

## **New Shop & Establishment Law in Maharashtra State**

### **Background**

Shop & Establishment Law is employee welfare law applicable to entities other than factories. Thus, it applies to banks and other entities in the banking ecosystem.

It is a state legislation dealing with working hours and other service conditions. It is enforced by local authority like municipality.

It is in addition to other employee welfare laws such as Payment of Wages Act, Minimum Wages Act, Workmen's Compensation Act, EPF Act, Gratuity Act etc. and Negotiable Instruments Act in case of banks.

In its state of Maharashtra there had been in place till recently The Maharashtra Shops and Establishment Act.

### **Development**

In the wake of the Governmental agenda of promoting "Doing Business with Ease", the Central Government had rolled out a Model Shops and Establishments Act in year 2016 with a request to the states in India to consider it for implementation.

In response, the Maharashtra Government has effective 27 December 2017 brought into force new Shop and Establishment act viz. the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017.

The new act has replaced its predecessor viz Maharashtra Shops and Establishments Act, 1948 (Earlier called The Bombay Shops & Establishments Act).

The new act has brought in sweeping changes lessening the "licence raj" and providing flexibility to employers and hence more business-friendly regime. It also has extended certain new benefits to the employees. Thus, the new act serves interests of both- the employers and the employees.

### **Major Changes & Arising Actionable**

#### **Registration (Licence)**

- Required only when employees are 10 or more.
- Entities with employees below 10, have to merely give intimation.

#### **Working Hours, Weekly- off & Overtime to Employees**

- Employee may be required to work for 9 hrs. a day and 48 hrs. a week.
- Every employee to get a paid weekly off
- Overtime (for work > hours as above or on weekly off) allowed maximum for 125 hrs. per quarter @double the wages
- Women allowed to work only between 7am to 9.30pm, unless enough protection and transportation is made.

#### **Weekly Close of the Entity**

- No compulsory weekly close. An entity may be kept open for all 7 days, subject to employees getting a weekly off.

#### **Leaves to employees & Leave Wages**

- Casual Leave: 8 days in a year to be credited quarterly and to lapse at the end of the year (no carry over).
- Earned Leave (in addition to Casual Leave): 1 day for every 24 days worked (say 15 days if employee works all 365 days!)
- Festival Leave in a year: 26<sup>th</sup> Jan+ 1<sup>st</sup> May+ 15<sup>th</sup> August+ 2<sup>nd</sup> October+ 4 days
- Earned Leave could be accumulated maximum 45 days.
- Wages to be paid when leave is refused.
- Encashment for un-availed Earned Leave. (Not for Casual & Festival Leave).
- Wages at double rate payable for work on any of the above leave days.

#### **Others**

- Employer has to issue Identity Card to every employee.
- First Aid Facility to be provided.
- Good Drinking Water to be provided.
- Separate Latrines & Urinals to be provided for male and female employees.
- Creche Facility (own or shared) to be provided where employees are 50 or more.
- Canteen (own or shared) to be provided where employees are 100 or more.
- More favourable service conditions allowed any time.
- More favourable prevailing service conditions to be continued.

#### **Penalty**

- Fine for continued non-compliance up to Rs.1 lac+ Rs.2k per day for further continuance.
- Fine for repeat offence- Rs.2 lacs.
- For serious injury or death owing accident on account of non-compliance: Fine Rs.2- 5 lacs or Jail up to 6 months.
- Magistrate Court (Metropolitan/ 1<sup>st</sup> Class Judicial) to be the judicial forum for trial.
- Compounding of offence possible only 1 time if the offence is not a repeat offence.

Actionable: Entities have to review and ensure having HR policies and facilities in tune with the above.

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Dated: 27.12.2017

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