Indian Trade Unions (CITU) states in a document critiquing the Code on Wages Bill 2017, this makes "the whole concept of 'National Minimum Wage' a deceptive ploy to mislead the people."

"Even if the difference in price level in different states/geographical areas is taken into account, it can well be reflected in the rates of variable dearness allowances, as it exists now. There is no justification of making 'national minimum' of the basic minimum wage different for different states," notes CITU.

"Hence the provision of 'national minimum wage' being projected by the government as an improvement in the present Bill is rendered meaningless for the workers by the provision of the Bill itself."

Further, as a memo on the Labour Code of Wages Bill 2017 by the New Trade Union Initiative (NTUI) points out, this could lead to a "race to the bottom" among states to lower wages.

"The underlying competitive federalism inherent in this shift of responsibility severely dilutes the concurrent nature of 'labour' as outlined in Article 246, Schedule 7 of the Constitution. This will also lead to competition between states to lower wage standards and lead to a race to the bottom, which negatively impacts growth owing to reduced effective demand."

The other overriding problem is the matter of the fixation of the minimum wage.

According to Dr K Hemalata, president of CITU, The government has completely ignored the formula for fixing the minimum wage as was recommended by the 44th Indian Labour Conference (ILC) in 2012, and reiterated by the 46th ILC in 2015, which was even inaugurated by Prime Minister Narendra Modi. This formula for minimum wage was adopted unanimously by the 15th ILC in 1957 and by the Supreme Court directions in the Raptakos and Brett case.

Based on this formula, the Seventh Pay Commission recommended Rs 18,000 as minimum wage. The government accepted this for central government employees.

Trade unions are demanding the same minimum wage of Rs 18,000 per month for all workers. But the Wage Code Bill does not provide for that. In fact, the government was quick to deny that it had any intention to fix a Rs 18,000 monthly minimum wage.

The country's central trade unions have already planned a three-day dharna from November 9 to 11 in front of the

Parliament in Delhi Street, to be followed by the indefinite country wide strike, against the anti-labour policies of the NDA government. They are demanding the adoption of a 12-point Charter of Demands put forward by them, which includes the issue of minimum wages.

"The formulation of minimum wage has been kept under the sole discretion of the government," notes CITU.

"Although the provision of Advisory Board is there both at state and central level, the Bill does not make even the recommendation of the Advisory Board mandatory for the state and central governments while deciding minimum wage," as CITU further points out.

Another concern is that the Code has removed the Schedule of Employment, which lists the industries governed by labour laws.

And as CITU states, "Does it mean that the minimum wages, to be decided by either state or central government, will be the same for all industries? There is no answer. Rather this is a ploy to empower employers to suppress the wages in the establishments/industries in the erstwhile schedules where wage level was higher than the others. All for ensuring 'ease of doing business' in an unscrupulous manner."

Moreover, the Code significantly weakens the Equal Remuneration Act, one of the four laws it seeks to replace.

CITU states, "The Equal Remuneration Act has been completely diluted by restricting it to gender discrimination only in respect of payment of wages, doing away with other types of discrimination related to recruitment, conditions of service such as promotion, vocational training, transfer etc."

Similarly, NTUI says, "The entire Equal Remuneration Act, 1976 has been limited to one section in the code, referring to as "Prohibition of discrimination on ground of gender". This removes all penalties and violations contained in the principal act... The Code also reduces participation of women in the Central Advisory Board for Minimum Wages from 50% to one third."

Significantly, the Code seeks to render trade unions toothless in a number of ways.

For one, the Code does away with the right of trade unions to legally access the audits of the establishment's accounts.

The Code also deems workers who are participating in a strike to be absent.

The Code further restricts the functioning of trade unions and workers' organisations as "it limits the scope of trade union members forming independent funds for their own welfare or other activities; removes right of trade unions to legally access audited accounts and balance-sheets of employers and limits possibility of scrutinizing the financial claims of the employer," states NTUI.

As for revision of the minimum wages, the Code sets five years as the standard time for wages to be revised, while currently five years is the maximum period for the revision of wages.

Newsclick Dated : 15-09-2017

How gratuity amount is calculated

The Union Cabinet recently approved a proposal to enhance the limit of tax-free gratuity to Rs20 lakh, from Rs10 lakh. The proposal Bill need parliamentary approval to come into force.

Once approved by the Parliament, this Bill will come as a major relief, especially to those who spend many years working in a single organisation, which results in a significant amount in gratuity.

Most employees do not have a clear understanding of gratuity. In most cases, the amount you receive as salary is less than what's mentioned in the joining letter from the organisation you work for. This is because the full amount also includes components like contribution to retirement benefits such as provident fund and gratuity. Read on to understand some more important basics about gratuity.

What is gratuity ?

It is a defined benefit, which means that the payment, based on a certain defined formula, will be guaranteed if the basic conditions are met. In India, gratuity is a benefit offered by organisations employing more than 10 employees, according to the Payment of Gratuity Act, 1972.

According to the law, an organisation has to pay gratuity to an employee who has served it continuously for at least 5 years. For each year of service, the organisation has to pay an amount equalling 15 days of last drawn salary. Salary here means basic salary plus dearness allowance plus commission, if commission is a fixed percentage of sales. Moreover, if a person works for over 6 months in the last year of service, it will be considered as a complete year for gratuity calculation. For instance, if a person completes 7 years and 6 months of continuous service, gratuity paid will be for 8 years.

For gratuity calculations, a month of work is calculated as 26 days. So the 15-day salary will be calculated as (monthly salary*15)/26. This number multiplied by the number of years in service will be the gratuity amount payable.

A similar calculation applies if gratuity is to be paid at retirement.

In case an employee dies, the minimum 5 year-service clause is not applicable and the amount accrued is to be paid to the nominee or legal heir of the employee. All these payments are to be made within 30 days of the last working day of the employee. If the payment is delayed beyond 30 days, the law states that the employer will have to pay an interest on the amount.

The employer is expected to pay the gratuity either from its own funds or from a group gratuity scheme, where an insurance company manages the gratuity fund. The organisation deposits the gratuity amount with the insurer, which is then invested to earn returns. Typically, this amount is invested in fixed income or debt instruments to avoid the risk of market volatility.

How is gratuity amount taxed ?

Under the income Tax Act, gratuity is taxed under the head 'income from salary'. The portion of salary received as gratuity can be exempt from tax under section 10(10) of the Income-tax Act, 1961, depending on various factors. But if gratuity is received by an employee of a central, state or local government agency, it is fully exempt when withdrawn on death or retirement.

Under the current regime, where the Payment of Gratuity Act is applicable, the least of the following received by the employee is exempt from tax: Rs10 lakh; actual gratuity received; or 15 days' salary based on the salary last drawn multiplied by the number of years in employment.

In case of death of an employee and gratuity being paid to the nominee or legal heir, the tax exemption will remain the same, but the income will be considered under the head of 'income from other sources'.

Mint Dated : 18-09-2017

Union Home Minister launches Platform for Effective Enforcement for No Child Labour (PENCIL) Portal

SOPs for enforcement agencies on child labour also released
Shri Rajnath Singh addresses National Conference on Child Labour

The Union Home Minister Shri Rajnath Singh launched the Platform for Effective Enforcement for No Child Labour (PENCIL) Portal at the National Conference on Child Labour organised by the Ministry of Labour and Employment, Government of India on 26th September, 2017. The PENCIL is an electronic platform that aims at involving Centre, State, District, Governments, civil society and the general public in achieving the target of child labour free society. Shri Rajnath Singh also launched the Standing Operating Procedures (SOPs) for the enforcement of legal framework against child labour. The SOP is aimed at creating a ready reckoner for trainers, practitioners and monitoring agencies to ensure complete prohibition of child labour and protection of

adolescents from hazardous labour ultimately leading to Child Labour Free India.

Shri Rajnath Singh said that ratification of treaties by India in this regard shows our resolve to eradicate child labour in a time-bound manner. He said that only portal will not be able to suffice our efforts, but social awareness is needed in this regard. He quoted the example of special drives undertaken under 'Operation Smile', where 70,000-75,000 children could be saved. He emphasized that for the success of PENCIL Portal also, one month's special drive in the country, even at block levels, is required, so that everybody becomes aware of it and acts in the direction of elimination of child labour. He said that child labour not only has social implications but economic implications also. Appreciating the Ministry of Labour and Employment's efforts in releasing SOPs for enforcement agencies, he said that this will help in the better implementation of the schemes, as many schemes are good at the formation stage, but are not being implemented in an effective manner on the ground due to lack of guidance.

The Minister of State for Labour and Employment (I/C), Shri Santosh Kumar Gangwar said that keeping in mind the overall development of children, the employment of children under the age of 14 years is not allowed under the law for any occupation and for the children between 14-18 years, the employment is not allowed in occupations that are harmful to their physical and mental health.

The Labour Minister stated that India ratified the two Core Conventions of International Labour Organization (ILO), Convention 138 regarding admission of age to employment and Convention 182 regarding worst forms of Child Labour in June 2017 which shows our commitment to a child labour free nation.

Earlier while delivering the welcome address, Secretary, Ministry of Labour & Employment, Smt. M. Sathiyavathy said that Government has taken various initiatives and developed a legal framework to achieve the Sustainable Development Goal (SDG) of eliminating child labour by the year 2025. She said that child labour has come down in India as per 2011 census as compared to 2001 census. She further stated that broad consultation was done with all the stakeholders before finalizing the amendments in central rules which was notified on 2nd June 2017.

The PENCIL Portal (pencil.gov.in) has various components, namely Child Tracking System, Complaint Corner, State Government, National Child Labour Project and Convergence. The Districts will nominate District Nodal Officers (DNOs) who will receive the complaints and within 48 hours of receiving, they will check the genuineness of the complaint and take the rescue measures in coordination with police, if the complaint is found to be genuine. Till date, 7 states/UTs have appointed the DNOs.

The State Labour Ministers from Uttar Pradesh, Assam, Delhi, Telangana, Tamil Nadu, Haryana, Andhra Pradesh, Chhattisgarh, Bihar and Rajasthan participated in the conference. The conference was also attended by Labour Secretaries of the State, Secretaries of Central Ministries, District Nodal Officers as well as the Project Directors for National Child Labour Project (NCLP).

Ministry of Labour Dated : 26-09-2017

The New Provident Fund (PF) Transfer Rules

Transferring employee provident fund (EPF) corpus while changing jobs has become easier. EPFO or Employees' Provident Fund Organisation subscribers are no longer required to file separate EPF transfer claims using Form-13 after changing jobs as it will now be done automatically. EPFO has introduced a new composite form called Form 11 that will replace Form 13 in all cases of auto transfer. This was stated by EPFO in an order dated September 20, 2017. "EPFO has embarked upon next phase of e-governance reforms with a view to make its services available to its stakeholders. EPFO has recently introduced a single page composite claim

form (Aadhaar/non-Aadhaar) and composite claim form for death cases by replacing multiple forms for settlement of claims," the EPFO order said.

5 Things To Know About New PF Rule:

- 1) The Composite Form 11 is a declaration document filed by an employee through an employer to provide information on bank account number and Aadhaar and other details.
- 2) At the time of joining a new employer, an employee can give details of their previous EPF account in new composite form (Form 11) to give declaration about his/her details,
- 3) Once the previous EPF account details are provided in Form 11, the funds will be automatically transferred by the EPFO to new EPF account,
- 4) At present, the formal sector employees are required to file Form-13 for EPF transfer to their new account on changing jobs. The EPFO has also decided that Form 11 will replace Form No 13 in all cases of auto transfer.
- 5) EPFO receives over one crore different type of claims every year, including EPF withdrawal, pension fixation, death claims and EPF transfer claims. The EPFO has a subscribers base of over four crore and manages a fund size of over Rs. 10 lakh crore. Transfer claims constitute 10-15 per cent of the total claims filed by subscribers. The retirement fund body also allows online facility to encourage subscribers to seek transfer of funds into their new EPF accounts when they change job.

Other Recent Initiatives From EPFO:

To further boost e-governance, EPFO has initiated a new measure under which employers will be required to intimate about the details of their new employees online to retirement fund body EPFO from October 1, 2017. The Employees' Provident Fund Organisation (EPFO) has decided to do away with filing of Form-9, a declaration by a person (employee) taking up employment in an establishment in which Employees' Pension Scheme is in force. This Form-9 is filed by the formal sector employers manually at present to intimate about their new employees. **NDTV Dated : 25-09-2017**

Modern slavery and child labour

40 million in modern slavery and 152 million in child labour around the world

New research developed jointly by the International Labour Organization (ILO) and the Walk Free Foundation², in partnership with the International Organization for Migration (IOM), has revealed the true scale of modern slavery around the world. The data, released during the United Nations General Assembly, shows that more than 40 million people around the world were victims of modern slavery in 2016. The ILO has also released a companion estimate of child labour, which confirms that about 152 million children, aged between 5 and 17, were subject to child labour.

The research reveals that among the 40 million victims of modern slavery, about 25 million were in forced labour, and 15 million were in forced marriage.

Child labour remains concentrated primarily in agriculture (70.9 per cent). Almost one in five child labourers work in the services sector (17.1 per cent) while 11.9 per cent of child labourers work in industry.

Forced labour

An estimated 25 million people were in forced labour at any moment in time in 2016. Out of them, 16 million people were in forced labour exploitation in the private sector such as domestic work, construction, agriculture. About 5 million persons were in forced sexual exploitation, and just over four million persons (or 16 per cent of the total) were in forced labour imposed by their state authorities.

Forced marriage

An estimated 15.4 million people were living in a forced marriage at any moment in time in 2016. Of this total, 6.5

million cases had occurred in the past 5 years (2012-2016) and the remainder had taken place prior to this period but continued into it. More than one third of all victims of forced marriage were children at the time of the marriage, and almost all child victims were girls.

Child labour

152 million children - 64 million girls and 88 million boys - are subject to child labour and account for almost one in ten children around the world. The highest number of children aged 5 to 17 engaged in child labour were to be found in Africa (72.1 million), followed by Asia and the Pacific (62 million), the Americas (10.7 million), Europe and Central Asia (5.5 million) and the Arab States (1.2 million). Approximately one third of children aged 5 to 14 engaged in child labour are outside the education system. 38 per cent of children in hazardous work aged 5 to 14 and almost two-thirds of those aged 15-17 work more than 43 hours per week.

ILO Dated : 19-9-2017

Select Case Laws

2017 III CLR 117

In The High Court Gauhati

June 8, 2017

WRIT PETITION (C)NO. 4567 OF 2011

PRESENT

The Honourable Mr. Justice Hrishikesh Roy

Sukh Sagar Nayak, Assam

Petitioner

v.

Labour Court at Dibrugarh and Anr.

Respondent

Industrial Disputes Act, 1947 S. 10(1) Disciplinary Inquiry, Misconduct, dismissal The petitioner workman challenges the award of Labour Court, declining him any relief and affirming the order of his dismissal from service. On scrutiny of rival pleadings and contentions, the Court concluded that (i) findings recorded in the domestic inquiry are based on cogent evidence, which cannot be termed as a 'perverse finding'. (ii) The plea of victimization raised by the workman, was no basis and there is no evidence to say that this is a case of victimization. (iii) With active participation of the workman and his cross examination of the Management's witnesses, proves the misconduct committed by him, in which conclusion there is no infirmity. (iv) The evidence recorded in the domestic inquiry establishes petitioner's participation in felling of two trees and transporting the material on a truck arranged by delinquent and his colleagues. (v) With this record of enquiry, the punishment of dismissal from service awarded to petitioner-workman, cannot be termed as disproportionate penalty. For any management it is difficult to continue to have faith in such an errant employee. This petition is devoid of merit. (Paras 1 to 14), Writ Petition Dismissed

2017 III CLR 153

In The High Court of Hyderabad

(FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH)

March 22, 2017

WRIT PETITION NO. 14751 OF 2006

PRESENT

The Honourable Mr. Justice M. Seetharama Murthi

D. Balaji

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Petitioner

v.

Honourable Labour Court – III, Hyderabad, rep. by its P.O. & Anr. Respondents

Industrial Disputes Act, 1947 S. 10 (1) Delay and ;aches in raising dispute Misconduct A challenge is from petition workmen to the ward passed by the Labour Court, declining him any relief and upholding the order of his dismissal from service. The Court held that (i) checking officials found 20 plantain gelas and seven grape boxes loaded on top of the bus without luggage ticket for which the petitioner-conductor had no satisfactory explanation, except [72]

that he forgot to issue luggage tickets. (ii) The petitioner also violated the rule 'issue and start', meaning that Bus should start after issue of tickets to all passengers and for their heavy luggage. (iii) On examination of facts correctly and evidence in proper perspective, the Enquiry Officer, the appellate authority and Labour Court arrived at concurrent conclusions and finding that charges are proved. (iv) Those are findings of facts, in which there is no illegality or irregularity or impropriety in the same and this Court will not substitute its opinion of such findings. (v) Last but not the least; in case of award passed by Labour Court in the year 1992, present writ petition is filed by petitioner in the year 2000, with no explanation for this inordinate delay. (Paras 1, 2, 3, 7 to 12), Writ petition dismissed.

2017 III CLR 196

In The High Court of Judicature at Bombay
(NAGPUR BENCH)

January 23, 2017

FRIST APPEAL NO. 7501 OF 2004

PRESENT

The Honourable Mr. Justice A. S. Chandurkar

Employees' State Insurance Corporation,

By its Joint Regional Director, Nagpur

Appellant

v.

Anand Bhandar, by its Partner, Ashok Kumar Das,
Nagpur & Anr. Respondents

Employees' State Insurance Act, 1948 Ss. 45A, 82 Coverage of two units as single establishment – Whether the ESI Court, was legally justified in coming to the conclusion that the two units Anand Bhandar Annexe, were two different separate units/establishments and thereby not liable to pay contributions for the employees of Anand Bazar Annexe? The Court answered this substantial question of law in the affirmative with these conclusions. (i) In the absence of any legal steps taken by the appellant Corporation in between 1st November 1985 to 6th January 1989, for collection of any material / evidence to club these two units together, there is absolutely no basis for clubbing both the units together as one unit. (ii) Merely on basis of observations made by Inspector in his inspection report, which is not signed by any representative of the respondent, the same cannot be used as a piece of evidence, in support of the conclusion that they are one unit only. (iii) Considering the evidence on record, the learned Commissioner rightly concluded that there was no factual or legal basis to order clubbing of both the units is not warranted. (iv) There is no case made out, to interfere with the Order passed by the Commissioner. (Paras 1 to 13), Appeal stands dismissed.

2017 III CLR 247

In The High Court of Rajasthan
(JAIPUR BENCH)

April 25, 2017

S.B. CIVIL WRIT PETITION NOS. 18059 AND 10625 2015
PRESENT

The Honourable Mr. Justice Veerndr Singh Siradhana

Managing Director, RSRTC Jaipur & Anr. Petitioner

v.

Suraj Prakash Jat S/o Jagdish Lal Respondent

Industrial Disputes Act, 1947 S.10(1) Disciplinary Inquiry held, declared to be unfair In both the writ petitions, a challenge is given by the petitioner management to the interim orders passed by the Industrial Tribunal. The Court concluded that (i) the petitioner Corporation did not serve any notice on the respondent employee, while proceedings with the domestic inquiry against him, and obviously establishes that principles of natural justice were not followed. (ii) Even otherwise in view of the law laid down by the Supreme Court in Dena Bank v. D. V. Kundadia, 2011 II CLR 415 (SC), no writ petition should be entertained against an diametrically opposite course of action is adopted in institution of the writ applications by the petitioner Corporation, in the background of challenges given by the petitioner in the dsecond writ application, to the order passed by the Tribunal directing the petitioner to pay subsistence allowance to the respondent workman during his suspension. (iv) Both the writ applications are devoid of any substance and lack in merit. (Paras 1, 2, 3, 7, 8, 10, 11 and 12).