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Employment in Shops and Other Establishments

The Shops and Establishments Act, 1951. No. LIX. (Burma
Labour Gazette, Vol. V, No. 2, p. 3)

1. *Short title, extent and commencement.* (1) This Act may be called the Shops and Establishments Act, 1951.

(2) It shall come into force on such date and in such areas as the President may, by notification, appoint in that behalf from time to time.

(3) It shall apply to such shops or establishments or classes of shops or establishments as the President may from time to time specify by notification.

2. *Definitions.* In this Act, unless there is anything repugnant in the subject or context,

(a) "shop" means any premises used wholly or in part for the wholesale or retail sale of commodities or articles, either for cash or on credit, or any premises used for the purpose of hair-dressing or beauty culture, and such other premises as the President may by notification declare to be a shop for the purposes of this Act, but does not include a commercial establishment, an establishment for public entertainment, a factory or an industrial establishment;

(b) "commercial establishment" means an establishment in which there is conducted the business of an advertising, commission forwarding or commercial agency, a clerical department of a factory or of any industrial or commercial undertaking, an insurance company, joint stock company, bank or broker's office, or such other establishment or class thereof as the President may by notification declare to be a commercial establishment for the purposes of this Act, but does not include a shop or an establishment for public entertainment;

(c) "establishment for public entertainment" means a cinema or a theatre and such other establishment or class thereof as the President may by notification declare to be an establishment for public entertainment for the purposes of this Act, but does not include a shop, commercial establishment, a factory or an industrial establishment;

(d) "industrial establishment" means a mine or an oilfield and such other establishment or class thereof as the President may by notification declare to be an industrial establishment for the purposes of this Act, but does not include a shop, commercial establishment, establishment for public entertainment or factory;

(e) "factory" means a factory as defined in, or declared to be a factory under, the Factories Act;

(f) "employer" means a person owning or having charge of the business of a shop, commercial establishment or establishment for public entertainment or, in the case of a factory or industrial establishment, the owner or occupier thereof and includes an agent or manager of, and any other person acting on behalf of, such person in the general management or control of such shop or establishment;

(g) "employee" means—

(i) in the case of a shop, a person wholly or principally employed in the shop in connection with the business of the shop, and includes a person who is employed in a clerical capacity or as a cashier, messenger, *durwan*, caretaker, watchman or sweeper in such shop;

(ii) in the case of a commercial establishment, a person wholly or principally employed in connection with the business of the establishment, and includes a person who is employed in a clerical capacity or as a cashier, messenger, *durwan*, caretaker, watchman or sweeper in such establishment;

(iii) in the case of an establishment for public entertainment, a person wholly or principally employed in connection with the business of the establishment, and includes a person who is employed in a clerical capacity or as a cashier, messenger, *durwan*, caretaker, watchman or sweeper in such establishment;

(iv) in the case of a factory or industrial establishment, a person employed in a clerical capacity, or as a cashier, messenger, *durwan*, caretaker, watchman or sweeper in such factory or industrial establishment;

but does not include an employer or the husband, wife, child, father, mother, brother or sister of an employer who lives with, and is dependent on, such employer;

(h) "closed" means not open for the service of any customer or conduct of business;

(i) "day" means a period of 24 hours beginning at midnight;

(j) "week" means a period of 7 days beginning at midnight on Saturday;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "rules" means rules made under this Act.

3. *References to time of day.* References to the time of day in this Act shall be deemed to be references to Burma Standard Time.

4. *Powers of the President.* (1) The President may, for the purposes of all or any of the provisions of this Act, by notification declare—

(a) to be a shop, any premises which are not premises of a commercial establishment or establishment for public entertainment or factory or industrial establishment;

(b) to be a commercial establishment, any establishment which is not a shop or establishment for public entertainment or factory or industrial establishment;

(c) to be an establishment for public entertainment, any premises or class of premises which are not premises of a shop or commercial establishment or factory or industrial establishment;

(d) to be an industrial establishment, any premises or class of premises which are not premises of a shop, commercial establishment, establishment for public entertainment or factory.

(2) The provisions of this Act specified in a notification under subsection (1) shall apply to any premises or establishment which, under the provisions of that subsection, have or has been declared to be a shop or a commercial establishment or an establishment for public entertainment or an industrial establishment, as the case may be.

(3) The President may by notification, on account of such holiday or other occasion as may be prescribed, suspend the operation of all or any of the provisions of this Act in respect of any shop, commercial establishment or establishment for public entertainment or factory or industrial establishment or class of shop or commercial establishment or establishment for public entertainment or factory or industrial establishment, for such period and subject to such conditions as he thinks fit.

5. *Act not applicable to certain establishments, shops and persons.* (1) Nothing in this Act shall apply to—

(a) offices and undertakings of or under Government, or offices and undertakings of or under any local authority, not being the office of any factory;

(b) establishments of overland, waterways and airways transport services;

(c) refreshment stalls and other shops at railway stations, docks, wharves and airports;

(d) roadside stalls;

(e) refreshment stalls and other shops in any public exhibition;

(f) fun fairs, refreshment stalls and other shops in shows or entertainments held for a short duration;

(g) any person employed as a manager;

(h) such other establishments or shops or persons or classes of establishments, shops or persons as the President may by notification exempt from the operation of all or any of the provisions of this Act.

(2) Notwithstanding anything contained in subsection (1), the President may by notification declare that any shop, establishment or person specified in that subsection shall not be exempt from the operation of such provisions of this Act as may be specified in the notification, and that the provisions of this Act specified in such notification shall apply to such shop, establishment or person.

(3) The provisions of subsection (1) of section 6 shall not apply to—

(a) restaurants;

(b) shops or classes of shops dealing mainly in meat, fish, milk and dairy produce or other perishable commodities, so far as the sale of these articles is concerned;

(c) retail shops or classes thereof dealing in rice, oil, salt, *ngapi* (decayed fish paste), *ngam-pya-ye* (sauce extracted from decayed fish paste), spices and condiments, or such other articles of food for kitchen use as the President may by notification exempt from the operation of this Act, so far as the sale of these articles is concerned;

(d) shops or classes thereof dealing in vegetables, fruits, flowers and fresh fish, so far as the sale of these articles is concerned;

(e) shops dealing in articles required for funerals, burials or cremations, so far as the sale of these articles is concerned;

(f) retail shops dealing in firewood, charcoal or petroleum products for domestic use;

(g) shops dealing in cigars, cheroots, cigarettes and *beedies* of various kinds, pipe tobacco, *pan*, liquid refreshments of various kinds sold retail for consumption on the premises, ice, newspapers or periodicals, so far as the sale of these articles is concerned;

(h) shops dealing in petroleum products or spare parts sold retail for motor vehicles;

(i) hairdressing saloons;

(j) such shops dealing in various articles required for use by sea-going vessels as the Chief Inspector may by order in writing exempt from the operation of this Act, so far as the sale of these articles is restricted for the use of sea-going vessels only.

(4) The provisions of subsection (1) of section 6, and subsection (1) of section 7 shall not apply to—

(a) clubs, residential hotels and boarding-houses;

(b) shops dealing mainly in medicines, surgical appliances or other medical requisites, sold retail, so far as the sale of these articles is concerned;

(c) services for supply to the public of electricity, electric lighting, gas or water and such other utility services or class of services as the President may by notification exempt from the operation of this Act.

6. *Weekly holidays.* (1) Every shop and commercial establishment shall be entirely closed on at least one day in each week, and an employee thereof shall be allowed holiday on that day, and no deduction shall be made from his wages for his being granted holiday for that day:

Provided that, when there are conducted in a shop or commercial establishment two or more trades or businesses, any of which is of such a character that, if it was sole trade or business therein conducted, the provisions of this subsection would not apply to that shop or commercial establishment, such shop or commercial establishment shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this subsection. Provided also that any commercial establishment connected with a factory, mine or oilfield is not required to remain closed in pursuance of the provisions of this subsection if such factory, mine or oilfield is not closed.

(2) Every person employed in a shop specified in section 5 (3) or in a commercial establishment or establishment for public entertainment or factory or industrial establishment shall be allowed as holiday at least one day in each week, and no deduction shall be made from his wages for his being granted holiday for that day.

(3) The President may, in consultation with organisations, representatives of employers and persons employed, or otherwise, fix a day on which all commercial establishments and shops dealing in specified goods or located in a specified area shall remain closed every week.

7. *Hours of work.* (1) Every shop and commercial establishment shall remain closed between 9 p.m. and 5 a.m. but any customer who was being, or was waiting in the shop to be, served at 9 p.m. may be served during the period of 30 minutes immediately following such hour:

Provided that a restaurant may remain open till 1 a.m. and that a restaurant which the Chief Inspector, on religious consideration, exempts, as occasion arises, subject to such conditions as may be prescribed, may remain open in accordance with the conditions prescribed:

Provided further that, when there are conducted in a shop or commercial establishment two or more trades or businesses any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this subsection would not apply to that shop or commercial establishment, such shop or

commercial establishment shall, so far as the conduct of that trade or business is concerned, be exempt from the operation of this subsection.

(2) No person employed in a shop or commercial establishment or establishment for public entertainment shall be required or permitted to work in such shop or commercial establishment or establishment for public entertainment for more than 8 hours in any one day and for more than 48 hours in any one week:

Provided that in any day or in any week in which there occurs stock-taking, making up accounts, settlement or such other business operation as may be prescribed, or during such other periods as may be prescribed, a person employed in a shop, commercial establishment or establishment for public entertainment may be required or permitted to work overtime in such shop, commercial establishment or establishment for public entertainment for more than 8 hours in such day and for more than 48 hours in such week, but the total number of hours so worked overtime by such persons shall not exceed 60 in any one year.

(3) No person employed in a shop or commercial establishment except as caretakers or watchmen shall be required or permitted to work after the hour of 9.30 p.m.:

Provided that persons employed in a scheduled bank may work overtime up to 12 midnight subject to the restriction contained in the proviso to subsection (2) regarding the maximum hours of overtime work in a year.

(4) No person employed in a shop, commercial establishment or establishment for public entertainment shall be required or permitted to work in such shop, commercial establishment or establishment for public entertainment for more than 5 hours in any one day, unless he has been allowed an interval for rest of at least half an hour during that day.

(5) Every establishment for public entertainment shall remain closed between 1 a.m. and 9 a.m.:

Provided that an establishment for public entertainment may remain open from 7.30 a.m. either on Sunday or on such day on which a charity show or a special free show or a show for purposes of censorship is performed.

(6) The periods of work and intervals for rest of each person employed in a shop, commercial establishment or establishment for public entertainment shall be arranged by the employer so that together they do not extend over more than 11 hours in any one day in such shop or commercial establishment and over more than 14 hours in any establishment for public entertainment:

Provided that no interval for rest need be provided for persons employed as caretakers or watchmen.

8. *Young persons.* (1) No person who has not attained the age of 13 years shall be required or permitted to work in any shop, commercial establishment or establishment for public entertainment.

(2) The President may fix an hour beyond which young persons who have not attained the age of 18 years shall not be allowed to work in any shop, commercial establishment or establishment for public entertainment.

9. *Payment of wages.* All wages payable to any person employed in a shop, commercial establishment or establishment for public entertainment shall be paid not later than the seventh day of the month immediately succeeding that in respect of which such wages are payable.

10. *Wages for overtime work.* When any person employed in any shop, commercial establishment or establishment for public entertainment is required or permitted to work overtime in such shop, commercial establishment or establishment for public entertainment in excess of the maximum limit of hours of work specified in subsection (2) of section 7, the wages payable to such person in respect of such overtime work shall be calculated at the rate of double the ordinary rate of wages payable to him, and such ordinary rates of wages shall be calculated in the manner prescribed.

The term "wages" for the purpose of this section means pay excluding allowances, if any.

11. *Maintenance of records, registers and notices.* Every employer shall for the purposes of this Act maintain such records and registers, and display such notices, as may be prescribed.

12. *Inspectors.* (1) The President may by notification appoint such person as he thinks fit as inspector for the purposes of this Act, and may assign such local limits as he deems fit to that person.

(2) The President may by notification appoint such person as he thinks fit as Chief Inspector, who shall, in addition to powers conferred on the Chief Inspector under this Act, exercise the powers of an inspector throughout the Union of Burma.

(3) The Chief Inspector and the inspectors appointed under subsections (1) and (2) shall be deemed to be public servants within the meaning of section 21 of the Penal Code, and shall be subordinate, so far as their official duties are concerned, to such authority as may be specified by the President in this behalf.

13. *Power of inspectors.* Subject to the rules made by the President in this behalf, an appointed inspector under section 12 may, within the local limits for which he is appointed, at all reasonable times enter into any place which is, or which he has reason

to believe is, a shop or a commercial establishment or an establishment for public entertainment, with such assistance of such persons (if any) being servants of the Government of the Union of Burma and make such examination of that place and of any prescribed record, register or notice maintained therein, as may be prescribed, and may require such explanation of any prescribed record, register of notice and make such other inquiries as he may consider necessary for the purposes of this Act:

Provided that no person shall be required under this section to answer any question or give any evidence tending to incriminate himself.

14. *Penalties.* (1) Whoever contravenes any of the provisions of this Act shall, on conviction, be punishable with imprisonment which may extend to 3 months or with fine which may extend to 500 rupees, or with both.

(2) If any person who has been convicted of any offence punishable under subsection (1) is again guilty of an offence involving a contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term not exceeding 6 months or with fine which may extend from a minimum of 200 rupees to a maximum of 1,000 rupees or with both:

Provided that for the purposes of this section no consideration shall be taken of any conviction made more than 2 years before the commission of the offence for which he is being punished.

(3) Whoever wilfully obstructs an inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand by an inspector any registers or other documents in his custody kept in pursuance of this Act or of any rules made thereunder, or conceals or prevents any employee present in a shop, commercial establishment or establishment for public entertainment from appearing before or being examined by an inspector, shall be punishable with imprisonment for a term not exceeding 3 months or with fine not exceeding 500 rupees or with both.

15. *Procedure.* (1) No court inferior to that of a magistrate of the first class shall try an offence punishable under this Act or the rules made thereunder.

(2) No court shall take cognizance of an offence punishable under this Act except upon complaint made by an inspector appointed under section 12.

16. *Determination of employer.* (1) Where the employer is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Act for any offence for which the employer is punishable:

Provided that the firm or association may give notice to the inspector that it has nominated one of its members who is resident

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in the Union of Burma to be the employer for the purposes of this Act, and such individual shall, so long as he is so resident, be deemed to be the employer for the purposes of this Act, until further notice cancelling his nomination is received by the inspector or until he ceases to be a partner or shareholder of the firm or association.

(2) Where the operator is a company, any one of the directors thereof, or in the case of a private company, any one of the shareholders thereof, may be prosecuted and punished under this Act for any offence for which the operator is punishable:

Provided that the company may give notice to the inspector that it has nominated a director or, in the case of a private company, a shareholder, who is resident in either case in the Union of Burma, to be the employer for the purposes of this Act, and such director or shareholder, as the case may be, shall, so long as he is so resident, be deemed to be the employer for the purposes of this Act, until further notice cancelling his nomination is received by the inspector or until he ceases to be a director or shareholder.

17. *Indemnity.* No suit, prosecution, or legal proceeding whatever shall lie against any person in respect of anything in good faith done or intended to be done under this Act or the rules.

18. *Saving of certain rights and privileges.* Nothing in this Act shall affect any right or privilege to which any person employed in any shop, commercial establishment or establishment for public entertainment is entitled at the date of the commencement of this Act under any other law for the time being in force or under any contract, custom or usage which is in force on that date, if such right or privilege is more favourable to him than any right or privilege conferred upon him by this Act.

19. *Power to make rules.* (1) The President may, after previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the holidays and other occasions on account of which a notification may be issued under subsection (3) of section 4;

(b) the business operations in connection with which, and the periods during which, persons employed in shops, commercial establishments and establishments for public entertainment may work overtime or in excess of the limit provided in subsection (2) of section 7;

(c) the manner of calculating ordinary rates of wages for the purposes of section 10;

(d) the records and registers to be maintained, and the notices to be displayed, by an employer under section 11;

