



INDIA

Decent Work Check 2019

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WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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Bibliographical information

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: www.decentworkcheck.org During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

Major Legislation on Employment and Labour

1. Minimum Wages Act, 1948
2. Payment of Wages Act, 1936
3. Factories Act, 1948
4. Industrial Employment (Standing Orders) Act (IESA), 1946
5. Industrial Disputes Act (IDA), 1947
6. Payment of Gratuity Act, 1972
7. Maternity Benefit Act, 1961
8. Employees' State Insurance Act, 1948
9. Employee's Pension Scheme, 1995
10. Equal Remuneration Act, 1976
11. Constitution of India, 1950
12. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
13. Child Labour (Prohibition & Regulation) Act, 1986
14. The Bonded Labour System (Abolition) Act, 1976
15. Trade Union Act, 1926

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

India has not ratified the Conventions 95, 117 & 131 only.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- Factories Act, 1948

Minimum Wage

Minimum wage rates in India are fixed under the Minimum Wages Act, 1948. Since labour is a concurrent subject under the Indian Constitution, minimum wage rates are determined both by the Central Government and the Provincial Governments. Minimum wage rates in India are declared at the national, state, sectoral and skill/occupational levels. Minimum wage rates may be established for any region, occupation and sector. Also, minimum wage is established for trainees, youth and piece-rate workers. Minimum wage is determined by considering the cost of living.

Minimum rate of wages may consist of a basic rate of wages and a cost of living allowance; or a basic rate of wages, with or without the cost of living allowance, and the cash value of concessions in respect of the supply of essential commodities at concession rates (if authorized); or an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions (if any).

While fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for different scheduled employments; different classes of work in the same scheduled employment; adults, adolescents, children and apprentices; and different localities. The minimum wage rates may be fixed by hour, day, month or any such other larger wage period as may be prescribed.

Under the Minimum Wages Act, both the Central and State Governments may notify the scheduled employments and fix/revise minimum wage rates for these scheduled employments. The scheduled employments include both the agricultural and non-agricultural employments. Both the Central and State Governments are empowered to notify any employment (industry/sector) in the schedule where the number of employees is 1000 or more and fix the rates of minimum wages in respect of the employees employed therein.

Minimum wage is announced for 45 scheduled employments in the Central Sphere while the State level minimum wage is determined by every state keeping in view the sectors more dominant in the State. Minimum wage is revised while considering the following five elements: three consumption units per earner; minimum food requirement of 2700 calories per average adult; cloth requirement of 72 yards per annum per family; house rent corresponding to the minimum area provided under the Government's Industrial Housing Scheme; fuel, lighting and other miscellaneous items of expenditure to constitute 20% of the total minimum wage; and children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriage etc. should further constitute 25% of the total minimum wage (the last component added by the Supreme Court in *Reptakos Brett Vs Workmen*

case in 1991). Minimum wages may be reviewed at different intervals however such intervals cannot exceed five years.

The Minimum Wages Act provides for two methods of fixation/revision of minimum wages. Under the Committee Method, committees and sub-committees are set up by the Government to hold inquiries and make recommendations with regard to fixation and revision of minimum wages. Under the Notification method, government proposals are published in the Official Gazette for information of the persons likely to be affected and specify a date (not less than two months from the date of the notification) on which the proposals will be taken into consideration.

After considering advice of the Committees/Sub-committees (Committee method) and all the representations received by the specified date (Notification method), the appropriate Government, by notification in the Official Gazette, fixes/ revises the minimum wage in respect of the concerned scheduled employment which come into force on expiry of three months from the date of its issue.

In protecting the real wages against inflationary effects, the Central government provides for linking of Variable Dearness Allowance to the Consumer Price Index for industrial workers (CPI-IW). Most states provide for variable dearness allowance in revising the minimum wage. VDA is revised periodically twice a year effective from 1st April and 1st October.

Compliance with labour legislation including payment of minimum wages to workers is ensured by the labour inspectors, as are appointed under section 19 of the Minimum Wages Act 1948. In the event of non-compliance, fines, imprisonment and payment of arrears can be applied as per law. Section 22 of the Minimum Wages Act stipulates that violators may be punished to pay fine (which may extend to 500 rupees) or imprisonment, which may extend to period of six months or both. The Authority (magistrate) may also require payment of arrears to the worker along with compensation for delay in payment of due wages. However, such extra compensation should not exceed 10 times the due amount. Similarly, an employer who fails to maintain a register or record as required under the law is liable for a fine of up to 500 rupees.

If a worker receives wages, which are less than the government declared minimum wages, he/she may file a complaint with the labour inspectorate. The complaint can be filed by the worker or through a legal practitioner, or an official of the registered trade union. The claims for any unpaid/due wages must be filed within 6 months of their becoming due.

Source: §3-5, 18-22, 27 & 28 of Minimum Wages Act 1948

Regular Pay

Wages means all remuneration capable of being expressed in terms of money, which would, if the terms of the contract of employment express or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. It however does not include the value of any house-accommodation, supply of light, water, medical attendance, or any other prescribed amenity or service; any pension or provident fund, or social insurance scheme, contributions paid by the employer; travelling allowances or concessions; reimbursement for special expenses incurred by the employee; or gratuity payable on discharge.

In accordance with the Minimum Wage Act, the employer is obliged to pay wages on regular and timely basis at least once a month. Wage period may be fixed on hourly, daily, weekly or monthly basis. The employer is under obligation to pay wages in cash on a working day before the expiry of the 7th day after the last day of the wage period (in establishments with less than 1000 workers). In other establishment, i.e., those hiring more than 1,000 workers, wages must be paid before expiry of 10th day after the last day of the wage period. If the employment of a worker is terminated by or on behalf of the employer, the outstanding wages are paid within two days of employment termination. Wage periods can't be fixed for duration longer than one month.

Minimum wages are generally payable in cash however if it is customary to pay wages wholly or partly in kind, the appropriate Government may authorize the payment of minimum wages either wholly or partly in kind.

Payment of Wages Act 1936 required that all wages be paid in current coin or currency notes or in both (in legal tender). An employer may, after obtaining the written authorization by the worker, pay worker the wages either by cheque or by crediting the wages in bank account. A 2017 amendment in the 1936 Act, applicable from 28 December 2016, now allows the employer to pay wages in coins or currency notes; or by check; or by crediting the wages in worker's account. The amended Act has withdrawn the requirement of taking prior authorization from worker about mode of wage payment. The relevant (central or state) government may however specify certain industrial or other establishments requiring those to pay either by check or bank transfer.

Workers are entitled to the wages without any kind of deduction except in cases prescribed by the Payment of Wages Act 1936. It may include deductions as fine; for absence; for damage or loss of goods or money; for house accommodation supplied by employer; for recovery of advances or loans; for income-tax; and any other kind of deduction that is made by order of a Court or other authority competent to make such order.

Source: §3-6 & 11 of Minimum Wages Act 1948; §3-7 of the Payment of Wages Act 1936, amended in 2017

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

India has ratified the Convention 01 only.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- Factories Act, 1948

Overtime Compensation

In accordance with the Factories Act 1948, normal working hours are 9 hours per day and 48 hours per week. Working hours for young workers are 4.5 hours per day.

Adult workers may be required to work beyond the stipulated working hours, i.e., 9 hours a day and 48 hours a week. The compensation for overtime work is twice the regular rate of his ordinary pay (200% of the regular wage rate). Ordinary rate of wages includes the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

The periods of work must be fixed in such a way that no period should exceed five hours (exemption can be granted to extend this period to 6 hours). A worker must get a rest interval of at least half an hour (30 minutes) after at most five hours of work. The total spread over (of working hours) inclusive of rest breaks and overtime cannot exceed ten and a half hours in any day. This means that an overtime of 2 hours is allowed per day. The Chief Inspector is authorized to extend this spread over, for reasons specified in writing, to 12 hours.

An employee may not be required to work overtime on short notice without prior intimation. Period of work, fixed in accordance with the provisions of Act, should be properly notified and displayed in the factory. Any proposed change should be notified to the Inspector, before the change is made.

Source: §51-63 of Factories Act 1948

Night Work Compensation

In accordance with the Factories Act, night shift is a shift which extends beyond midnight. There is no special pay premium for employees working overnight.

Source: §57 of Factories Act 1948

Compensatory Holidays / Rest Days

In extraordinary circumstances, workers may perform work on weekly rest days and public holidays. If workers lost their weekly rest days due to the exemption granted to an establishment under section 52 of the Factories Act, these workers must be provided with compensatory rest days within the following 2 months.

There is no provision for compensatory holiday for workers working on a public holiday.

Source: §53 of Factories Act, 1948

Weekend / Public Holiday Work Compensation

In extraordinary circumstances, workers may perform work on weekly rest days and public holidays. If workers lost their weekly rest days due to the exemption granted to an establishment under section 52 of the Factories Act, these workers must be provided with compensatory rest days within the following 2 months.

There is no provision for compensatory holiday for workers working on a public holiday.

Source: §53 of Factories Act, 1948

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

India has ratified the Convention 14 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Factories Act, 1948

Paid Vacation / Annual Leave

The Factories Act has provided annual/earned leave of 12 working days for all the workers who have worked at least 240 days in a year. However, the duration of earned/annual leave differs for the adult and young workers. An adult worker is entitled to one day of earned leave for every 20 days of service while a young worker (under the age of 15 years) is entitled to one day of earned leave for every 15 days of service. Thus, the annual leave duration is 15 working days and 20 working days for adult and young workers respectively.

Workers are paid their usual daily wage rates for the days of earned leave. A worker is paid his full daily wages during the term of annual leave. Daily wages are the average of his total full time earnings for the day on which he actually worked during the months immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of advantage accruing through the concessional sale to the worker of food grains and other articles.

If a worker takes four or more days' leave at a time, his wages are paid before the leave begins. The employer, the works committee and the Chief Inspector of factories determine the schedule of leaves by mutual consensus to ensure continuity of work. A worker may take all or portion of annual leave provided that he/she notifies the employer in writing at least 15 days prior to the date of availing annual leave and such request may not be refused unless it contradicts with the scheme of leave already agreed. Even when in portions, annual leave cannot be taken more than three times a year.

Annual leave may be carried over however no more than 30 days can be carried over to the next year. If the employment contract expires before a worker could take annual leave, compensation for leave is made in proportion to the number of months and numbers of hours worked in a week.

Source: §79-82 of Factories Act 1948

Pay on Public Holidays

Workers are entitled to paid days-off during Festival (public and religious) holidays. These include memorial holidays and religious holidays.

There are many festival and religious holidays in India however only three of these are fully covered national public holidays. These are Republic Day (January 26), Independence Day (August 15) and Mahatama Gandhi's Birthday (October 2). (National and Festival Holiday Act & www.qppstudio.net)

Weekly Rest Days

The Factories Act provides provision on weekly rest. Workers are generally entitled to at least 24 hours of weekly rest on the first day of the week, i.e., Sunday. The weekly rest period is reckoned as a paid time.

Workers may be required to work on weekly holiday, in this case, he/she is entitled to the substitute holiday three days before or after the usual weekly holiday. Even in the case of holiday substitution, workers must be given a weekly holiday in every 10 days. If an organization is exempted from the provision related to weekly holiday and workers are not granted their weekly holidays, an equal number of compensatory holidays have to be granted within 2 months.

Source: §52-53 of Factories Act 1948

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

India has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Industrial Employment (Standing Orders) Act (IESA), 1946
- Industrial Disputes Act (IDA), 1947
- Payment of Gratuity Act, 1972

Written Employment Particulars

There is no provision in the above labour law that requires an employer to provide a written statement of particulars to a newly hired employee. However, a written appointment letter or employment contract is signed between the employer and the worker as a matter of practice.

The written document may contain the following information: name and address of the employer; name and address of the employee; title of the job or nature of work to be performed by the employee (or job description); place of work and hours of work; and probation, if any, and its term, etc. The employers may also incorporate the following information into employment contract: option of the employer to transfer an employee from one office to another branch office, affiliate, etc.; date of commencement of employment; wages or salary details (overtime wages); any benefits that an employee is entitled to (gratuity, provident fund and pension); type of contract – permanent or fixed-term; period of notice required for termination of employment; leave entitlement; conditions under which the employer can terminate the contract; and non-compete, confidentiality and non-solicitation provisions, etc.

Fixed Term Contracts

Indian labour Law allows hiring fixed term contract workers for tasks of permanent nature. There is no maximum length of fixed term contracts provided under the labour laws.

Employment of contract labour is allowed under the Contract Labour (Regulation and Abolition) Act, 1970. The Central Government (or Provincial Government) may, after consultation with the Central Board or a State Board, prohibit, employment of contract labour in any process, operation or other work in any establishment while considering the following factors:

(a) whether the process, operation or other work is incidental to, or necessary for the activity that is carried on in the establishment: (b) whether it is of perennial nature, it is of sufficient duration having regard to the nature of activity carried on in that establishment; (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; (d) whether it is sufficient to employ considerable number of whole-time workmen.

Sources: §1 & 10 of the Contract Labour (Regulation & Abolition) Act, 1970

Probation Period

Under section 2 of the Model Standing Order, probation period is usually 6 months however it can be extended by a by a period of three months at a time at the discretion of management. The maximum probation period can't exceed two years. A person is employed as a probationer generally to fill a permanent vacancy in a post. If a permanent employee is employed as a probationer in a new post he may, at any time during the probationary period, be reverted to his old permanent post.

Source: §2 of the Model Standing Orders

Notice Requirement

The Industrial Dispute Act uses the term "retrenchment" instead of "termination". Retrenchment is defined as termination for any reason except as punishment inflicted by way of disciplinary action, retirement/superannuation, and termination for continued ill-health, or expiry and non-renewal of the term of an employment contract.

Reasons for retrenchment could be redundancy, non-performance, or loss of confidence in the worker for various reasons. The Industrial Disputes Act also delineates the manner of retrenchment of workmen and provides a mechanism for the computation of their severance compensation. Workmen may be retrenched only for just cause and after complying with various statutory requirements, failing which the aggrieved workman or representatives of the workman can raise an industrial dispute in connection with the termination.

An employer is required to give at least one month's advance notice or payment in lieu thereof to a worker who has completed at least one year of continuous service before termination. The notice must be given in writing indicating the reason of retrenchment. While terminating a large number of employees in factories, mines or plantations employing more than 100 workmen, the employer must give at least three months of notice or wages in lieu thereof to the workmen proposed to be terminated.

The services of workmen as well as non-workmen can be terminated without any notice in situations, such as proven misconduct, fraud, etc. Termination proceeds with an internal enquiry in accordance with the principles of natural justice - where the employee is given a free and fair hearing.

Appeals could be made against wrongful termination. A workman can challenge his/her termination (retrenchment) before appropriate labour authorities and seek reinstatement and/or compensation under the ID Act. A non-workman can take recourse only by instituting a civil suit against his/her employer for damages for wrongful termination.

In case, it is proved that the termination/retranchment is not proper, then based on various other criteria, the worker can be re-instated to his/her job with back wages.

Courts in India have held that a worker is entitled to exercise his right to resign from the employment. An employer may be justified in refusing to accept the worker's resignation in limited cases, such as, when a worker wants to leave in the middle of work which is urgent or important and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee.

Source: §2, 25(F-N) of Industrial Disputes Act 1947; §15 of the Model Standing Orders

Severance Pay

In accordance with the Payment of Gratuity Act 1972, a worker is entitled to a gratuity payment upon termination of his service after five years of continuous employment.

Amount of severance pay is equal to 15 days' wages for each completed year of service. Under the Industrial Disputes Act, retrenched workers are entitled to 15 days' wages for each completed year of service.

Source: §25(F) of Industrial Disputes Act, 1947; §4 of the Payment of Gratuity Act, 1972

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)

Recommendation 165: Workers with Family Responsibilities (1981)

India has not ratified the Convention 156.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Factories Act, 1948

Paternity Leave

There is no provision on paternity leave in Indian labour law for private sector workers. The civil servants (Central Government) however are entitled to paternity leave. A male civil servant (including an apprentice, probationer) with less than two surviving children, may be granted Paternity Leave for a period of 15 days before or up to six months from the date of delivery of the child. If paternity leave is not taken within 6 months of the birth of child, it is treated as lapsed. Workers on paternity leave are paid their leave salary equal to the pay drawn immediately before proceeding on leave. The paternity Leave may be combined with leave of any other kind. The paternity leave cannot be debited against the leave account. Paternity Leave cannot normally be refused under any circumstances. Similar provisions are applicable on the adoption of a child under the age of one year.

Source: Rule 43-A & 43-AA of Central Civil Services (Leave) Rules, 1972

Parental Leave

There is no provision for parental leave in Indian labour law.

Flexible Work Option for Parents / Work-Life Balance

There was no provision for flexible work option for workers with minor children and other family responsibilities. However, under the Maternity Benefit (Amendment) Act 2016, after completion of maternity leave, an employer may permit a woman to work from home, if the nature of work assigned permits her to do so. However, this must be mutually agreed between the parties.

Source: §05 of the Maternity Benefits Act 1961, amended in 2017

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

India has not ratified both Conventions 103 & 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Maternity Benefit Act, 1961

Free Medical Care

A pregnant women worker is entitled to a maternity benefit (in the form of medical bonus) of one thousand rupees if no prenatal confinement and post-natal care is provided by the employer free of charge. It can be increased to a maximum limit of twenty thousand rupees. The Central Government is authorized to increase the basic amount every three years. In August 2008, the amount of medical bonus was 2500 Indian rupees which have been later raised in 2011 to 3500 Indian rupees.

Source: §8 of the Maternity Benefits Act 1961

No Harmful Work

In accordance with the Maternity Benefits Act, a pregnant woman cannot, on a request made by her in this behalf, be required by her employer to assign any work (during 10 weeks before her expected delivery) which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health. An employer is also obliged not to employ a woman during the six weeks following the day of her delivery, miscarriage or medical termination of pregnancy.

Source: §4 of the Maternity Benefits Act 1961

Maternity Leave

The Maternity Benefit (Amendment) Act 2016, passed by the Rajya Sabha in August 2016, has also been passed by the Lok Sabha in March 2017.

Under the new Law, maternity leave is raised from current 12 weeks to 26 weeks. The prenatal leave is also extended from six to eight weeks. However, a woman with already two or more children is entitled to 12 weeks' maternity leave. The prenatal leave in this case remains six weeks.

The Act also provides for adoption leave of 12 weeks for a woman who adopts a child under the age of three months. A commissioning mother is also entitled to a 12-week leave from the date the child is handed over to her. A commissioning mother is defined as "biological mother who uses her egg to create an embryo implanted in any other woman" (the woman who gives birth to the child is called host or surrogate mother).

The Act further requires an employer to inform a woman worker of her rights under the Act at the time of her appointment. The information must be given in writing and in electronic form (email).

Female civil servants are entitled to maternity leave for a period of 180 days for their first two live born children.

Before March 2017, the law provided following rights:

According to the Maternity Benefit Act female workers are entitled to a maximum of 12 weeks (84 days) of maternity leave. Out of these 12 weeks, six weeks leave is post-natal leave. In case of miscarriage or medical termination of pregnancy, a worker is entitled to six weeks of paid maternity leave. Employees are also entitled to one additional month of paid leave in case of complications arising due to pregnancy, delivery, premature birth, miscarriage, medical termination or a tubectomy operation (two weeks in this case).

Source: §3-10 of the Maternity Benefits Act 1961, amended in 2017; §43 of the Central Civil Service (Leave) Rules 1972

Income

The maternity leave is awarded with full pay on completion of at least 80 days in an establishment in the 12 months prior to her expected date of delivery. The maternity benefit is awarded at the rate of the average daily wage for the period of a worker's actual absence from work. Apart from 12 weeks of salary, a female worker is entitled to a medical bonus of 3,500 Indian rupees.

Source: §5 of the Maternity Benefits Act 1961

Protection from Dismissals

It is unlawful for an employer to discharge or dismiss a pregnant worker during or on account of absence due to pregnancy, delivery or any post-natal illness, or to give notice of discharge or dismissal, or to vary to her disadvantage any of the conditions of her service.

Source: §12 of the Maternity Benefits Act 1961

Right to Return to Same Position

Employers are prohibited from varying a worker's conditions of employment to her disadvantage while she is on maternity leave. It implies from Section 12 that a woman worker has the right to return to her same job/position after availing her maternity leave.

Source: §12 Maternity Benefits Act 1961

Breastfeeding

The Maternity Benefits Act requires employers to provide nursing breaks of prescribed duration for new mothers in order express breast milk for nursing child. These nursing breaks are fully paid and are available until a child reaches the age of 15 months. The duration of these prescribed breaks is not provided under the Act.

The Maternity Benefit (Amendment) Act 2016, passed by the Rajya Sabha in August 2016, has also been passed by the Lok Sabha in March 2017. Under the new Law, every establishment having fifty or more employees must provide the facility of creche within such distance as proposed either separately or along with common facilities. A woman worker will be allowed four visits to the crèche in a day.

Ministry of Women and Child Development, Government of India has issued Crèche Guidelines in November 2018. In line with the guidelines, following are the salient points:

- i. One creche for every 30 children between the age 6 months to 6 years of all types of employees;
- ii. The creche must be located at the workplace or within 500 meters of the establishment;
- iii. Employers are required to employ one creche worker along with a helper for every 10 children under the age of 3 years and for every 20 children between the age group of 3-6 years.

Source: §11 & 11A of the Maternity Benefits Act 1961, amended in 2017

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

India has ratified the Convention 81 only.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Factories Act, 1948

Employer Cares

In accordance with the Factories Act 1948, an occupier of an establishment has to ensure the health, safety and welfare of all the workers while they are at work in the factory.

It is obligatory for an employer/occupier to ensure the provision and maintenance of plant and systems of work that are safe and without health risks. Arrangements should be made to rectify risks involved in use, handling, storage and transport of articles and substances.

The establishment should be monitored to check the quality of the premises; cleanliness; disposal of wastes and effluents; ventilation and temperature; dust and fume; artificial humidification; overcrowding; lighting; clean drinking water; latrines and urinals; and spittoons.

Safety of the worker must be ensured by installing and maintaining the machinery, mechanisms, transmission apparatus, tools, equipment and machines in best possible safety conditions. Tools, equipment, machines, or products used must be organized properly guaranteeing the safety of workers.

The employer is obliged to take care to protect the worker's health and safety by providing the means of rescue, the first aid, and the cleanup; and arrangements and organization of the workplace

Source: §7(A) of the Factories Act 1948

Free Protection

The Factories Act requires employers to provide protective equipment (means of protection) to workers involved in hazardous work. The type of PPE needed varies depending on the nature of work being performed. It includes screens or suitable goggles for protection of eyes. The right use of PPE reduces risk of accident and illness, minimizes future medical costs, and helps in creation of safer working environment.

Source: §35 & 87 of Factories Act 1948

Training

In accordance with the Factories Act, it is the responsibility of an employer to provide instruction, training and supervision as is necessary to ensure health and safety at work of his employees.

Source: §35 & 87 of Factories Act 1948

Labour Inspection System

The Factories Act provides for a vibrant labour inspection system. However, the labour inspection system is state based.

The Ministry of Labour and Employment along with ministries specialized for certain industrial sectors (for example the Ministry of Power, Ministry of Mines) are responsible for formulating and administering laws and regulations relating to labour and employment.

The national legislation provides inspectors the power to enter in workplace premises; examine; inquire or interview anyone; ask for or take copy of any prescribed register, record or other document; and take measures and photographs. The labour inspector is also authorized to dismantle or subject it to any process or test and take possession of any such article or substance that seems to cause danger to health and safety, and detain it for so long as is necessary for such examination.

Source: §9 of Factories Act 1948

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

India has not ratified the Conventions 102, 121 & 130.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Employees' State Insurance Act, 1948

Income

Workers covered by the 'Employee State Insurance Act' are entitled to sick pay, but only a small proportion of the organized work force is covered by social security legislation. Amount of sick pay varies; it is around 70% of the average daily wage. The benefit is paid after a 2-day waiting period for up to 91 days in any two consecutive designated 6-month periods.

Different provisions could be located under different Acts:

- i. 15 days of sick leave is entitled under Apprentices Act, 1961
- ii. 30 days of sick leave for 18 months of service under Working Journalist and Other News Paper Employee's (Conditions of Service) and Miscellaneous Provisions Act, 1955;
- iii. (iii)At least 1/18th of the period worked under Sales Promotion Employees (Conditions of Service) Act, 1976. (<http://www.esic.nic.in/benefits.php>)

Source: §15 (Rule 13) of the Apprentices Act 1961; Working Journalist and Other News Paper Employee's (Conditions of Service); §7 (Rule 28) of the Miscellaneous Provisions Act 1955); §4 of the Sales Promotion Employees (Conditions of Service) Act 1976

Medical Care

Full medical care is provided to an Insured person and his family members. There is no ceiling on expenditure on the treatment of an insured person or a family member. On payment of annual premium of 120 rupees, medical care is also provided to retired and permanently disabled insured persons and their spouses.

(<http://www.esic.nic.in/benefits.php>)

Job Security

There is no legislation in this respect.

Disability / Work Injury Benefit

Work injuries are divided into four categories: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

In the case of permanent total incapacity/disability, 90% of an insured worker's average earning is paid as the amount of compensation. These benefits are paid for the duration of disability.

In the case of permanent partial disability, amount of compensation depends on the assessed degree of disability.

In the case of temporary disability, 90% of an insured worker's average earning is paid as the amount of compensation. The benefits are paid until worker's full recovery.

In the case of fatal injury, dependents (including widow, widower, children, parents, grandparents) receive survivors' benefit. Widow receives 60% of the disability pension the deceased worker received or would have been entitled to receive and an orphan, younger than age 25, receives 40% of total disability pension. The minimum monthly benefit is 1200 rupees per family. A funeral grant (lump sum of up to 10,000 rupees) for the cost of the funeral is paid to the oldest member of the family or to the person who pays for the funeral.

In line with a 2017 amendment in the Employee Compensation Act 1923, employers are required to inform the employees of their rights to compensation under the 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. If an employer fails to inform the employee of his compensation rights under the law, he is liable to a fine which may range between 50,000-100,000 Indian rupees.

Source: §46 of the Employees State Insurance Act 1948, ISSA Country Profile for India

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

India has not ratified the Conventions 102, 121, 128, 130 & 168.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Employee's Pension Scheme, 1995

Pension Rights

Employee's Pension Scheme 1995 provides for both full and reduced/early pension. For full/superannuation pension, a worker must have reached 58 years of age with at least 120 months (10 years) of contribution. A person is entitled to partial pension at the age of 58 years with less than 120 months (10 years) of contribution. Early pension is granted at the age of 50 years with at least 120 months (10 years) of contribution.

Amount of old-age monthly pension is based on a member's pensionable service and earnings but it may not be less than 1,000 rupees per month. A lump sum of total employer and worker contributions plus accrued interest is paid as a partial pension. The early pension is a reduced form of full pension and full pension is reduced by 3% for each year the retirement is taken before 58 years.

Source: §12 of Employee's Pension Scheme 1995

Dependents' / Survivors' Benefit

Dependents/Survivors' Pension is paid to the family in the event of death of a worker who dies while in service after contributing for at least one month into the Employees' Pension Fund; has attained the age of 58 years with 120 months of contributions; and has started receiving pension

In any of the above-mentioned cases, the amount of minimum monthly pension for widow(er) is 450 rupees. The minimum monthly pension for children is 150 rupees (or 25% of the amount admissible to the widow(er), whichever is higher) payable until the child attains the age of 25 years (no limit with a total and permanent disability). In the case of full orphans, pension is equal to 75% of the pension admissible to the widow(er). The minimum monthly pension for full orphan can't be less than 250 rupees.

Source: §16 of Employees' Pension Scheme 1995

Unemployment Benefits

Unemployment Allowance is provided to workers losing their jobs under no fault of their own (on account of closure of factories, retrenchment or permanent invalidity of at least 40% arising out of non-employment injury). Unemployment allowance is the 50% of an insured worker's daily average earnings. It is paid up to one year to the workers who have paid contributions for at least 3 years. During this time, free medical care is also provided to beneficiaries and their dependents.

(<http://www.esic.nic.in/benefits.php>)

Invalidity Benefits

Invalidity benefit is provided to a worker assessed with a permanent and total disability as the result of an occupational injury and has at least one month of contributions.

Amount of invalidity pension is based upon the member's pensionable earnings. The minimum amount of invalidity pension is at least 250 rupees or a lump sum of total employee and employer contributions plus accrued interest.

Source: §12 of Employees' Pension Scheme 1995

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

India has ratified both Conventions 100 & 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Equal Remuneration Act, 1976
- Constitution of India, 1950
- Factories Act, 1948
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Equal Pay

Equal Remuneration Act, 1976 requires employers to pay equal remuneration to workers for same work or work of a similar nature without any discrimination on the basis of sex.

The Act requires every employer not to pay to any worker the remuneration (payable in cash or in kind) at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex for performing the same work or work of a similar nature.

Law further obligates employers not to reduce the rate of remuneration of any worker for the purpose of complying with the provision of equal pay for same work or work of a similar nature.

Source: §4 of the Equal Remuneration Act 1976

Sexual Harassment

The Supreme Court Decision (Vishaka V/S State of Rajasthan, 1997) which recognizes harassment as a form of discrimination against women and violation of the constitutional right to equality was used to refer to sexual harassment.

Earlier, India had no legislation on sexual harassment. In 2013, Indian Government has enacted The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (in force from December 09, 2013) which prohibits sexual harassment at the workplace. The Act specifies the types of actions that would fall within the ambit of sexual harassment with respect to women workers. Sexual harassment is defined as any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: physical contact and advances; or a demand or request for sexual favours; or making sexually coloured remarks; or showing pornography, or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

To address complaints relating to sexual harassment exclusively, the Act mandates all employers to create internal complaints committees. It also requires employers to include sexual harassment as a disciplinary violation in their internal policies, provide assistance to victims in reporting incidents of sexual harassment to the authorities, and also prepare and file annual reports prescribed therein. An employer who contravenes the provisions of this Act is punishable with a fine which may extend to 50,000 rupees.

Sexual harassment is also prohibited under section 354-A of the Penal Code. A person convicted of sexual harassment is punished with rigorous imprisonment for a term which may extend to three years or with fine or with both.

Source: §2 & 26 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, §354 (A) of the Penal Code

Non-Discrimination

The Constitution of India guarantees equality and prohibits discrimination on grounds of religion, race, caste, sex, birthplace, residence or any of them.

The Constitution guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. No citizen can, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

The Equal Remuneration Act also forbids discrimination in hiring, pay and conditions of employment between male and female workers engaged in the same or similar work, except where dissimilar treatment is mandated or permitted under the law.

Source: §14-16 of Indian Constitution 1949 last revised in 2012; §4 of the Equal Remuneration Act 1976

Equal Choice of Profession

In accordance with the Constitution, every citizen has the right to practice any profession, or to carry on any occupation, trade or business subject to reasonable restrictions imposed under the law.

Women in India cannot work in the same industries as men. According to the Factories Act 1948, women can't be employed in any part of a factory for pressing cotton in which a cotton-opener is at work. The Act further states that the daily work hour exemption cannot be granted for women workers and night work is also prohibited to them. Moreover, the Act prohibits employment of women in "dangerous" occupations.

Source: §19(1)(g) of Indian Constitution 1949 last revised in 2012; §27, 66 & 87 of the Factories Act 1948

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

India has not ratified both Conventions 138 & 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Child Labour (Prohibition & Regulation) Act, 1986

Minimum Age for Employment

In accordance with the Constitution of India, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The minimum age for employment is 14 years. Employment of child under 14 years of age is strictly prohibited in any establishment. A violation of this rule can result in the imposition of fines and also imprisonment in certain States.

Children are not allowed to work more than six hours a day (which include one hour of rest after 03 hours of work). Night work (between 07 pm and 08 am) and overtime work is prohibited for children.

According to the Constitution, it is obligatory for the state to provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

The Child Labour (prohibition and regulation) Amendment Act 2012 has been passed by both Rajya Sabha and Lok Sabha in July 2016.

The amendments are as follows:

Employment of children below 14 years is prohibited in all occupations and processes and age of prohibition of employment is linked to age under Right of Children to Free and Compulsory Education Act, 2009, i.e., 14 years. Employer of children under 14 years is prohibited in both hazardous and non-hazardous employments. The Act prohibits employment of children below 14 years in certain occupations such as automobile workshops, bidi-making, carpet weaving, handloom and power loom industry, mines and domestic work.

However a child (under 14 years) can help his family or family enterprises in a non-hazardous occupation/enterprise, after his school hours or during vacations. Similarly, a child working as an artist in an audio-visual entertainment industry, advertisement, films, television serials or any such other entertainment or sports activities, except the circus. In both cases, the law requires that this permission is subject to such conditions and safety measures, as may be prescribed and provided that such work does not affect the school education of the child.

A new definition of adolescent is incorporated in the Act and employment of adolescents (14-18 years of age) is now prohibited in hazardous occupations and processes (mines, inflammable substance, explosives, and hazardous processes). Stricter punishment for employers for violation has also been proposed to act as a deterrent. The offence of employing a child or adolescent in contravention of the amended Act by an employer has been made cognizable.

The amendment bill relaxes the penal provisions for parents or guardians, who were earlier subjected to the same punishment as the employer of the child. However, in case of parents being repeat offenders, they can be penalized with a monetary fine up to Rs 10,000. An employer who employs a child or permits a child (under 14) to work is punishable with imprisonment for at least six months and fine ranging between 20,000 and 50,000 rupees or both. If an employer contravenes provisions with regard to adolescents working in hazardous occupations or processes, he may be punishable with imprisonment for a term ranging between 6 months and two years, fine ranging between 20,000 and 50,000 rupees or with both.

The amendment Act also provides for constitution of Child and Adolescent Labour Rehabilitation Fund for one or more districts for the rehabilitation of the child or adolescent rescued. Fund is to be financed with the amount of fine recovered.

Under the Right of Children to Free and Compulsory Education Act, the compulsory education age is 14 years.

Source: §21(A) & 24 of Indian Constitution 1949 last revised in 2012; §2-7 of the Child Labour (Prohibition & Regulation) Act 1986; Child Labour (Prohibition & Regulation) Act 1986 Amendment Act, 2012, passed in 2016; §3 of the Right of Children to Free and Compulsory Education Act 2009

Minimum Age for Hazardous Work

The minimum age for hazardous work has been raised to 18 years. The hazardous work is defined as mines, inflammable substance, explosives, and hazardous processes. The 'Child Labour (Prohibition and Regulation) Act' makes it illegal for children under 14 years of age to be employed in factories, including 16 'hazardous occupations' and 65 'processes'. These hazardous occupations and processes include working in slaughter house, automobile workshops, foundries, handling of toxic substances, mines, dhabas, restaurants, tea shops, domestic service, beedi making, carpet weaving, building and construction industry, etc.

Night work (22:00 to 06:00) and overtime (more than four and a half hours) is prohibited for children.

Source: §3 of the Child Labour (Prohibition & Regulation) Act 1986, last amended in 2016; §71 of the Factories Act 1948

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

India has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- The Bonded Labour System (Abolition) Act, 1976

Prohibition on Forced and Compulsory Labour

The Constitution of India prohibits forced labour and considers it an offence punishable under the law. State can however impose compulsory service for public purposes. The Bonded Labour System (Abolition) Act, 1976 makes all forms of bonded labour illegal. Anyone who compels another person to render any bonded labour is punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.

Source: §23 of Indian Constitution 1949 last revised in 2012; §4 & 16 of the Bonded Labour System (Abolition) Act 1976

Freedom to Change Jobs and Right to Quit

Workers have the right to change jobs after serving due notice. For more information on this, please refer to the section on employment security.

Source: §15 of the Model Standing Orders

Inhumane Working Conditions

Working time may be extended beyond normal working hours of forty-eight hours per week and nine hours a day. In certain circumstances, workers may be required to work overtime. In allowing the spread over of 10.5 hours every day, law actually allows for two hours of overtime work per day.

For more information on this, please refer to the section on compensation.

Source: §51, 54, 59-63 of Factories Act 1948

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize:
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

India has not ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Trade Union Act, 1926
- Constitution of India, 1950
- Industrial Disputes Act, 1947

Freedom to Join and Form a Union

The right to freedom of association is enshrined in the constitution and guaranteed under the Trade Union Act.

According to the Constitution, all citizens have the right to form associations or unions or co-operative societies. The Trade Union Act defines trade union as any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

A Trade Union must get registered by depositing the application to the Registrar, along with a copy of the rules of the Trade Union and a statement containing following particulars: names, occupations and addresses of the members making the application; the name of the Trade Union and the address of its head office; and the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register and issuing the registration certificate in the prescribed form which is the conclusive evidence that the Trade Union has been duly registered under this Act.

A written notice, signed by the Secretary and seven members, is submitted to the registrar to change the name or for amalgamation of the Trade Unions.

Source: §19 of Indian Constitution 1949 last revised in 2012; §2-9 & 25 of the Trade Union Act, 1926

Freedom of Collective Bargaining

Right to collective bargaining is recognized under the labour law however there is no legal obligation on employers to recognize a union or engage in collective bargaining.

The term settlement is used in Industrial Dispute Act, instead of collective bargaining. Settlement means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such

agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

A settlement arrived at by agreement between the employer and workman in the course of conciliation proceeding binds on the parties to the agreement. The settlement become applicable on the date on which the memorandum of settlement is signed by the parties or on a date agreed upon in agreement. The settlement is valid for the period agreed upon in the agreement or in absence of any such provision the settlement is valid for a period of six months from the date the memorandum was signed. The memorandum continues binding on the parties after its expiry, until the two months from the date on which notice in writing to terminate the settlement is given by one party to the other.

When a settlement is not arrived by the conciliation process, the dispute is then referred to a Court (Labour Court, Tribunal or National Tribunal).

Scope and coverage of collective bargaining is limited within legal boundaries of Trade Union Act and Industrial Dispute Act.

Source: §15-20 of the Industrial Dispute Act 1947

Right to Strike

Right to strike is guaranteed under the Constitution and the Industrial Dispute Act. However, excessively long cooling off period, excessive penal sanction for unauthorised strikes and a long list of essential services frustrate this right. In accordance with the Indian Constitution, all citizens have the right to assemble peacefully without arms.

Strike is a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.

Members of a union must inform the employer at least six weeks prior to the proposed date of strike. Employer, within five days, notifies the appropriate Government or the authority about the notification. It is considered as a breach of contract if union members observe strike within 14 days or any time prior to expiry of notice period. Strike is also prohibited when the dispute resolution is in process. Financial aid in direct furtherance of support of illegal strike by anyone is prohibited.

Employers also have the right to lockout workers. This right is subject to the same rules and restrictions as the right to strike.

Source: §02, 22-25 of the Industrial Disputes Act 1947



DECENT WORK QUESTIONNAIRE

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Decent Work Check India is a product of WageIndicator.org and
www.paycheck.in



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

06/13 Maternity & Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".





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- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

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Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

India scored 34 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.