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**DEPARTMENT OF BBA**

**SYBBA**

**SEM-III**

**SUBJECT – LEGAL ASPECTS IN HUMAN RESOURCES**

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**CHAPTER NO. 2 THE EMPLOYEE’S COMPENSATION ACT, 1923**

Chapter No 02

The Employees Compensation Act,1923



# 2.1 Wage and Salary Administration

* Wage is remuneration to labour for the work done or the service rendered by it to the employers. Wage payment is the most vital and important problem that an industrial worker confronted with. It is also one of the most difficult areas in our present industrial relations system.
* The wages constitute the earning for the workmen which, in turn determine his standard of living and that of his family. They also determine the standard his efficiency and consequently, the level of productivity.
* Wage administration is also important the employer as it constitutes one of the principal items that enter into the cost of production of the-product. The government and the community at large are also vitally concerned with the problem because of a large number of industrial disputes centre round the question of wages and allowances. The problem of wage fixation in a modern democratic society is by far the most difficult of all employer-employee relationship. A number of institutions are involved in the determination of wages and working conditions. These include collective bargaining adjudication by Labour Courts and Tribunals, government appointed pay Commissions and Committees and Industrial Wage Boards.

##

**Definitions:**

**Wage:** Wages are paid on an hourly rate and depend on how many hours the employee works in a given pay period. The pay period is usually one or two weeks and there is no fixed amount per annum. This means if you worked overtime one week and missed a shift the next week your pay will reflect the changes.

**Salary**: A salary is a fixed amount paid to an employee over a 12-month period. An employee usually receives their salary on a monthly basis or any other period as determined by an agreement.

The most obvious difference between salaries and wages is that with a salary you know how much you will receive per year. Whereas with wages, it all depends on how much you work.

**Objectives of wage and salary administration are:**

(i) To ensure equity in respect of payment of salary/wages in terms of equal pay for equal work.

1. To establish a system of job analysis so that job description and job specification activities can be accurate and specific.
2. To create a pool of talented, they can deliver quality goods and services at reasonable
3. To make employees aware of wage and salary policies, procedures, etc.
4. To ensure effective control over all activities concerning wage/salary, welfare, social security, fringe benefit, incentive, bonus etc.
5. To introduce a system for complying with provisions of law, statutes and for proper implementation of agreements, settlement in respect of compensation of employees.

 (vii) To make evaluation of jobs so that there cannot be any dissatisfaction amongst

 employees in respect of their wages / salaries and other benefits. 

(viii) To develop mutual understanding, faith and confidence between employees and management through introducing fair and attractive compensation package.

(ix) To ensure maintenance of internal equity, external equity and individual equity in respect of providing compensation to employees. 

(x) To develop a 'culture of reciprocality' among two parties (employer and employees) to contribute to each other through introduction of attractive compensation package.

**Wage differentials:**

Definition: The difference in wages between workers with different skills in same industry or between those with comparable skills in dlfferent industries or localities.

 The wage differentials help in building the wage structures for various levels and types of jobs in an organization, as they are inevitable They relate to skill, training and experience, nature and complexity of the job, responsibilities and accountability of the person doing that job and the economic and social status of the geographical area. 

**Factors Affecting Wage & Salary Levels:**

 

Following are certain factors affecting the wage and salary structure of workers:

* Organization's ability to pay: Wage increases should be given by those organizations which can afford them. Companies that have good sales and therefore high profits tend to pay higher wages than those which are running at a loss or  earning low profits because {the high cost of production or low sales.

 • Cost of living: When the cost-of-living increases, workers and trade unions demand adjusted wages to offset the erosion of real wages. However, when living costs are stable or decline the management does not resort with this argument as a reason for wage reduction.

* Government legislations: The laws passed and the labour policies formed by the Government have an influence on wages and salaries paid. The laws on minimum wages, hours of work, equal pay for equal work, payment of dearness and other allowances, payment of bonus, etc. have been enacted and enforced to ensure adequate fairness in compensating the employees.



* Labour unions/ Trade union': Trade unions do exert their influence for a higher

wage and allowances through collective bargaining with the representatives of the management. Generally, the stronger and more powerful trade union, higher the wages.

* Supply and demand: Wage is a price for the services rendered by a worker or employee. The firm desires these services, and it must pay a price that will bring  forth the supply, which is controlled by the individual worker or by a group of workers acting together through their unions.
* Productivity: Productivity is the key factor in the operations of a company. High  wages and low costs are possible only when productivity increases appreciably. Increase in productivity is not due to labour efforts alone. Technological improvements, greater ingenuity and skill by the labour are all responsible for it.
* Perception of employees/PsychoIogical and social factors. This determine in a significant measure how hard a person will work for the compensation received or what pressures he will exert to get his compensation increased. Psychologically.



* persons perceive the level of wages as a measure of success in life. Sociologically and ethically, people feel that "equal work should carry equal wages. They should not be exploited, and that no discrimination be made on the basis of caste, color, sex or religion."



**Introduction:**

A beginning of social security in India was made with the passing of Workmen's Compensation Act, 1923. In 1921, the government formulated some proposals for the grantof compensation and circulated them for opinion.

The proposals received general support. As a result, the Workmen's Compensation Act was passed in March 1923 and was put into force on July 1, 1924. Subsequently, there were a number of amendments to the Act. With the Workmen's Compensation (Amendment) Act, 2009 the word 'workmen' stands to be substituted with the word 'employees' w.e.f. 18.01.2010.

**Object of the Act:**

• The object of the Act is to 'impose moral obligation upon employers to pay compensation to employees for injury by accidents arising out of and in the course of employment.

* The scheme of the Act is not to compensate the employee in lieu of wages, but to pay compensation for the injury sustained to him. 
* This Act aids in faster and cheaper disposal of disputes relating to compensation in  comparison of proceedings of civil law.

**Scope and Coverage**: 

* The act extends to whole of India and applies to any person who is employed in the railways, factories, mines, plantations, transport establishments, loading and unloading work on a ship, construction, maintenance and repairs of roads, bridges etc., electricity generation, cinemas, catching or training of wild elephants, circus and other hazardous occupations and employments specified in Schedule Il to the Act.





* Under Section 2(3) of the Act, the State Government/ Central Government are empowered to extend the scope of the Act to any class of persons whose occupations are considered hazardous after giving 3 months" notice in the Official Gazette
* The Act, however, does not apply to  members serving in the Armed Forces of the Indian Union, o employees covered under the provisions of Employees State Insurance Act, 1948 as disablement and defendants' benefit are available under this Act.
* The coverage of this Act has been extended to cooks employed in hotels, restaurants, etc.
* There is no wage limit for coverage under the Act.

**Definitions:**

Employee: Section 2 (1) (dd)

Employee means a person who is-



* A railway servant as defined in Railways Act, 1989, not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule Il or 
* A master, seaman or other members of the crew of the ship,



* A captain or other member of the crew of an aircraft
* A person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
* A person recruited for work abroad by a company,



Dependents: Section 2 (1) (d) For the purposes of the Act 'dependents' have been grouped into 2 classes:

* Those who are considered dependents without any proof and
* Those who must prove that they are dependents.

The first group includes

* a widow,

a minor legitimate or adopted son,

* unmarried legitimate or adopted daughter or
* a widowed mother—

The following are included in the second group if they were wholly or partially dependent on the earnings of the employee at the time of his or her death;

* a widower,
* a parent other than a widowed mother,
* a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor

a minor brother or an unmarried sister or a widowed sister, if a minor,

* a widowed daughter-in-law,
* a minor child of a predeceased son,
* a minor child of a predeceased daughter where no parent of the child is alive, or
* a paternal grandparent, if no parent of the

**Employer. Section 2 (1) (e)**

Employer includes-

* any body of persons whether incorporated or not,
* Any managing agent of an employer,
* Legal representative of a deceased employer,
* Any workman whose services are temporarily lent or let on hire to another person, by the person with whom the workman has entered into a contract of service or apprenticeship; means such other person while the workman is working for him.

A contractor falls within the above definition of employer.

 **Partial Disablement: Section 2 (1) (g)** 

Partial disablement means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of an employee in any employment in which he was engaged at the time of accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time.

**Total Disablement: Section 2(1) (l)**

Total disablement means such disablement, whether of a temporary or permanent nature, as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement.

**Wages: Section 2 (1) (m)**

Wages includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any traveling concession or a contribution paid by the employer to an employee towards any pension or provident fund or a sum paid to an employee to cover any special expenses entailed on hirnbJ the nature of his employment.

**Section 3: Employers' liability for compensation**

 The compensation shall be paid by the employer to an employee for any personal injury sustained by him in an accident arising out of and in the course of his employment.

In Schedule I to the Act, the percentage of loss of earning capacity caused by different types of injuries has been listed.

However, the employer shall not be liable to pay compensation for-

* any kind of disablement (except death) which does not continue for more than 3 days.
* any injury caused to the employee when he was under the influence of
* drink/drugs or o
* willfully disobeyed an order/ rule expressly framed for employees or
* willfully removed or disregarded a safety device.



The employee is also not entitled to compensation if he/ she fails to take proper medical treatment which aggravates the injury/ disease. In case it is not fatal, an employment injury may cause any injury resulting in permanent total disablement; permanent partial disablement; or temporary disablement. 

Anthrax, poisoning by lead, phosphorous or mercury, telegraphist's cramp, silicosis, asbestosis, bagassosis etc. (Section 3)

**Section 4: Amount of Compensation**—

• The rate of compensation in case of death is an amount equal to 50% of the monthly wages of the deceased employee multiplied by the relevant factor or an amount of Rs. 1.2 lakh whichever is higher. In case of death of an employee, the employer is also liable to pay funeral expenses of Rs. 5000 to the eldest surviving dependant. This amount is not in lieu of compensation for injury. Section 4(4).

* Where permanent total disablement results from the injury, the compensation will be an amount equal to 60% of the monthly wages of the injured employee multiplied by the relevant factor, or an amount of Rs 1.4 lakh whichever is higher.

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| --- | --- | --- |
| Sr. No. | Result from the injury | Amount of compensation |
| 1. | Death | 50% x monthly wages of deceased employee Relevant FactorORRs 120000 Whichever is more |
| 2. |  Permanent total disablement | 60% x monthly wages of injured employee x Relevant FactorOR Rs 140000Whichever is more. |

 (Note: Relevant Factor' means the factor specified in the second column of Schedule IV against the entry in the First Column of that Schedule specifying the number of years which are the same as the completed years of the age of employee on his last birthday immediately preceding the date on which the compensation fell due.)

(General principle applied in paying compensation: Higher the age, lower is the compensation)

Example 1: In case of death

Given: Wages Rs.3000 PM

Age 23 years

Relevant Factor as under Schedule IV 219.95

Amount of compensation = 50% x monthly wages x relevant factor

= Rs. 329,925 

Example 2: In case of total disablement-

Amount of compensation = 60% x monthly wages x relevant factor

= Rs. 395,910.

(c) Where permanent partial disablement results from the injury, if specified in Part Il of Schedule I, such % of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the % of the loss of earning capacity by that injury

The % loss of earning capacity depends on the loss of limbs and varies from 1% to 90%

In case of an injury not specified in Schedule I, such % of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.

(Note: Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but shall not in any case exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.)

(d) In case of temporary disablement, a half-monthly payment of the sum equivalent to 25% of monthly wages of the employee has to be paid. 

* Half monthly payment shall be payable on the 16th day from the date of disablement, where such disablement lasts for a period of 28 days or more.
* Half monthly payment shall be payable after the expiry of a waiting period of 3 days from the date of disablement, where such disablement lasts for a period of less than 28 days and
* Thereafter, the compensation will be payable half-monthly during the period of disablement or during a period of 5 years, whichever is shorter.
* There is also a provision for commutation of half-monthly payments to a lump sum amount by agreement between the parties or by an application by either party  to the Commissioner if the payments continue for not less than 6 months. (Section 7) 

 • Half monthly payments are subject to review by the Commissioner, on an application made to it by employer/ employee. Application must be accompanied with a medical certificate stating change in condition of employee. On review, half monthly payments may be increased, decreased, continued or ended.

**Section 4A: Compensation shall be made when due and penalty for default**

It is provided that all cases of fatal accidents should be brought to the notice of the Commissioner; and if the employer admits the liability, the amount of compensation payable should be deposited with him.

Where the employer disclaims his liability for compensation to the extent claimed, he has to make provisional payment based on the extent of liability which he accepts, and such payment must be deposited with the Commissioner or paid to the employee.

If an employer is in default, in paying the compensation within 1 month from the due date, the Commissioner may direct the recovery of not only the amount of the arrears but also a simple interest at the rate of 12% p.a. on the amount due.



If, in the opinion of the Commissioner, there is no justification for the delay, an additional sum, not exceeding 50 % of such amount, may be recovered from the employer by way of penalty.

**Section 5: Method of calculating wages**



'Monthly wages" means the amount of wages deemed to be payable for a  service (whether the wages are payable by the month or by whatever other period or at piece rates). Monthly wages are calculated as follows:-- 



1. where the employee has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the employee shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
2. where the whole of the continuous period of service immediately preceding the accident during which the employee was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the employee shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a employee employed on the same work by the same employer, or, if there was no employee so employed, by a employee employed on similar work in the same locality; 
3. in other cases [including cases in which it is not possible for want of necessary  information to calculate the monthly wages under clause (b)], the monthly wages  shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

Distribution of Compensation / Returns: 

If the employer admits his liability, he shall make the deposit within 30 days of the service of the notice, to the Commissioner. If the employer disclaims his liability, he shall indicate the reasons for disclaiming.



In such cases, the Commissioner may, after such enquiry as he thinks fit, inform the dependants that it is open to them to prefer a claim and may give such other information as he thinks fit. It is obligatory on the part of the Compensation Commissioner to decide on a  claim within 3 months of an application being filed. The employer is required to file annual returns giving details of the compensation paid, the number of injuries and other particulars as to the compensation, (Section 8 and 16)

The amount deposited with the Commissioner is payable to the employee/ dependants of the employee.

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of the employee. The amount of compensation is to be apportioned among the



dependants of the deceased employee or any of them, in such proportion as the Commissioner thinks fit. (Sections 2 and 8)

**Contracting Out:**

* A contract or agreement, whereby the employee relinquishes his right to Compensation from the employer for the personal injury arising out of and in the course of employment, is null and void to the extent to which such contract or agreement purports to remove or reduces, the liability for, the payment of compensation. (Section 17)

The compensation payable to the employee or to his dependants cannot be assigned, attached or charged. (Section 9)

**Claims and Appeals:**

In case the compensation is not paid by the employer, the employee concerned or his dependants may claim the same by filing an application before the Commissioner. The claim shall be filed within a period of 2 years of the occurrence of the accident or death.



The application which is filed after the period of limitation can be entertained only if sufficient cause exists. An appeal will lie to the High Court against certain orders of the Commissioner. It should involve a substantial question of law.

The period of limitation for an appeal under Section 30 is sixty days. (Section 10 and 30)

**Obligations of Employers:**

* Pay compensation for the employment injury or deposit the amount with the Commissioner as soon as it falls due.
* Do not deduct from the compensation amount any expenses incurred by the employee for his medical treatment.
* Notify to the Commissioner, or any other authority specified by the Government for this purpose, any accident occurring on the premises which results in death or serious bodily injury, explaining the circumstances attending death or serious injury within 7 days of occurrence.

 • Submit an annual return to the government specifying the number of injuries in respect of which compensation has been paid by the employer during the previousyear, and the amount of such compensation together with such other particulars as  may be required by the authority concerned.

* Arrange to get registered any agreement made with the employee or his dependants settling the amount of lumpsum payable as compensation, or by way of redemption of half monthly payments on account of temporary disablement, with the Commissioner.

**Obligations of Employees:**

* Give notice of the accident and the occupational disease in the prescribed form for  claiming compensation.

• In case of an accident, go through the prescribed medical examination by a qualified medical practitioner and follow the treatment and instructions given by him.



**Administration**

The Act is administered by State Governments which are required to appoint

Compensation Commissioners. The functions of the Commissioner include

 • Settlement of disputed claims

* Disposal of cases on injuries involving death and
* Revision of periodical payments (Section 20)

The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise (Section 31)



The Act provides for the framing of the rules and its publication, by the State and Central Government. (Section 32- 36) 