

# **R.M.M. Law College, Saharsa**

**Pt. Lecturer- KESHAV KUMAR SHRIVASTAVA**

**L.L.B Part- 3<sup>rd</sup>**

**Subject- Labour Law**

**Paper- 6<sup>th</sup>**

**Date- 26/12/2020**

**Topic- Write short notes on the following:**

**1. Average Pay, 2. Continuous Service, 3. Employer, 4. Industry, 5. Lay-off,**

## **1. Average Pay**

Wage is a remuneration to labor for the work done for the service rendered by it to the employer. There are different theories on the concept of wages as enunciated by economists and sociologists, which explain various aspects of wage problems. However, these theories are not applicable in all circumstances.

According to Section 2(h) of the Minimum wages Act, 1948 the term "wages" means all remuneration capable of being expressed in terms of money which would if the terms of the contract of employment express or implied were fulfilled be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include –

(i) the value of –

(a) any house accommodation supply of light water medical attendance or

(b) any other amenity or any service excluded by general or special order of the appropriate government;

(ii) any contribution paid by the employer to any person 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.

## **2. Continuous Service**

For the purposes of this Act,--

(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order <sup>2\*\*\*</sup> treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

(2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer--

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

(i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) two hundred and forty days, in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than

(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) one hundred and twenty days, in any other case

## **3. Employer**

A person who is contractually bound to a worker - the employee - to give that worker money as a salary or wages, in exchange for ongoing work and for which the employer directs the work and exercises fundamental control over the work.

## **4. Industry**

Sec 2 (j) of the Industrial Disputes Act has defined the term **“industry” means any systematic activity carried on by co-operation between an employer and his workmen** (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) **for the production, supply or distribution of goods or services with a view to**

**satisfy human wants or wishes** (not being wants or wishes which are merely spiritual or religious in nature), whether or not, –

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes –

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1949);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include –

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space

## **5. Lay-off**

The term '**lay-off**' has been defined under section 2 (kkk) of the Industrial Disputes Act, 1947, thus lay-off means the failure, refusal or inability of an employer on account of the shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other unconnected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Lay-off is a measure to cope with the temporary inability of an employer to offer employment to a workman to keep the establishment as going concern. It results in immediate unemployment though temporary in nature. It does not put an end to the employer-employee relationship, nor does it involve any alteration in the conditions of service.

Further, lay-off occurs only in a continuing business. When the industrial establishment is closed permanently or it lock-out is declared by the employer, the question of lay-off has no relevance. Lay-off is justified only when it is in conformity with the definition given under Section 2 (kkk) of the Industrial Disputes Act.

The explanation given to this section further provides that if a worker whose name is borne on the muster roll of the industrial establishment and who presents himself for work during normal hours on any day, and he is not given employment within two hours of his so presenting himself, he is said to be laid-off for the day.

But if he is asked to present himself during the second half of the shift and is given employment, he is deemed to be laid-off for half the day. However, if the workman is not given employment even after presenting himself at the commencement of the second half of the shift, he is deemed to have been laid-off for the full day.

**The End**