

# Employee's Compensation Act, 1923

# Aim of the Act

- To provide financial protection and assistance to employees and their dependents through compensation in case of any accidental injury occurs during the course employment.
- It is generally applicable to the cases where such incidents lead to either death or disablement of the worker.

# Applicability of the Act

- It applies to all employees working in mines, factories, plantations, construction establishments, oilfields, etc. Moreover, it applies to establishments which are under Schedule II of the Worker's Compensation Act.
- The act applies to persons who are working abroad or outside India as per Schedule II of the Act.
- It applies to a person recruited as the mechanic, helper, driver, etc. in connection with a motor vehicle. It also applies to a captain or members of the crew of an aircraft.
- Moreover, the act does not cover the members of armed forces of the U&W who are already under ESI (Employee State Insurance) Act.

# Employer's Liability

(A) Cases where they have to pay

- Injury by accident during employment
- Diseases in occupation

(B) Cases where they do not have to pay

- In case of any injury or damage which does not lead to the semi or total disablement of the workers for a period exceeding 3 days.
- In case of any injury which does not result in death or permanent total disablement under the following circumstances:
  - the workman present at the time of the work under the control of drink or drugs.
  - when the worker deliberately disobeys the rule which ensures their safety.
  - non-application of the devices which are especially for the safety of the workers.

# Amount of compensation

(a) where death results an from the injury : an amount equal to fifty per cent. of the monthly wages of the deceased \*[employee] multiplied by the relevant factor; or an amount of \*[one lakh and twenty thousand rupees], whichever is more;

(b) where permanent total disablement results from the injury : an amount equal to sixty per cent. of the monthly wages of the injured \*[employee] multiplied by the relevant factor; \*[one lakh and twenty thousand rupees], whichever is more;

- c. where permanent partial disablement result from the injury:
- (i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury;
  - (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;
- (d) where temporary disablement, whether total or partial, results from the injury : a half monthly payment of the sum equivalent to twenty-five per cent. of monthly wages of the \*[employee], to be paid

➤ If the injury of the \*[employee] results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of \*[not less than five thousand rupees] for payment of the same to the eldest surviving dependant of the \*[employee] towards the expenditure of the funeral of such \*[employee] or where the \*[employee] did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.]

# Method of calculating wages

- In this Act and for the purposes thereof the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated as follows, namely:--
  - (a) where the \*[employee] has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the \*[employee] shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
  - (b) where the whole of the continuous period of service immediately preceding the accident during which the \*[employee] was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the \*[employee] shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a \*[employee] employed on the same work by the same employer, or, if there was no \*[employee] so employed, by a \*[employee] employed on similar work in the same locality;
  - (c) in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)], the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period. Explanation.--A period of service shall, for the purposes of this section be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.



# The Employees' Compensation (Amendment) Act, 2017

1. It is the employer's responsibility and duty to inform an employee of his rights. According to the Act, "Every employer shall immediately at the time of employment of an employee, inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee.
2. Failure to do so will make the employer liable to penalty. The Bill penalises an employer if he fails to inform his employee of his right to compensation. As per the amendment, the penalty amount has been increased from a maximum of Rs. 5000 to a definite penalty of Rs. 50,000 which may be further extended to Rs. 1 lakh.
3. As per the amended act, appeals can be made against orders related to compensation, distribution of compensation, award of penalty or interest, only if the amount in dispute is at least Rs 10,000. The same has been revised from the earlier minimum amount of Rs 300.
4. Any dispute related to an employee's compensation will be heard by a commissioner who will have the powers of a civil court. Appeals from the commissioner's order, related to a substantial question of law, will lie before the High Court.
5. In a further amendment, the Act has scrapped the rule as per which the employer could temporarily withhold any payments towards the employee in case the former had appealed against a commissioner's order.