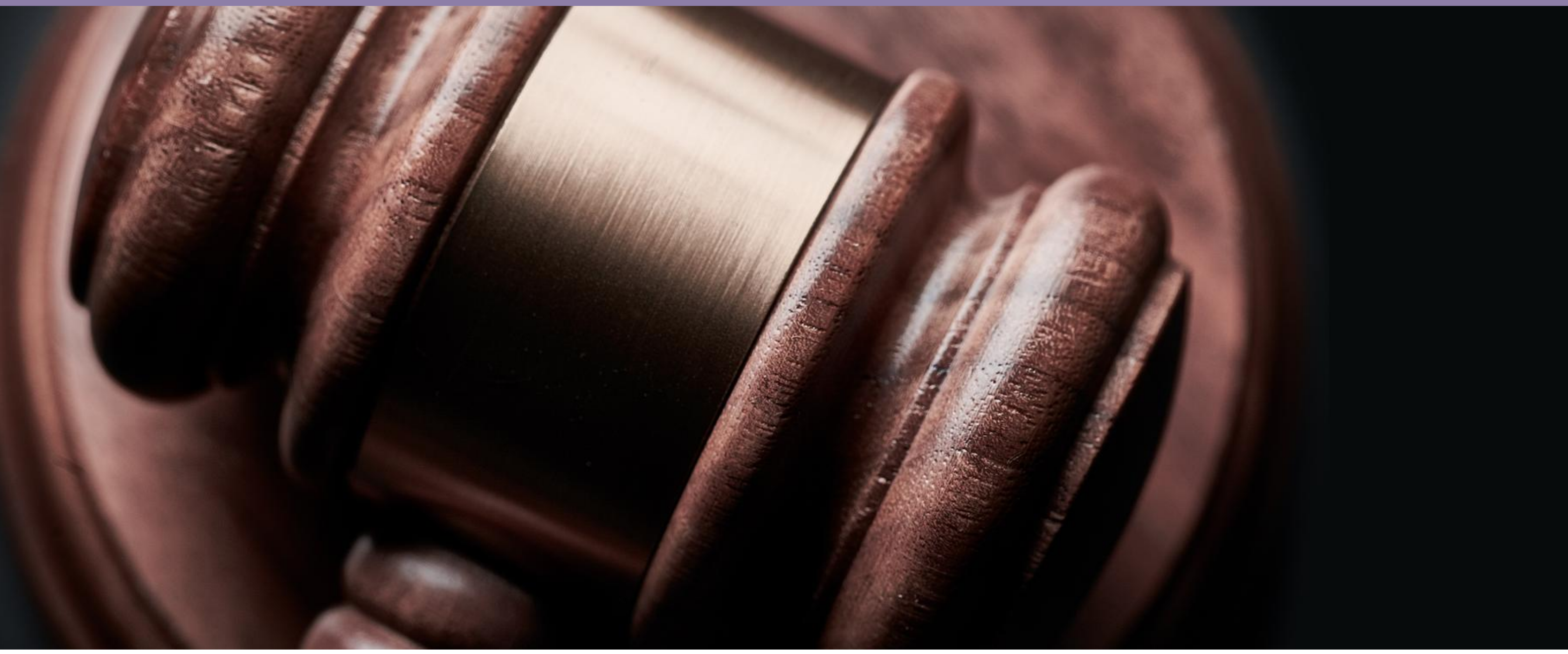
AUGUST 2020 ISSUE

UNITED CONSULTANCY SERVICES
compliance simplified™

THE COMPLIANCE WATCH

QUALITY | WILL TO WIN | BUILDING & LEVERAGING RELATIONSHIPS



UCS POV

By Shaiju Mathew,
Chief Operating Officer

The Telangana state government issued the Self Certification and Third-Party Certification Schemes on 14th July 2020, for the ease of doing business. The state government issued the order to simplify inspection under various labour laws. The main objective of the notification is for a joint inspection under some labour laws, without any duplication of inspections.

UCS NEWSLETTER
AUGUST HIGHLIGHTS

- **Code on Wages likely by September**
- **Due Date for LWF Payment Extended in Maharashtra**
- **Himachal Pradesh Amendment Ordinance, 2020**
- **Further Amendment to The Factories Act, 1948**

The government intends to designate an inspecting authority to carry out a single inspection under some of the labour laws like; Shops and Establishment Act, Payment of Wages Act, Minimum Wages Act, Maternity Benefit Act, CLRA, Payment of Bonus Act, Payment of Gratuity Act, Equal Remuneration Act, and so on.

There are three categories for establishments; Low-Risk (establishments with under 30 employees), Medium-Risk (establishments with 30 to 100 employees), and High-Risk (establishments with more than 100 employees). Low-Risk category companies can opt for the Self-Certification Scheme. Medium-Risk and High-Risk category of establishments can opt for Third-Party audit declaration. The Self-Certification and Third-Party Certification Schemes are introduced for the purpose of keeping inspector raj in check, and the onus of being compliant put on the establishment. The frequency of inspection for High-Risk establishments will be limited to once in two years, Medium-Risk once in three years, and Low-Risk once in five years. However, the department has the power to initiate any additional inspection in the event of any complaint. It should be noted that states like Telangana, Andhra Pradesh and some others were not conducting regular inspections in IT/ITES companies for the past many years. The reason for the recent inspections by the labour authorities is only due to regular complaints from the employees or employees' union and such inspections may continue as it is a mandatory requirement for the inspecting authority to initiate inspection in case of any complaint against the establishment.

The inspecting authority will have to upload the inspection report within 48 hours from the completion of such inspection. Any adverse findings in the self-certifications during inspections can be considered as a false declaration (undertaking) submitted by the employer, which may lead to legal implications on the establishment. We have seen some state governments like, Maharashtra, Andhra Pradesh, Haryana, Rajasthan and others introducing these schemes for the ease of doing business and also to ensure an industry-friendly environment. The certification schemes introduced by all these states are optional for establishments, and companies can opt for Self-Certification or Third-Party Certification Scheme based on the number of employees in the establishment.

These certification schemes is not an exemption from carrying out compliances. Rather, compliance should be ensured in a much-disciplined and efficient manner. The department will verify the compliance status as per the periodicity prescribed for the inspections based on self-declaration given by the employer. The self-certification is a declaration by the company stating that they have complied or fulfilled all the requirements under the labour laws and any false declaration will lead to serious legal implications. Although these certifications may give an exemption for regular inspection, the department can nevertheless inspect as per the periodicity prescribed in the scheme or in the case of any complaint. It is probably for this reason, most of the companies have not opted for the Self-Certification or Third-Party Certification Schemes.

Being compliant in both letter and spirit, that is the best way forward!

Govt. Extends Work from Home Norms for IT Firms, BPOs Till Dec 31

Source: Indian Express

The government has extended connectivity norms for work from home for IT and BPO companies till December 31. The time period for work from home was expiring on July 31. “DoT has further extended the relaxations in the terms and conditions for other service providers up to 31st December 2020 to facilitate work from home in view of the ongoing concern due to COVID-19,” the Department of Telecommunications said in a late-night tweet. Currently, around 85% of the IT workforce is working from home and only those performing critical functions are going to offices. In March, the DoT relaxed certain norms for OSPs till April 30 to facilitate work from home (WFH) amid the coronavirus pandemic which was further extended till July 31.

Cabinet Approves the Proposal to Extend the EPF Contribution for Another Three Months from June to August 2020 Under PMGKY/AATMANIRBHAR BHARAT

Source: Press Information Bureau

The Union Cabinet chaired by the Prime Minister Shri Narendra Modi has given its approval for extending the contribution both 12% employees' share and 12% employers' share under Employees Provident Fund, totalling 24% for another 3 months from June to August 2020, as part of the package announced by the Government under Pradhan Mantri Garib Kalyan Yojana (PMGKY)/ Aatmanirbhar Bharat in the light of COVID-19, a Pandemic. This approval is in addition to the existing scheme for the wage months of March to May 2020 approved on 15.04.2020. The total estimated expenditure is of Rs.4,860 crore.

The salient features of the proposal are:

- For the wage months of June, July and August 2020, the scheme will cover all the establishments having up to 100 employees and 90% of such employees earning less than Rs. 15,000 monthly wage.

- About 72.22 lakh workers working in 3.67 lakh establishments will be benefited and would likely to continue on their payrolls despite disruptions.

- The government will provide Budgetary Support of Rs.4800 crore for the year 2020-21 for this purpose.

- The beneficiaries entitled for 12% employers' contribution for June to August 2020 under Pradhan Mantri Rozgar Protsahan Yojana (PMRPY) will be excluded to prevent overlapping benefit.

- Due to prolonged lockdown, it was felt that businesses continue to face a financial crisis as they get back to work. Therefore, the Hon'ble FM, as part of Aatmanirbhar Bharat, announced on 13.5.2020 that the EPF support for business and workers will be extended by another 3 months viz. for the wage months of June, July, and August 2020.

The steps taken by the Government from time to time to ameliorate the hardships faced by the low paid workers are well accepted by the stakeholders.

Code on Wages likely by Sept.

Source: tribuneindia.com

The Code on Wages, 2019, the first law under labour reforms, is likely to be implemented by September as the Ministry of Labour and Employment has put draft rules of the law in the public domain for feedback, a senior official said. Parliament in August last year approved the code to enable the introduction of a minimum wage for every worker besides addressing issues like delay in payment to employees. - PTI

Karnataka Standing Orders Amended

Source: Gov. notification

The Government of Karnataka has published notification No. LD 382 LET 2018 dated 30th Jun 2020 introducing the "Fixed Term Workmen" under Schedule I in the Model Standing Orders.

The highlights are:

- Fixed Term Workman – Those who are engaged based on a written contract of employment for a fixed period.
- The hours of work, wages, allowances and other benefits of a "Fixed Term Workman" shall not be less than that of a permanent workman.
- Fixed Term Workman are eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him, even if his period of employment does not extend to the qualifying period of employment required in the statute. Hence Certain legislations which require minimum qualifying period like Payment of Gratuity, Payment of Bonus, etc. shall become applicable for such employees in proportion to the period of service rendered.
- For fixed-term employment workmen, if the fixed-term contract is not renewed, then upon the expiry of the contract period, no notice or payment in lieu of notice is required. However, if a temporary workman is terminated due to alleged misconduct, he is required to be given an opportunity of explaining the charges.

300 Workers? Gujarat Government Layoff Nod Not Needed

Source: Times of India

In a move aimed at making labour laws more flexible for employers, the Gujarat government has permitted industrial establishments with 300 or fewer workers to retrench or lay off workers or close down without prior permission of the state government. The exemption previously was available to industrial units with a workforce up to 100. The Gujarat government has amended the Industrial Disputes Act, 1947, by way of an ordinance, which has received the assent of the governor. The state labour and employment department has also begun its implementation. "It is considered necessary to have a provision which would help and encourage the employers to employ more number of workers in the establishment," states the ordinance. "And therefore, the said Section 25K is amended to increase the number of workmen from one hundred to three hundred." The state government has also made three-month notice period to workers mandatory by prohibiting employers from providing three months' wages in lieu of the notice period before the retrenchment. "To ensure that the employer shall only give notice of three months to such workmen, the provision to give wages for the notice period in lieu of the notice is proposed to be deleted," the ordinance adds.

To provide additional financial security to laid-off workers, the workers affected by retrenchment or closure (of an industrial unit) will have to be paid by their employer an amount equivalent to the last three-month average pay. This amount will be in addition to the prescribed compensation the worker is already entitled to under the law. "Restrictive measures enforced by such Acts have always led to more friction between employees and employers," said Chintan Thaker, co-chair, Gujarat state council of the industry body Assocham. Labour and trade unions, however, have widely criticized the decision, saying it will only lead to more exploitation of labourers and employees. "On the one hand, the government talks about protecting the interest of labourers and on the other, it is bringing about such policies which are against the interest of labourers," said Arun Mehta, general secretary, Gujarat, CITU.

Due Date for LWF Payment Extended in Maharashtra

Source: https://public.mlwb.in

The Maharashtra Labour welfare fund has extended the due date for acceptance of online payment for June 2020 due to the lockdown. The last date for payment of the contribution is now 15th August 2020.

Cabinet Okays Changes to ID, Contract Labour Acts, Goa

Source: Times of India

The cabinet approved two amendments to be moved during the coming state legislative assembly session which would bring in labour reforms and reduce compliances for the industrial sector. The cabinet has assented to amending the Contract Labour (Regulation and Abolition) Act, 1970 and the Industrial Disputes (ID) Act, 1947. The Union Ministry of Labour has emphasized on the need to bring in labour reforms, especially the amendment in both these acts. The Goa government has already passed ordinances to implement the reforms.

By amending the Contract Labour Act, industrial units and contractors employing up to 50 workers will no longer need to register or obtain a licence while hiring contract labour. The amendment increased the limit from the existing 20 workers to 50 workmen. The amendment also permits compounding of offences so that disagreements can be settled out of the court with the government acting as a mediator. The cleared Industrial Disputes Act amendment bill will give workers just a year to lodge a complaint about industrial disputes, from the present three-year time limit. The amendment also enhances retrenchment compensation and closure compensation by increasing it from 15 days per year of service to 45 days for each year of service rendered.

Many states have already brought the relevant amendments suggested by the Centre to improve ease of doing business for the private sector. A new section 36C will be introduced in the Industrial Disputes Act which will give the state the power to exempt new industries from provisions of the Industrial Disputes Act. “This will help more industries to set up in the state,” said the cabinet note. The finance and law departments have vetted the amendments and have cleared the moves.

Himachal Pradesh Amendment Ordinance, 2020

Source: Gov. notification

The Factories Act – In section 2 of the Factories Act, 1948 Sub-clause (i) applicability has been amended from ten to twenty workers, and in Sub-clause (ii) applicability has been amended from twenty to forty workers. Overtime wages to be paid twice the rate of ordinary wages.

The Contract Labour (REGULATION AND ABOLITION) - In Section 1 of the Contract Labour (Regulation and Abolition) Act, 1970 applicability has been amended in sub-section 4, from twenty to thirty workers.

Karnataka Government Tweaks Three Laws, Approves Labour Ordinance

Source: https://www.deccanherald.com

Karnataka's industrial sector is likely to witness a large-scale shake-up after the state Cabinet approved sweeping changes to three important labour laws through an ordinance, in a move that will infuriate labour unions. The Industrial Disputes and Certain Other Laws (Karnataka Amendment) Ordinance — which the government said will help ease of doing business amid the pandemic — will amend some provisions under the Industrial Disputes Act, the Contract Labour (Regulation and Abolition) Act and the Factories Act.

According to Law Minister JC Madhuswamy, the worker threshold will increase from 100 to 300 under Section 25(K) of the Industrial Disputes Act. This means that only those establishments that employ 300 or more persons will have to seek the government's permission for closure, retrenchment or layoff. Similarly, worker thresholds under the Contract Labour and Factories Acts will be increased. While any contractor with 20 employees or more attracted the regulations under the Contract Labour Act, a contractor with 50 or more employees will attract the regulations going forward. Madhuswamy said that the Industries Act will also be amended to increase the worker threshold from 10 to 20 in units which use power and from 20 to 40 in factories that do not use power. "Overtime work of any quarter is also increased from 75 to 125 hours under section 65(3)(iv) of the Factories Act," he said. According to government sources, the amendments were based on the recommendations made by the Ministry of Labour and Employment in May, and 'prior instruction' was issued by the President of India through a letter by the Ministry of Home Affairs on July 11.

Similar amendments have been made in Madhya Pradesh, Rajasthan, Maharashtra, Gujarat, Odisha and other states. The ordinance comes after much dilly-dallying and amidst protests from the labour unions. On June 11, the government withdrew a May 22 notification extending work hours after the High Court observed that it may have to quash the notification unless the government clarified what was the 'Public Emergency' involved to enhance the working hours. Labour activist Meenakshi Sundar said, "The amendments are detrimental to the interests of labourers as the industries can now lay off or fire people without consulting the government."

Quick Updates

THE FACTORIES (HARYANA AMENDMENT) ACT, 2018 - Further to Amend The Factories Act, 1948

1

Source: Gov. notification

The following Act of the Legislature of the State of Haryana received the assent of the President of India on the 16th June 2020. Highlights of the notification are:

Applicability - In clause (m) of section 2 of the Factories Act, 1948 applicability in sub-clause (i) has been amended from ten to twenty workers and in sub-clause (ii) from twenty to forty workers.

Overtime working hours – has been amended from seventy-five to one hundred and fifteen.

Exemption - Provided that the State Government may, by notification in the Official Gazette, in respect of any factory which provides such adequate safety and security measures or safeguards, as may be prescribed apply for such exemption, allow the women to work in the factory between the hours of 7:00 PM to 6:00 AM.

Compounding of offences and List of compoundable offences mentioned in the Addition of Fourth Schedule to Central Act 63 of 1948.

2

Further Amendment to The Contract Labour (Regulation And Abolition) Act, 1970 In Gujarat

Source: Gov. notification

Due to the present situation prevailing due to COVID - 19, it is necessary to boost the economic activity and by way of offering an economic revival package in the State, it is felt that the establishments and contractors which employ more 50 people or more (previously 20) may be covered under the Act.

EPFO Withdrawals During April-July Hit Rs 30,000 Cr As 8 Mn Dig Into The Retirement Fund

Source: Economic Times

As much as Rs 30,000 crore has been withdrawn in under four months starting April by 8 million subscribers of the Employee Provident Fund Organisation. EPFO manages a corpus of Rs 10 lakh crore built on mandatory contributions from nearly 60 million salaried people and their employers. The huge outgo is likely to impact the fund's earnings in FY21, officials said. EPFO officials told ET the amount withdrawn between April and the third week of July is much more than the usual outgo seen over similar periods, and that pandemic-related job losses, salary cuts and medical expenses explain this substantial increase. "Of the total withdrawals, nearly 3 million beneficiaries withdrew upwards of Rs 8,000 crore under the COVID window while the rest Rs 22,000 crore was a general withdrawal by 5 million EPFO subscribers, mainly as medical advance," an EPFO official said.

A special COVID window for withdrawals was announced by finance minister Nirmala Sitharaman soon after India declared a nationwide lockdown in late March to contain the spread of the pandemic. The Finance Investment and Audit Committee (FIAC) of the retirement fund body updated its members on withdrawals at a virtual meeting held last week, people familiar with the deliberations at the meeting told ET. Officials said the full impact on returns of this large withdrawal will be known after "detailed micro-level analysis". "With COVID cases on the rise, the number of withdrawals is going up faster," a top government official said. Going by the current trend, EPFO expects nearly 10 million subscribers to withdraw from their savings in the coming days.

UCS CompliTool

Streamline Compliance & Risk

UCSCompliTool is a technology to ease the complexities of navigating through the changing Labour laws. With our past experiences and feedbacks, we have developed an in-house Software solution and have created this robust mechanism which represents our motto – Compliance simplified. It provides a real time and 360-degree view of compliance status for the Principal employer **(Complitool-Compliance)** and with risk matrix to monitor the contractors **(Complitool -Audit)**. We have developed a Role Based Access Control model and being a cloud-based system, we are offering an absolute security and protection of data.

Following are some of the Major benefits of the Tool:

* Real Time Statistical Data	* Informative Tool
* Transparency	* Ease of Documentation
* Ease of Monitoring	* Highlighting of Critical Points
* Security and Data Confidentiality	* Centralization of Data
* Readily Available Documents	* Data Integrity
* Extensive Reporting	* User friendly Dash Boards

* Overall compliance review from front end manoeuvre

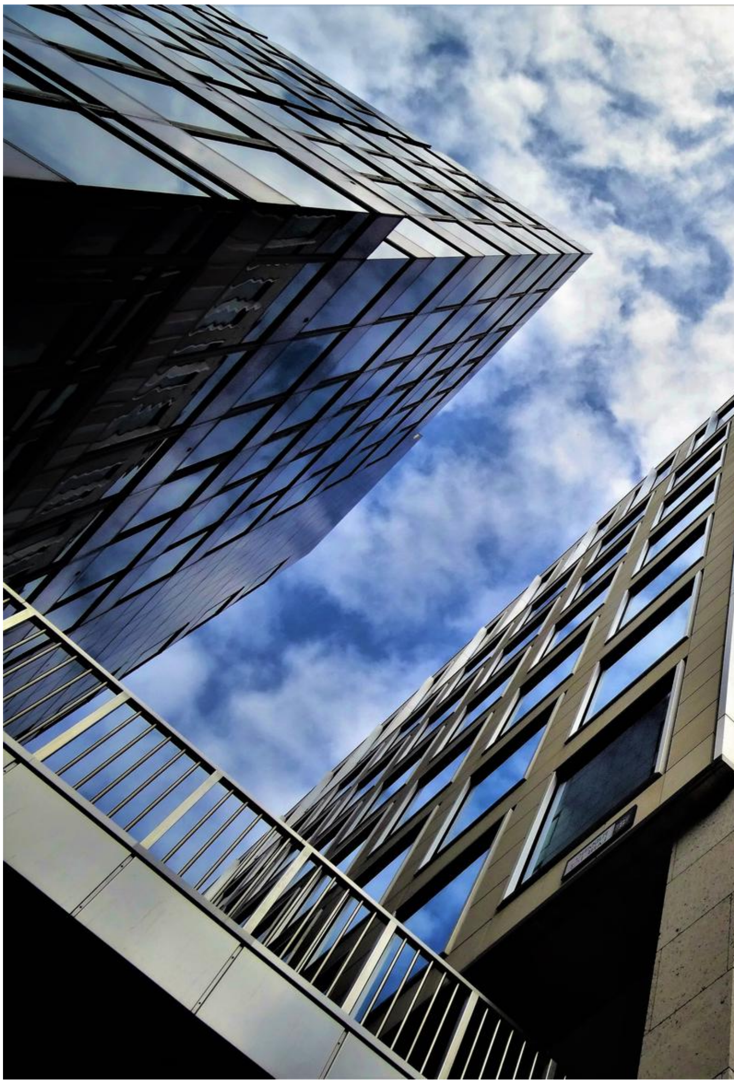
For Demo, Please write to us at enquiry@ucsdel.com
or Call us @ 0124 - 2656849

About Us

United Consultancy Services is one of the leading consulting firms in India providing compliance, advisory and audit services in the field of Labour Laws, Human Resource Development and Legal matters pertaining to Industrial Relations. We provide meaningful, forward looking and compliance oriented solutions to help organizations grow while being compliant under labour laws. Proactive teams led by domain experts, use insight, experience and best practices to understand complex issues of publicly listed and privately owned clients and simplify compliance.

With over 25 years of existence and with more than 200 professionals the firm provides robust compliance services and solutions on complex requirements under Labour law. The information shared in the newsletter is on the basis of Government notifications and newspaper articles. This is for general information purposes only and does not constitute legal advice. Please reach out to your UCS contact or the Company legal counsel before taking any action.

We simplify compliance for you.



Unit No: 852 - 856
8th Floor JMD Megapolis,
Tikri, Sector 48, Gurugram
122001, Haryana

0124 - 2656800

enquiry@ucsdel.com

www.unitedconsultancy.com

Branch Offices: Ahmedabad | Bengaluru | Chennai | Cochin | Hyderabad | Kolkata | Mumbai | Pune