

ECONOMIC AND LABOUR LAWS

PART B – LABOUR LAWS

STUDY XV - MINIMUM WAGES ACT, 1948

LEARNING OBJECTIVES

The Minimum Wages Act prescribes minimum wages for all employees in all establishments or working at home in certain employments specified in the schedule of the Act. Central and State Governments revise minimum wages specified in the schedule. The objective of this study lesson is to thoroughly acclimatize the students with the law relating to minimum wages.

At the end of the study lesson, you should be able to understand:

- Object and scope the Act
- Important definitions
- Manner of fixation of minimum wages
- Procedure for fixation and revising minimum wages
- Advisory Board
- Central Advisory Board
- Authority claims
- Offences and penalties
- Compliances under the Act

OBJECT AND SCOPE OF THE LEGISLATION

The Minimum Wages Act was passed in 1948 and it came into force on 15th March, 1948. The National Commission on Labour has described the passing of the Act as landmark in the history of labour legislation in the country. The philosophy of the Minimum Wages Act and its significance in the context of conditions in India, has been explained by the Supreme Court in *Unichoyi v. State of Kerala* (A.I.R. 1962 SC 12), as follows:

“What the Minimum Wages Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an underdeveloped country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general

public and so in prescribing the minimum rates, the capacity of the employer need not to be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour”.

According to its preamble the Minimum Wages Act, 1948, is an Act to provide for fixing minimum rates of wages in certain employments. The employments are those which are included in the schedule and are referred to as ‘Scheduled Employments’. The Act extends to whole of India.

IMPORTANT DEFINITIONS

Appropriate Government [Section 2(b)]

“Appropriate Government” means-

- i. in relation to any scheduled employment carried on by or under the authority of the Central or a railway administration, or in relation to a mine, oilfield or major part or any corporation established by a Central Act, the Central Government, and
- ii. in relation to any other scheduled employment, the State Government.

Employee [Section 2(i)]

“Employee” means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an outworker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale purpose of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of that person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of Armed Forces of the Union.

Employer [Section 2(e)]

“Employer” means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except, in sub-section (3) of Section 26_

- i. in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, as manager of the factory;
- ii. in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person of authority is so appointed, the Head of the Department;
- iii. in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the Chief Executive Officer of the local authority;
- iv. in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner of the supervision and control of the employees or for the payment of wages.

The definitions of “employees” and “employer” are quite wide. Person who engages workers through another like a contractor would also be an employer (1998 LLJ I Bom. 629). It was held in *Nathu Ram Shukla v. State of Madhya Pradesh* A.I.R. 1960 M.P. 174 that if minimum wages have not been fixed for any branch of work of any scheduled employment, the person employing workers in such branch is not an employer with the meaning of the Act. Similarly, in case of *Loknath Nathu Lal v. State of Madhya Pradesh* A.I.R. 1960 M.P. 181 an out-worker who prepared goods at his residence, and then supplied them to his employer was held as employee for the purpose of this Act.

Scheduled employment [Section 2(g)]

“Scheduled employment” means an employment specified in the Schedule or any process or branch of work forming part of such employment.

Note: The schedule is divided into two parts namely, Part I and Part II. When originally enacted Part I of Schedule had 12 entries. Part II relates to employment in agriculture. It was realised that it would be necessary to fix minimum wages in many more employments to be identified in course of time. Accordingly, powers were given to appropriate Government to add employments to the Schedule by following the procedure laid down in Section 21 of the Act. As a result, the State Government and Central Government have made several additions to the Schedule and it differs from State to State.

Wages [Section 2(h)]

“Wages” means all remunerations 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 and includes house rent allowance but does not include:

- i. the value of:
 - a. any house accommodation, supply of light, water medical
 - b. any other amenity or any service excluded by general or social order of the appropriate Government;
- ii. contribution by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;
- iii. any traveling allowance or the value of any traveling concession;
- iv. any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment;
- v. any gratuity payable on discharge.

FIXATION OF MINIMUM RATES OF WAGES [Section 3(1)(a)]

Section 3 lays down that the ‘appropriate Government’ shall fix the minimum rates of wages, payable to employees in an employment specified in Part I and Part II of the Schedule, and in an employment added to either part by notification under Section 27. In case of the employments specified in Part II of the Schedule, the minimum rates of wages may not be fixed for the entire State. Parts of the State may be left out altogether. In the case of an employment specified in Part I, the minimum rates of wages must be fixed for the entire State, no parts of the State being omitted. The rates to be fixed need not be uniform. Different rates can be fixed for different zones or localities: [*Basti Ram v. State of A.P.* A.I.R. 1969, (A.P.) 227].

The constitutional validity of Section 3 was challenged in *Bijoy Cotton Mills v. State of Ajmer*, 1955 S.C. 3. The Supreme Court held that the restrictions imposed upon the freedom of contract by the fixation of minimum rate of wages, though they interfere to some extent with freedom of trade or business guaranteed under Article 19(1)(g) of the Constitution, are not unreasonable and being imposed in the interest of general public and with a view to carrying out one of the Directive Principles of State Policy as embodied in Article 43 of the Constitution, are protected by the terms of Clause (6) of Article 9.

Notwithstanding the provisions of Section 3(1)(a), the “appropriate Government” may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are engaged. But when it comes to its knowledge after a finding that this number has increased to 1,000 or more in such employment, it shall fix minimum wage rate.

REVISION OF MINIMUM WAGES

According to Section 3(1)(b), the ‘appropriate Government’ may review at such intervals as it may think fit, such intervals not exceeding five years, and revise the minimum rate of wages, if necessary. This means that minimum wages can be revised earlier than five years also.

MANNER OF FIXATION/REVISION OF MINIMUM WAGES

According to Section 3(2), the ‘appropriate Government’ may fix minimum rate of wages for:

- a. time work, known as a Minimum Time Rate;
- b. piece work, known as a Minimum Piece Rate;
- c. a “Guaranteed Time Rate” for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage), and
- d. a “Over Time Rate” i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

Section 3(3) provides that different minimum rates of wages may be fixed for –

- i. different scheduled employments;
- ii. different classes of work in the same scheduled employments;
- iii. adults, adolescents, children and apprentices;
- iv. different localities

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- i. by the hour,
- ii. by the day,
- iii. by the month, or

iv. by such other large wage periods as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day as the case may be, may be indicated.

However, where wage period has been fixed in accordance with the Payment of Wages Act, 1986 vide Section 4 thereof, minimum wages shall be fixed in accordance therewith [Section 3(3)].

MINIMUM RATE OF WAGES (Section 4)

According to Section 4 of the Act, any minimum rate of wages fixed or revised by the appropriate Government under Section 3 may consist of –

- i. a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such worker (hereinafter referred to as the cost of living allowance); or
- ii. a basic rate of wages or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concessional rates where so authorized; or
- iii. an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

The cost of living allowance and the cash value of the concessions in respect of supplies essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions specified or given by the appropriate Government.

PROCEDURE FOR FIXING AND REVISING MINIMUM WAGES (Section 5)

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method [Section 5(1)(a)]

This method is known as the ‘Committee Method’. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advise of the committee or committees, the appropriate Government

shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

Note: It was held in *Edward Mills Co. v. State of Ajmer* (1955) A.I.R. SC, that Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations.

As regards composition of the Committee, Section 9 of the Act lays down that it shall consist of persons to be nominated by the appropriate Government representing employers and employee in the scheduled employment, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. One of such independent persons shall be appointed as the Chairman of the Committee by the appropriate Government.

Second Method [Section 5(1)(b)]

The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. [1996 II LLJ 267 Kar.].

ADVISORY BOARD

The advisory board is constituted under Section 7 of the Act by the appropriate Government for the purpose of co-ordinating the work of committees and sub-committees appointed under Section 5 of the Act and advising the appropriate Government generally in the matter of fixing and revising of minimum rates of wages. According to Section 9 of the Act, the advisory board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employment who shall be equal in number, and independent persons

not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman by the appropriate Government.

It is not necessary that the Board shall consist of representatives of any particular industry or of each and every scheduled employment; *B.Y. Kashatriya v. S.A.T. Bidi Kamgar Union* A.I.R. (1963) S.C. 806. An independent person in the context of Section 9 means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed. In the case of *State of Rajasthan v. Hari Ram Nathwani*, (1975) SCC 356, it was held that the mere fact that a person happens to be a Government servant will not divert him of the character of the independent person.

CENTRAL ADVISORY BOARD

Section 8 of the Act provides that the Central Government shall appoint a Central Advisory Board for the purpose of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters under the Minimum Wages Act and for coordinating work of the advisory boards. The Central Advisory Board shall consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employment who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members, one of such independent persons shall be appointed as the Chairman of the Board by Central Government.

MINIMUM WAGE – WHETHER TO BE PAID IN CASH OR KIND

Section 11 of the Act provides that minimum wages payable under the Act shall be paid in cash. But where it has been the custom to pay wages wholly or partly in kind, the appropriate Government, on being satisfied, may approve and authorize such payments. Such Government can also authorize for supply of essential commodities at concessional rates. Where payment is to be made in kind, the cash value of the wages in kind or in the shape of essential commodities on concessions shall be estimated in the prescribed manner.

PAYMENT OF MINIMUM WAGES IS OBLIGATORY ON EMPLOYER (Section 12)

Payment of less than the minimum rates of wages notified by the appropriate Government is an offence. Section 12 clearly lays down that the employer shall pay to every employee engaged in a scheduled employment under him such wages at a rate not less than the minimum rate of wages fixed by the appropriate Government under

Section 5 for that class of employment without deduction except as may be authorized, within such time and subject to such conditions, as may be prescribed.

FIXING HOURS FOR A NORMAL WORKING DAY (Section 13)

Fixing of minimum rates of wages without reference to working hours may not achieve the purpose for which wages are fixed. Thus, by virtue of Section 13 the appropriate Government may –

- a. fix the number of work which shall constitute a normal working day, inclusive of one or more specified intervals;
- b. provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such day of rest;
- c. provide for payment of work on a day of rest at a rate not less than the overtime rate.

The above stated provision shall apply to following classes of employees only to such extent and subject to such conditions as may be prescribed:

- a. Employees engaged on urgent work, or in any emergency, which could not have been foreseen or prevented;
- b. Employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;
- c. Employees whose employment is essentially intermittent;
- d. Employees engaged in any work which for technical reasons, has to be completed before the duty is over;
- e. Employees engaged in any work which could not be carried on except at times dependent on the irregular action of natural forces.

For the purpose of clause (c) employment of an employee is essentially intermittent when it is declared to be so by the appropriate Government on ground that the daily hours of the employee, or if these be no daily hours of duty as such for the employee, the hours of duty, normally includes period of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

There is correlation between minimum rates of wages and hours of work. Minimum wages are to be fixed on basis of standard normal working hours, namely 48 hours a week; *Benode Bihari Shah v. State of W.B.* 1976 Lab I.C. 523 (Cal).

PAYMENT OF OVERTIME (Section 14)

Section 14 provides that when an employee, whose minimum rate of wages is fixed under this Act by the hours, the day or by such longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or part of an hour so worked in excess at the overtime rate fixed under this Act or under any other law of the appropriate Government for the time being in force whichever is higher. Payment for overtime work can be claimed only by the employees who are getting minimum rate of wages under the Act and not by those getting better wages. (1998 LLJ I SC 815).

WAGES OF A WORKER WHO WORKS LESS THAN NORMAL WORKING DAY (Section 15)

Where the rate of wages has been fixed under the Act by the day for an employee and if he works on any day on which he employed for a period less than the requisite number of hours constituting a normal working day, he shall be entitled to receive wages for that day as if he had worked for a full working day.

Provided that he shall not receive wages for full normal working day—

- i. if his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him with work, and
- ii. such other cases and circumstances as may be prescribed.

MINIMUM TIME – RATE WAGES FOR PIECE WORK (Section 17)

Where an employee is engaged in work on piece work for which minimum time rate and not a minimum piece rate has been fixed, wages shall be paid in terms of Section 17 of the Act at minimum time rate.

MAINTENANCE OF REGISTERS AND RECORDS (Section 18)

Apart from the payment of the minimum wages, the employer is required under Section 18 to maintain registers and records giving such particulars of employees under his employment, the work performed by them, the receipts given by them and such other particulars as may be prescribed. Every employee is required also to exhibit notices, in the prescribed form containing particulars in the place of work. He is also required to maintain wage books or wage-slips as may be prescribed by the appropriate Government and the entries made therein will have to be authenticated by the employer or his agent in the manner prescribed by the appropriate Government.

AUTHORITY AND CLAIMS (Section 20-21)

Under Section 20(1) of the Act, the appropriate Government, may appoint any of the following as an authority to hear and decide for any specified area any claims arising out of payment of less than the minimum rate of wages or in respect of the payment of remuneration for the days of rest or of wages at the rate of overtime work:

- a. any Commissioner for Workmen's Compensation; or
- b. any officer of the Central Government exercising functions as Labour Commissioner for any region; or
- c. any officer of the State Government not below the rank of Labour Commissioner; or
- d. any other officer with experience as a Judge of a Civil Court or as the Stipendiary Magistrate.

The authority so appointed shall have jurisdiction to hear and decide claim arising out of payment of less than the minimum rates of wages or in respect of the payment remuneration for days of rest or for work done on such days or for payment of overtime.

The provisions of Section 20(1) are attracted only if there exists a disputed between the employer and the employee as to the rates of wages. Where no such dispute exists between the employer and employees and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off days is due to an employee or not, the appropriate remedy is provided by the Payment of Wages Act, 1936.

OFFENCES AND PENALTIES

Section 22 of the Act provides that any employer who (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or contravenes any rule or order made under Section 13, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

While imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

It is further stipulated under Section 22A of the Act that any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if

no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

COMPLIANCES UNDER THE ACT

The establishment must ensure following compliances under the Act. These compliances are not exhaustive but illustrative.

1. The Establishment is covered by the definition “Scheduled Employment” with effect from
2. The Government revised the minimum wages once/twice/ thrice during the financial year under reference and the Establishment has paid to all its employees minimum wages in accordance with the rates at respective point of time and at the respective rates specified in notification under Section 5 of the MWA.
3. The Establishment has issued wage slips to all its employees in respect of each of the wage period.....
4. Where the services of any employee were terminated for any reason whatsoever, the wages were paid within two working days from the date of such termination.
5. The Establishment did not make any unauthorized deduction from the wages of any of its employees. Further, the deductions if any, made were within the limits of fifty percent (or seventy five percent in case of cooperatives) of wages earned by such employees during the period under reference.
6. Where the Establishment was constrained to impose any fine or deduct wages on account of damages caused by any employee, the latter was given an opportunity of being heard in the presence of a neutral person and was also communicated the amount of fine imposed or deduction made from the wages.
7. The Establishment has eight working hours per day, inclusive of half an hour of interval.
8. All claims under Section 20 of the MWA were paid within the time limit specified in the Order.

LESSON ROUND-UP

- The Minimum Wages Act, empowers the Government to fix minimum wages for employees working in specified employments. It provides for review and revision of minimum wages already fixed after suitable intervals not exceeding five years.
- It extends to the whole of India and applies to scheduled employments in respect of which minimum rates of wages have been fixed under this Act.
- The appropriate government shall fix the minimum rates of wages payable to employees employed in a scheduled employment.

- It may review at such intervals not exceeding five years the minimum rates of wages so fixed, and revise the minimum rates if necessary.
- The employer shall pay to every employee in a scheduled employment under him wages at the rate not less than the minimum rates of wages fixed under the Act.
- The Act also provides for regulation of working hours, overtime, weekly holidays and overtime wages. Period and payment of wages, and deductions from wages are also regulated.
- The Act provides for appointment of the authorities to hear and decide all claims arising out of payment less than the minimum rates of wages or any other monetary payments due under the Act. The presiding officers of the Labour court and Deputy Labour Commissioners are the authorities appointed.