

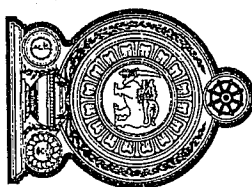
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# UNDERSTANDING LABOUR LAW



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PLANNING, RESEARCH AND DEVELOPMENT DIVISION  
MINISTRY OF EMPLOYMENT AND LABOUR

SRI LANKA

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## WAGES BOARDS ORDINANCE

S. K. S. Ranawera\*

It was in 1928 that the ILO adopted convention No. 26, concerning the creation of minimum wage fixing machinery and recommendation No. 30 on the same subject. Convention No. 26 requires a member state, desiring to ratify it, to create or maintain machinery whereby minimum rate of wages can be fixed for workers in certain trades or parts hereof, where there are no arrangements for effective regulation of wages by Collective Agreements or otherwise, and wages are exceptionally low.

An year before the adoption of the said instrument, Sri Lanka enacted its first law concerning minimum wage fixation through tripartite machinery, titled Minimum Wages (Indian Labour) Ordinance No. 27 of 1927. This piece of legislation recognised several important principles. The first principle is the fixation of a minimum rate of wages. The second principle is the introduction of a legally defined normal working day. The third principle is the fixation of minimum age for employment and the fourth is the most significant concept of tripartism.

The Indian Labour Ordinance provided, amongst other things, the establishment of Estate Wages Board for administrative districts for the purpose of determination of minimum wages for able-bodied unskilled males, able-bodied unskilled females and able-bodied unskilled children, for a normal working day. The decisions arrived at by the Estate Wages Boards were subject to scrutiny and approval by the Board of Indian Immigrant labour and by the Governor in Executive Council.

Since this law secured the interests of the Indian labour only, a machinery embracing all sectors of labour was a crying need at the time. The introduction of the Wages Boards Ordinance No. 27 of 1941 fulfilled that need.

\* Deputy Commissioner of Labour (Labour Standards), Department of Labour.

### A. Reference to law

Wages Boards Ordinance was first enacted, bearing No. 27 of 1941, (Chapter 136) (Date of assent being 19 Sept., 1941). The principal ordinance had been amended from time to time in the following manner by amending Ordinances Nos. 40 of 1943, 19 of 1945, 22 of 1945 and by amending Acts Nos. 5 of 1953, 27 of 1957, 27 of 1962, 17 of 1965, 23 of 1966, 24 of 1966, 29 of 1971, 10 of 1978, 10 of 1980 and 36 of 1982.

Since this instrument deals with holidays in particular, the Holidays Regulations No. 1 of 1966 made under Holidays Act, No. 17 of 1965 and the Holidays Regulations No. 1 of 1971 made under Holidays Act No. 29 of 1971, have an effect on this law.

The Wages Boards Regulation of 1971 replaces all other regulations made prior to that day.

The Ordinance is in 3 parts.

#### Part I—Provisions relating to all trades.

It places time limits within which the wages should be paid. It also restricts the maximum deduction from wages. The Minister is empowered to decide under special circumstances to increase deduction limit upto 75%, but generally aggregate deduction limit is 50% from total wages. However, this limitation excludes any deduction made under Income Tax Law or under any other statutory provisions, or on an Order of a Court of Law permitting for retention on payment of any part of wages. The deduction that could be made from wages are termed authorised deductions. It is a prerequisite that all deductions should be made with the consent of the workmen. The approval of the Commissioner of Labour is necessary to operate certain deductions from wages. Subject to such variations and limitations, deductions could be made in respect of :-

- (a) advance of money made by the employer ;
- (b) payments made at the request of the worker, by the employer, to a third party ;

- (c) the price of any article of food supplied ;
- (d) any contribution to be made through the employer to any pension fund, provident fund, insurance scheme, savings scheme or medical scheme or sickness benefit scheme or like fund ;
- (e) any contribution or subscription to any welfare scheme, trade union or temple fund ;
- (f) the recovery of rest (within authorised limits) ;
- (g) the deposits of security ;
- (h) the price of goods sold, out of goods kept for sale at employers premises ;
- (i) recovery of a loan from the approved loan fund or scheme, and the recovery of interest on such loan ;
- (j) recovery of a fine on any act or omission, such as absence from work, late attendance, causing damage to or causing loss of goods of the employer due to negligence, slacking or negligence at work, sleeping whilst on duty, insubordination, theft, fraud, dishonesty, intoxication, wilful breach of discipline, incivility to members of the public, malingering, etc.

Part II — Provisions relating to particular trades, including such matters like Application of Part II to particular trades, Creation of Wages Boards, Creation of District Wages Committees, Decisions of Wages Boards, Determination of General Minimum Time-Rate by Commissioner and provisions relating to special cases.

Part III — General matters including Appointment and powers of Officers, Offences, Penal Sections, Interpretations and effect of Ordinance in case of inconsistency with other laws.

The Wages Boards Ordinance had provided for creation of a machinery to deal with the fixation of wages, terms and conditions of employment through Wages Boards. Application of Part II of the Wages Boards Ordinance by the Minister, Establishment of Wages Boards, appointments and decisions form part of subsidiary legislation, but since such a documentation is unwieldy, reference is not made here.

### B. Coverage

Widest coverage is given under this instrument within the definition of trade.

TRADE includes any industry, business undertaking, occupation, profession or calling carried out, performed or exercised by an EMPLOYER or WORKER and any branch of, or any function or process in any trade.

Here the most important fact to be borne in mind is the link between employer and worker. The element of relationship is very vital.

Worker means any person employed to perform any work in any trade. And the term EMPLOYER means any person who—

- (a) on his own behalf employs, or
- (b) on whose behalf any other person employs, or
- (c) on behalf of any other person employs, any worker in any trade.

Thus the employer, agent or his contractors too gets covered under this Ordinance, jointly as the immediate employer and as remote employer.

However, the following categories fall outside the purview of this law :—

- (a) Employees of State ;
- (b) Any industry, business or undertaking which is carried on mainly for the purpose of giving an industrial training to juvenile offenders or orphans, or to persons who are destitute, dumb, deaf or blind ;

(c) Employees in government owned business undertakings, under Business Acquisition Act.

### C. Powers and functions of the Minister

1. The Minister is free to introduce regulations in relation to the following subject areas :—

- (a) Selection of representatives of employers and employees to the Wages Boards.
  - (b) Procedure to be followed at Wages Boards meetings and convening of meetings.
  - (c) Filling of vacancies that may occur in Wages Boards.
  - (d) All such forms as may be necessary for the purpose of this Ordinance.
  - (e) The notice to be given of any matter under this law, with the intention of bringing that matter to the knowledge of persons affected.
  - (f) The payment of remuneration or allowances to members of Wages Boards and the mode of computing such allowances or remuneration.
  - (g) The payment of allowances to officers employed in enforcing the provisions of this law.
  - (h) The investigation of standards of living and conditions of work.
2. Minister is empowered to —
- (a) Specify the description of any trade, in the application of Part II of the Ordinance, and to alter the description when necessary.
  - (b) Declare by order the establishment of Wages Boards.
  - (c) Appoint all members to Wages Boards, and fill vacancies that may occur from time to time.

- (d) Removal of members of Wages Boards, who fail to attend meetings without reasonable cause.
- (e) Constitute District Wages Committees for any area or a district within the confines of a Wages Board.
- (f) Appointment of a Competent Authority to ascertain from time to time, the cost of living index number, in respect of specified trades.
- (g) Approve a decision of a Wages Board.
- (h) Refer back a decisions to a Wages Board for reconsideration.
- (i) Exempt the Wages Boards from determining a rate and authorise Commissioner to determine a general minimum time rate for workers in a trade, if a duly established Wages Board fails to act within time limits.

#### D. Powers and functions of Commissioner

COMMISSIONER is interpreted to mean the person for the time being holding the office of the Commissioner of Labour and includes any person authorised by the Commissioner under Section 53 in respect of any power, duty or function of the Commissioner under the Ordinance.

Minister by regulations has appointed officers of the Department other than office staff, and specified officers of the Colombo Port Commission for the purpose of giving effect to the intentions of this law.

Commissioner could either generally or specially authorise the said officers to exercise, perform or discharge the obligations cast under this Ordinance. Thus it is evident that some of the powers and functions have been centralised, while certain functions have been delegated.

##### 1. Centralised functions :

- (a) Determination of questions as to which is the appropriate Wages Board in case of doubt shall lie with Commissioner.
- (b) Commissioner may refer to a Wages Board and call for a report on any matter regarding the conditions of a trade.

- (c) Commissioner, his Deputy or a person authorised in writing by Commissioner shall preside over District Wages Committee.
- (d) Commissioner is required to compute and publish such special allowance in such a manner, as decided by the respective Wages Boards at such intervals.
- (e) Once a Wages Board makes a decision, the Commissioner is required to make a report on economic impact of such a decision.
- (f) Commissioner shall determine a general time rate for a specific trade if required to do so by the Minister.
- (g) Commissioner to institute civil proceedings for recovery of sums due.
- (h) Sanction in writing from Commissioner is necessary to institute prosecution ;
- (i) Commissioner to file certificate for recovery of wages in certain cases.
- (j) Commissioner's prior written approval is necessary to make certain deductions prescribed by Regulations.
- (k) Commissioner to make written request to unions and organisations of employees and employers to send in nominations for appointment to Wages Boards.
- (l) Commissioner to give special directions to summon a Wages Board, if and when he considers desirable.
- (m) Commissioner to pay the members of Wages Boards out of funds voted by the Parliament.
- (n) Commissioner or a Deputy or an Assistant shall preside over Wages Board meetings.

##### 2. Delegated functions :

- (a) Authorised officer may require an employer to produce records for inspection in respect of previous four years.
- (b) Authorisation of payment of reduced rates to non-able bodied, who are incapable of earning the minimum rate.



- (c) To make a written notice to employers requiring remittance of unpaid wages to the Commissioner without paying such amounts directly to workers.
- (d) Commissioner may at any time direct an employer or an agent or sub agent to furnish specified particulars before a specified date.
- (e) Commissioner's officials may enter and inspect any place of work.
- (f) Commissioner's officials may examine and take copies of any record or part of record containing information.
- (g) Commissioner's officials may request or order to furnish any such information as may be desirable.
- (h) Commissioner's officials to examine any person, whom he has reasonable cause to believe, is an employer or worker engaged or employed in any trade, and also require explanations as may be required by that officer in relation to employment of worker.

#### E. Employers

Rights, duties and obligations of employers have been defined under this Ordinance.

##### 1. Duties of employers :

- (a) It is a duty by the employer to pay at least the minimum rates of wages under the specific trade liable to be paid in terms of Section 21.
- (b) In making such payment, due regard being made as to the authorised deductions.
- (c) To observe the dates of payment within which wages have to be paid.
- (d) To pay wages due to a worker within two days, if termination of employment was by the employer or himself.

- (e) To maintain and preserve records of wages, holidays and leave allowed, for a period of four years in respect of all workers.

- (f) To comply with the decisions of Wages Boards in relation to grant of weekly rest, annual and public holidays and payment of overtime in respect of extra hours performed by each of the workers.

##### 2. Obligation of employers :

- (a) Employer is obliged to issue a certificate of service to a worker at the cessation of employment.
- (b) Employer is obliged to exhibit notices under the trade he is covered.
- (c) Employer is obliged to grant leave to worker members appointed to respective Wages Boards.

- (d) Employer is liable for acts of his agent or sub-agents.

##### 3. Rights of employers :

- (a) When objections are invited on proposals before Wages Boards, employers are free to lodge objections.
- (b) To deal with minor lapses of employees, employer could operate a Fine Fund subject to the approval of the Commissioner of Labour.
- (c) Recoveries of dues are guaranteed to the extent provided under limits of deductions, subject to authorisation by worker.
- (d) Employers or their representatives could express opinions before Wages Boards.

#### F. Employees

The very purpose of this legislation is the regulation of terms and conditions of employment including wages of employees. Thus the law places guarantees as to payment of wages subject to deductions within limits, against embezzlement and avoidance of dilatory tactics in the manner of wage payments.



Much more than the rights, duties and obligations, the law stipulates safeguards against various acts of unfair labour practices.

### 1. *Safeguards :*

#### (a) Wage payments to be effected—

- (i) if paid weekly, within the next 3 days.
- (ii) if paid fortnightly, within the next 5 days.
- (iii) if paid after two weeks, within the next 10 days.

#### (b) Limits of deductions.

#### (c) Guarantee of a minimum rates of wages, hours of work, a rate of overtime, weekly rest, annual and public holidays if the Wages Board in particular has decided accordingly.

#### (d) Reductions of wages prohibited unless due to unwillingness to work.

#### (e) Change of employer no bar in regard to computation of any holidays, by virtue of length of service.

### 2. *Duties and obligations :*

#### (a) Employees are obliged to carry out lawful instructions of the employer.

#### (b) Be punctual in attendance.

#### (c) Be dutiful, loyal and efficient.

### 3. *Rights :*

#### (a) Right to be represented in a Wages Board as a representative of employer.

#### (b) Right to lodge objection in the event of proposal being made by a respective Wages Board.

#### (c) A worker member of a Wages Board, who had given reasonable notice, absents from work to be engaged in the duties of the Wages Board cannot be dealt with.

#### (d) A worker member of a Wages Board has the right to visit workplaces to examine observance of terms and conditions of employment.

### G. *Powers and functions of a trade union*

#### (a) A trade union of employers or employees have equal right to be represented in Wages Boards established under this ordinance.

#### (b) Similarly with the written permission of Commissioner, a registered trade union may institute action against an employer for recovery of any sum due.

#### (c) If and when a request is made by a trade union to which a worker belongs shall furnish particulars of wages paid.

### H. *Powers and functions of a Wages Board*

Wages Boards exercise the powers to :

#### (a) determine a minimum rate of wages for piece work.

#### (b) determine a minimum rate of wages for time-work.

#### (c) determine a rate of overtime.

#### (d) fix the number of hours constituting a working day, a normal working week and fix the number of days constituting a normal working month by determining the minimum number of working days constituting that month and the number of hours constituting each of these days.

#### (e) determine the number and duration of the intervals for meals or rest on a working day, the interval for the principal meal being not less than an hour.

(7) declare a weekly holiday, with or without remuneration to all workers or to specified class of workers, specifying conditions, if any, that should be followed.

(8) declare specified number of days of annual leave that should be allowed to a worker specifying the conditions attached.

(11) declare specified number of days of public holidays, that should be allowed to a worker stating the conditions attached thereto.

It may be noted that a Wages Board in determining the aforesaid matters, take into consideration the circumstances prevalent in the particular branches of the trade or the area or those affecting the particular classes of workers and as such, decisions are taken differently in regards to rates and working hours.

### I. Effect of Ordinance

The provisions of this Ordinance have effect notwithstanding anything contained in any written law, and in case of conflict or inconsistency between the provisions of this Ordinance or such other law, the provisions of this Ordinance prevail.

### Test your knowledge on the Wages Boards Ordinance

1. What was the main intention of the Wages Boards Ordinance ?  
The main intention of the Wages Boards Ordinance was to regulate the terms and conditions of employment including minimum wages of workers in trades.
2. When did the Wages Boards Ordinance come into operation ?  
In the year 1941 per Ordinance No. 27
3. State the classes of employees covered under the Wages Boards Ordinance ?  
All employees other than those employed by the State and those receiving industrial training in an institute meant for deaf, dumb, blind or juvenile delinquents.

4. In what form and manner does the Wages Boards Ordinance apply to employees ?

Wages Boards Ordinance is an enabling legislation. It provides for the creation of autonomous bodies called the Wages Boards for different trades.

5. What are Wages Boards ?

They are tripartite bodies constituted in respect of specific trades exercising power to determine terms and conditions of working people employed in such trade or trades. Wages Board members are representatives of employers, workers and nominated members appointed by the Minister of Labour.

6. How is a Wages Board formed ?

Wages Boards are formed after a careful evaluation of the need to establish one. Unorganised nature, industrial competition, exploitation, lack of protection are some of the areas considered.

7. Do these members have voting rights ?

Yes.

8. How many Wages Boards are functioning ?

43 Wages Boards, out of which 36 have been formed on tripartite basis.

9. For how long are the members appointed ?

For 3 year period.

10. How are the representatives of employees and employers selected to the Wages Board ?

The representatives are drawn from organisations or trade unions of employers or employees, who have a commitment to the activities of the trade they represent.

11. Is there a quorum for Wages Board meeting ?  
Yes, two from each side representing employees and employers, together with one from the nominated members.
12. What is meant by the hours of work ?  
Hours of work mean the normal number of hours a workman should work in a day without overtime.
13. What are the variations you observe in relation to hours of work fixed by the Wages Boards ?  
Wages Boards have determined hours of work in relating to a day, a short working day and week.
14. How many hours will a normal working day constitute ?  
Normally it is 8 hours per day, but in certain trades it is 8 hours within a period of 12 hours.
15. How many hours will a short working day constitute ?  
It will vary from trade to trade. The number of hours may be 5, 5 1/2 or 6.
16. How many hours constitute a working week ?  
That too vary from trade to trade. It is 45 in many, while in some 45 1/2 and 46. Maximum is 48 hours in the week, without payment of overtime.
17. In excess of the hours of work stipulated, is it obligatory to pay on overtime basis ?  
Yes, provided a rate has been determined.
18. What is the normal rate of overtime ?  
Normally it is 50 p.c. over the normal rate, that is 1 1/2 time the normal hourly rate.

19. Is there a maximum limit on overtime work ?  
Not for males. But overtime restrictions are imposed on the employment of women and young persons. (under the Factories Ordinance)
20. Should an employer pay E.P.F. on overtime ?  
No.
21. What do you mean by weekly holiday ?  
It is the day of rest once a week.
22. Do all employees enjoy weekly holidays ?  
In many trades employees enjoy, while in some it is silent about a particular day in the week to be the weekly holiday, and still in some the boards have not decided.
23. Are these weekly holidays granted with pay ?  
In many cases the weekly holidays are unpaid holidays, but in cinema trade it is a paid holiday.
24. If employees work on weekly holidays, are they entitled for overtime payment ?  
They are entitled for 1 1/2 days wages for the first eight hours and are entitled for overtime payment in excess of the number of hours constituting a normal working day.
25. Should the employer compute E.P.F. on account of work done on a weekly holiday ?  
Yes. The employer should pay E.P.F. on the wages earned during the first eight hour work and need not pay E.P.F. on overtime earnings, over and above the normal working hours worked by employee.

26. What is meant by annual holidays ?

Annual holidays are the holiday entitlement earned by employees once a year.

27. Are these annual holidays paid holidays ?

Yes.

28. Are there any limitation in the grant of annual holidays ?

The maximum limits have been determined by the respective Wages Boards. Within the limit, the employees have to earn by working the required number of minimum days in each year, and each board determines the qualifying procedure.

29. What are those variables in relation to annual holidays ?

In the case of industrial trades it is generally 14 days, in the case of service trades the number vary from 14 days and in the case of plantation trades it vary from 14 to 17 days.

30. What are the common requirements to qualify for annual holidays ?

The requirements to qualify for annual holidays vary from trade to trade, and the following days are generally accepted in the computation to qualify for annual holidays :

- (1) the actual number of days worked during the year ;
- (2) the number of days the employer failed to offer work ;
- (3) the number of days of authorised absence ;
- (4) the number of days on leave or on holiday and.
- (5) the number of days on which the employee was on strike in the aggregate of 30 days during the year.

31. Should the employer compute E. P. F. on the annual holidays ?

Yes.

32. What do you mean by public holidays ?

Though generally known as mercantile holidays, they are in fact statutorily declared public holidays. They are holiday entitlements of employees granted on account of either national, cultural or religious days of importance.

33. Should the employers pay their employees for public holidays ?

Yes, if the decisions of Wages Boards so provide.

34. How many public holidays should an employer grant within one year ?

The maximum 9 days ; however it varies from trade to trade.

35. Supposing an employee is required to work on a public holiday, what are his entitlements ?

Employee could either be,

- (a) granted a day off in lieu, for having worked on that day or,
- (b) paid double for the work done on that day.

36. What are the common public holidays in Sri Lanka ?

- (1) Thai Pongal day ;
- (2) National day (Feb. 4) ;
- (3) Day prior to Sinhala and Tamil New Year,
- (4) The Sinhala and Tamil New Year day ;
- (5) May day (May 1) ;
- (6) The day after the Full Moon day, in the Sinhala month of Wesak ;
- (7) Milad-un-Nabi (Prophet Mohamed's Birthday) ; and
- (8) Christmas day.

37. What are periods of wage payment?

These are periods within which wages have to be paid.

- (a) If paid weekly within 3 days.
- (b) If paid fortnightly within 5 days.
- (c) for periods in excess of a fortnight upto one month, within 10 days.

38. Is it an offence to withhold part of earned wages ?

Yes.

39. What are the variations observed in the determination of wages of employees ?

This differs from trade to trade. Some such differences are-

- (a) Daily rate with the cost of living component.
- (b) Daily rates,
- (c) Piece rates,
- (d) Monthly rates,
- (e) Monthly rates of wages with annual adjustments.

40. Who could prosecute employees for specific violation of the provisions of this law ?

Commissioner of Labour.

41. Are there any specific penalties for offences under the Act?

Yes.

42. Has the recovery procedure under this law simplified ?

In certain areas only. Instead of filing a plaint and charge sheet, Commissioner could file a certificate to recover the unpaid wages due.

43. For how long should an employer preserve his registers and records pertaining to wages ?

4 years.

44. Should the employer grant a holiday on the Full Moon Poya Day ?

Yes.

45. Can he employ workers on a Full Moon Poya holiday ?

Yes. Provided he pays 1 1/2 times the normal daily rate of wages for employing a worker during normal period of employment.

46. Is the employer legally bound to furnish the wages particulars to a worker ?

Yes, on a request made by the worker, or by the trade union, to which the worker belongs, employer should furnish the wage particulars.

47. Under what circumstances the Commissioner of Labour is empowered to assess the wages or the short payment of wages ?

If the employer fails to maintain, or keep in the premises the wages records required, or fails to produce such records for inspection.

48. Can the Commissioner determine wages ?

Yes. When a Wages Board can not be established or if the established Wages Board for any reason does not determine a general minimum time - rate before expiry of one year from the date on which that board was established, the Minister of Labour may order by Gazette notification authorise Commissioner to determine a time rated wage.

49. What do you mean by non-able bodied worker ?

A worker affected by any infirmity or physical injury who may be permitted to be employed on payment of wages at less than the minimum wages stipulated by that Wages Board.

50. Should the decisions of a Wages Board be exhibited in the work place for the workers to know their entitlements ?

Yes, the employer is legally bound to exhibit notices showing the decisions of Wages Boards pertaining to that trade or trades substantially in Form II shown in regulation 25 under the Ordinance.

## 2

### SHOP AND OFFICE EMPLOYEES' (REGULATION OF EMPLOYMENT AND REMUNERATION) ACT

P. Navaratne\*

**Setting.**—In 1940's, the terms and conditions of employment of mercantile sector employees were not covered by pay legislation. Expansion of the mercantile sector and growing militancy within the ranks of workers promoted the Minister of Labour and Social Services to appoint a committee to:—

"inquire into and report to him on the question of introducing legislation to regulate terms and conditions of employment of mercantile employees."

The committee was chaired by Mr. C. W. W. Kannangara, while employer representatives were Sir Cyril de Soysa, Mr. Arthur S. Fernando, Mr. F. C. Rowan and Mr. C. P. A. Nair. Worker representatives were Dr. N. M. Pereira, Mr. Bala Thampoe, Mr. V. Seneviratne and Mr. R. D. Karunathilake. Mr. D. H. Greve, represented the Labour Department.

The report was published as a session paper, No. 15 of 1951.

On the basis of recommendations, Government enacted the Shop and Office Employees' (Regulation of Employment and Remuneration) Act No. 19 of 1954, which has been so far amended 10 times. The new act replaced the Shops Ordinance No. 66 of 1938. In all, nine regulations have been made under the act.

**Introduction.**—The preamble to the Shop and Office Act states that —

An act to provide for the regulation of employment, hours of work and remuneration of persons in shops and offices, and for matters connected therewith or incidental thereto.

\* Former Assistant Commissioner of Labour, Industrial Relations Division and Former Secretary, Wages Boards, Labour Standards Division, Department of Labour.



The Act is in five parts, and cover the following topics:—

- Part I Regulation of hours of employment in shops and offices ; health and comfort of employees. (Secs. 2 to 18)
- Part II Payment of remuneration (Sec. 19)
- Part III Regulation of remuneration (Secs. 20 to 45)
- Part IV Closing order for shops (Secs. 40 to 45)
- Part V General matters (Secs. 46 to 70)

Shop and Office Employees' Act is a very comprehensive piece of legislation, provisions of which are applicable to a very small shop or office where a single workman is employed or to largest establishments employing thousands, without distinction. A fairly large establishment may be following the terms of a collective agreement which they negotiated with the workers/union, whereby more favourable terms have been extended. If it was a state corporation, board or authority, more favourable terms and conditions including salaries are enjoyed by workman, than those stipulated under the Shop and Office Employees' Act.

#### Definition:—

The Shop and Office Employees' Act applies to all employees within the definition of a 'shop or office'.

A 'shop' is defined as :

Any premises in which any retail or wholesale business is carried on and includes a residential hotel and any place where the business of the sale of articles of food or drink or the business of a barber or hairdresser, launderer, photographer or premises where dyeing or dry cleaning of wearing or other article, is carried on.

An 'office' is defined as :

- (a) any establishment maintained for the purpose of the transaction of the business of any bank, broker, insurance company, shipping company, joint stock company, estate agent, forwarding or indenting agent and
- (b) any establishment maintained for the purpose of the practice of the profession of any architect, advocate, proctor or notary, actuary, surveyor, auctioneer, valuer, draughtsman, appraiser, news agency and a travel & tourist agency.
- (c) the office or clerical department of any shop, factory, estate, mine, hotel, club or other place of entertainment, or of any other industrial or commercial undertaking (including the business of transporting persons' goods for fees or reward and any undertaking for the publication of newspapers, books or other literature) and
- (d) every establishment (excluding the printing section thereof) maintained for the purpose of the business of editing and publishing any newspaper.
- (e) every establishment maintained for the purpose of administering the business of any trade union, any thrift society or mutual benefit society, any provident fund or pension scheme, any body corporate or incorporate, any school or other educational establishment.

However, these provisions do not apply to the State as an employer. Unlike the Wages Boards Ordinance, this Act specifically defines the entitlements of workmen, and does not vest decision making power in a separate autonomous body except under certain circumstances which is limited to wage fixation.



### Hours of work

A normal day's work is limited to 8 hours and a normal working week is limited to 45 hours, excluding 1 hour for meals. Persons employed in different classes of shops and different classes of offices may have different hours of work, subject however, to the following restrictions :

- (a) Only in restaurants and hotels, could a female over 18 years and a male over 16 years be employed from 6 p.m. to 10 p.m.
- (b) Only in a residential hotel could a female over 18 years be employed between 6 p.m. and 6 a.m. in the capacity of a telephone operator, receptionist, ladies' cloak room attendant, ladies linen room attendant and ladies' lavatory attendant, and in an office maintained by an airline at an airport as a ground hostess.

Work in excess of the normal hours has to be treated as overtime and paid for at a rate not less than one and one-half times the hourly rate, calculated by dividing the monthly rate by 240. Executives in State Corporations are not entitled to overtime. The maximum amount of overtime is limited to 12 hours per week.

### Weekly holidays

On completion of 28 hours of work in a 'week' the law provides for the granting of one and half day's holidays with pay. 'Week' is defined to mean the period between midnight on any day Saturday night and midnight on the succeeding Saturday night.

### Annual holidays

The total annual leave entitlement is 14, and provision is made when employment commences between the following periods for the granting of the corresponding number of days as leave, in the succeeding year :

- (a) January 1st and March 31st - for the grant of 14 days
- (b) April 1st and June 30th - for the grant of 10 days
- (c) July 1st and September 30th - for the grant of 7 days
- (d) October 1st and December 31st - for the grant of 4 days

There is thus no leave entitlement in the commencing year of employment, but in the succeeding years the full quota is allowed with pay.

The eight public holidays are granted with remuneration :

- (1) Tamil Thai Pongal day
- (2) National day (February 4)
- (3) The day prior to Sinhala - Hindu New Year
- (4) The Sinhala - Hindu New Year's day
- (5) May day (May 1)
- (6) The day after the Full Moon Poya day in the Sinhala month of Vesak
- (7) Prophet Mohammed's Birth day and
- (8) Christmas day

Full Moon Poya days should be observed as holidays. Employment on such days is strictly on an overtime basis.

### Casual leave

The entitlement for a calendar year is 7 days. This is to be utilised on account of private business or ill-health. In the commencing year of employment one day is granted for every two completed months.

### Maternity leave

Female employees are entitled to maternity leave on the following basis :

- (1) 84 days' leave in respect of the first two live births.
- (2) 42 days' leave in respect of the third of subsequent births or for confinements resulting in the issue of a viable foetus.

Such days of leave shall be in addition to other leave or holiday entitlements.

If an employee had not utilised any part of the pre-confinement leave of 14 days, that part could be taken along with post-confinement leave.

Maternity leave shall be granted with remuneration. (Section 18 of the Shop & Office Employees' Act as amended by Section 2 of Act No. 44 of 1985).

### **Salary payments**

The Act places time limits within which salaries should be paid.

- (1) Salaries upto one week, to be paid within the next 3 days.
- (2) Salaries over one week, and upto two weeks to be paid within the next 5 days, and
- (3) Salaries in excess of two weeks and upto one month to be paid within the next 10 days.

### **Deduction from salary**

Deductions could be effected in two ways, namely, authorised deductions and other deductions. (Section 2 & Regulation 2)

### **Authorised deductions**

The Act restricts the permissible maximum deductions from salaries. The aggregate deduction limit is 60% from total remuneration. The deduction that could be made from salaries are termed authorised deductions. It is a prerequisite that all deductions should be made with the consent of the employee. The approval of the Commissioner of Labour is necessary to effect certain deductions from salaries. Subject to such variations and limitations, deductions could be made in respect of :

- (1) advances of money made by the employer ;
- (2) payments made at the request of the employee, by the employer, to a third party ;
- (3) the price of food or any article of food supplied ;

- (4) any contribution to be made through the employer to any pension fund, provident fund, insurance scheme, savings scheme or medical scheme or sickness benefit scheme or line funds ;

- (5) any contribution or subscription to any welfare scheme, trade union or temple fund ;

- (6) the recovery of rent (within authorised limits) ;

- (7) the deposits of security ;

- (8) the price of goods sold, out of goods kept for sale at employer's premises ;

- (9) recovery of loans from the approved loan fund or scheme, and the recovery of interest on such loan ;

- (10) recovery of a fine on every act or omission, such as absence from work, late attendance, causing damage to or causing loss of goods of the employer due to negligence, slaking or negligence at work, sleeping on duty, insubordination, theft, fraud, dishonesty, incivility to members of the public, malingering etc.

### **Other deductions**

In respect of other deductions, the consent of the employee is not necessary. Such deductions may be effected :

- (1) **Under special legislation**  
Inland Revenue Act or by other statutes enacted by the Government for this purpose.

- (2) **From an order of a court**  
Any part of salary or wage can be retained.

### Letter of appointment

It is a fundamental requirement under this Act that an employer issues a letter of appointment detailing the conditions of employment to an employee. This ensures to the employee certain inalienable rights under the law. Such a contract should contain :

- (a) the name of the employee, the designation and the nature of the appointment
- (b) the date on which the appointment takes effect
- (c) the grade to which the person is appointed
- (d) basic remuneration and the scale of remuneration
- (e) whether remuneration is paid weekly, fortnightly or monthly
- (f) cost of living allowance, if any, and other allowances, if any
- (g) (1) the period of probation or trial, if any, and the conditions governing such period of probation or trial.  
(2) circumstances under which the appointment may be terminated during such probation or trial.
- (h) (1) conditions governing the employment.  
(2) circumstances and conditions under which the employment may be terminated.
- (i) normal hours of work
- (j) number of weekly holidays, annual holidays, casual and privilege leave, which such person is entitled to
- (k) overtime rate payable
- (l) provision of medical aid, if any, by the employer
- (m) the provision of and the conditions governing any Provident Fund, Pension Scheme or Gratuity Scheme applicable to the employment.
- (n) prospects of promotion

All the aforesaid particulars, duly authenticated by the signature of the employer, have to be given in writing to the employee in the language with which he is fully conversant ; the employee has to acknowledge receipt of such information on a duplicate to be retained by the employer.

### Records of employees

Employers are obliged to maintain certain specified records in respect of their employees, namely :

- (a) A register indicating the actual hours worked, overtime worked, and leave obtained, which should be signed by the worker at a specified period.
- (b) A service record, indicating vital information relating to recruitment of the employee, with necessary changes indicated therein from time to time, such as the grant of increments, promotions, variation of conditions of employment and all other changes that would have affected employment.
- (c) A remuneration record containing the vital information in relation to each period. Such information being name of the employee, age, sex, class of grade, designation/occupation, remuneration period, number of hours worked, overtime hours, rate of remunerations, allowances, gross remuneration with deductions in respect of any pension or provident fund, income tax or court recoveries and balance pay with overtime remuneration accompanied with the employee's signature in acknowledgement.

### Determination of remuneration

Provision is also made for the determination of the remuneration of persons covered by the Act. It prescribes two modes :

- (a) On a direction by the Minister, the Commissioner of Labour can make a determination with the consent of employees and employers.

(b) A determination by a Remuneration Tribunal. A Remuneration Tribunal is tripartite. Representatives are drawn from organisations or trade unions of employees and employers who are equally represented. The Minister is empowered to nominate members to represent the State. All members exercise equal voting rights. A Remuneration Tribunal is an autonomous body subject to the overriding powers of the Minister. However, the Minister is required by law to call for objections from the public before it's decisions are made effective in law.

#### **Determination of obligatory minimum rate**

The law also provides for the Commissioner or Tribunal to determine the minimum rate of remuneration by reference to time work or by reference to piece work or by reference to such other method of calculation as may be considered fit. Once a determination has been made, the employer is required to pay remuneration at not less than the minimum rate prescribed.

#### **Powers of the Commissioner**

The general provisions relating to the powers of the Commissioner of Labour, and offences and penalties in case of noncompliance have been enumerated.

#### **Provision applicable under special circumstance<sup>†</sup>**

Apart from the foregoing, the Act makes provision for special circumstances as well :—

- (a) It prohibits the withdrawal, modification, restriction or termination of the privileges once enjoyed ;
- (b) A worker performing piece rate work to be paid not less than the minimum time rate, when a piece rate has not been decided ;
- (c) A worker waiting for work at employer's premises shall be deemed to have been employed.
- (d) Commissioner of Labour or his officials can authorise non-able bodied persons to be paid a wage less than the minimum rate.

- (e) Unless it is due to unwillingness of the employee to work, he is entitled to his wages, and there cannot be a reduction of wages.
- (f) On termination of employment, wages have to be paid before the expiry of the second working day.
- (g) The Minister is empowered to make a closing order applicable to shops of a specified description to be closed for the serving of customers at specified hours on each day, or on any day in every week, in a specified area.

The enactment of the Shop and Office Employees' Act has improved the terms and conditions of employment for workers in this sector and it has also reduced industrial disputes.

### **Test Your knowledge on the Shop and Office Employees (Regulation of Employment and Remuneration) Act†**

#### **Premaratne Hettiarachchi\***

1. What is a 'shop' ?
2. Is a 'barber saloon' a shop ?
3. Is a 'laundry' a shop?
4. Is a 'hotel' a shop?
5. Is a 'bank' a shop ; or is it an 'office'?
6. Is an 'insurance company' an office or a shop?
7. Is a club an office or a shop?
8. What is an 'office'?
9. Is a 'travel and tourist agency' a shop or an office?
10. Is a 'school' a shop or an office?
11. Is a 'boarding house' and office?
12. Are 'teachers' covered under the S. & O. E. Act?

† Hettiarachchi, Premaratne, "The Shop and Office Employees' (Regulation of Employment and Remuneration) Act", Understanding Labour Law, Ministry of Labour, 1988, pp 18-36

\* Former Assistant Commissioner of Labour (Labour Standards), Department of Labour