

Factories Act, 1948

The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories. The Act also makes provisions regarding employment of women and young persons (including children and adolescents), annual leave with wages etc.

The Act extends to whole of India including Jammu & Kashmir and covers all manufacturing processes and establishments falling within the definition of 'factory' as defined under Section 2(m) of the Act. Unless otherwise provided it is also applicable to factories belonging to Central/State Governments. (Section 116)

The Factories Act, 1948 extend to whole of India and came into effect from 01.04.1949.

Important Definitions

Hazardous Process

Section 2(cb) defines the expression 'hazardous process' as any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes, or effluents thereof would-

- cause material impairment to the health of the persons engaged in or connected therewith, or
- result in the pollution of the general environment

The State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry, specified in the said Schedule.

Manufacturing process

Section 2(k) defines the expression 'manufacturing process' as any process for-

- making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- pumping oil, water, sewage or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage.

Worker

Section 2(l) defines the term 'worker' as a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer,

whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

Factory

Section 2(m) defines the term ‘factory’ as any premises including the precincts thereof-

- whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-
- but does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.
- For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account;
- For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

Occupier

Section 2(n) defines the term ‘occupier’ of a factory as the person who has ultimate control over the affairs of the factory.

- in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- in the case of a company, any one of the directors shall be deemed to be the occupier;
- in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier;
- in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a drydock which is available for hire,-
- the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided.

Notice by occupier

Section 7 provides that the occupier shall, at least 15 days before he begins to occupy or use any premises as a factory, send to the Chief Inspector, a written notice containing the name and situation of the factory, the name and address of the occupier, the nature of manufacturing

process, the details of workers etc., Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge.

Duties of occupier

Section 7A prescribes the general duties of occupier. Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

Inspector

Section 8 provides that the State Government may appoint such persons as possess the prescribed qualification to be Inspectors for the purpose of this Act and may assign to them such local limits as it may think fit. Section 9 prescribes the powers of the Inspector as detailed below-

- to enter into any place which is used, or which he has reason to believe is used as a factory;
- make examination of the premises, plant, machinery, article or substance;
- inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not and
- take on the spot statements of any person which he may consider necessary for such inquiry;
- require the production of any document relating to factory;
- seize or take copies of any register, record or other documents of any portion thereof as he may consider necessary;
- to take possession of any article or substance or part thereof and detain it for so long as is necessary for such examination;
- to exercise such other powers as may be prescribed.

Certified surgeons

Section 10 provides that the State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such factory or class or description of factories as it may assign to them respectively. The duties of certified surgeons are as follows-

- the examination and certification of young persons;
- the examination of person engaged in factories in such dangerous occupations or processes as may be prescribed;
- the exercising of such medical supervision as may be prescribed for any factory or class or description of factories, where-
 - cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
 - by reason of any change in the manufacturing process carried on or in the substances used therein or by reason of the adoption of any new manufacturing

process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process;

- young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

Welfare measures

The Factories Act takes care of the workers in the following aspects-

- health of the workers in the working environment;
- safety of the workers including in the hazardous process;
- welfare of the workers;
- working hours of adults;
- employment of young persons;
- Annual leave with wages;

Health

Chapter III of the Act deals with measures to be taken considering the health aspects of the workers. The following are to be taken care of by the occupier of the factory:

- cleanliness;
- disposal of waste and effluents;
- ventilation and temperature;
- dust and fume;
- artificial humidification;
- overcrowding;
- lighting;
- drinking water;
- latrines and urinals;
- spittoons

Cleanliness

Section 11 of the Act provides every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

- removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same;
- cleaning of the floor of every workroom – once in every week by washing with disinfectant or by some other effective method;
- providing effective drainage for removing water to the extent possible;
- to ensure that interior walls and roofs etc., are kept clean the following is to be complied with-
 - white wash or color wash should be carried out at least once in every period of 14 months;

- where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months;
- where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
- all doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years;

The dates on which such processes are carried out shall be entered in the prescribed register

Disposal of wastes and effluents

Section 12 provides that effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal.

Ventilation and temperature

Section 13 provides that effective and suitable provision shall be made in every factory for securing and maintaining every workroom with adequate ventilation by the circulation of fresh air and such a temperature as will secure to workers therein reasonable conditions of comfort and prevent to health. In case of the work involves the production excessively high temperatures, adequate measures shall be taken to protect the workers by separating their process which produces such high temperatures from the workroom by insulating the hot parts or by other effective means.

Drinking water

Section 18 provides that effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed a sufficient supply of wholesome drinking water. Where more than 250 workers are employed provision shall be made for cool drinking water during hot weather. The water points shall be away six meters from any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination.

Latrines and urinals

Section 19 provides that in every factory-

- sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they are at factory;
- separate enclosed accommodation shall be provided for male and female workers;
- they shall be adequately lighted and ventilated;
- they shall be maintained in a clear and sanitary conditions at all times;
- sweepers shall be employed to keep clean latrines, urinals and washing places.

If there are more than 250 workers are employed all latrine and urinal accommodation shall be of prescribed types. The floors and internal walls and the sanitary blocks shall be laid in glazed tiles to provide a smooth polished impervious surface. The latrines and urinals shall be washed and cleaned at least once in every seven days with suitable detergents or disinfectants or with both.

Safety

Chapter IV of the Act prescribes the procedures to be adopted on the safety of the working place in a factory.

The factory is to take safety measures in respect of the following-

- Fencing of machinery;
- Work on or near machinery in motion;
- Employment of young persons on dangerous machines;
- Striking gear and devices for cutting off power;
- Self acting machines;
- Casing of a new machinery;
- Prohibition of employment of women and children near cotton openers;
- Lifting machines, chains, ropes and lifting tackles;
- Revolving machinery;
- Floors, stairs and means of access;
- Pits, sumps openings in floors etc.,;
- Excessive weights;
- Protection of eyes;
- Precaution against dangerous fumes, gases, etc.,
- Precautions regarding the use of portable electric light;
- Explosive or inflammable dust, gas etc.,
- Precaution in case of fire;
- Safety on buildings and machinery;
- Maintenance of buildings;
- Appointment of safety officers.

Hazardous Processes

Chapter IVA provides for making provisions relating to hazardous process. The State Government may, for purposes of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a Site Appraisal Committee. The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within 90 days of the receipt of such application.

The Committee has the power to call for any information from the person making an application. When the application is got approved by the State Government, it shall not be necessary to obtain a further approval from the Central Board of the State Board of pollution authorities.

Responsibility of the occupier

The occupier has to follow the procedure-

- to lay down a detailed policy with respect to the health and safety of the workers;
- to disclose all the information regarding dangers including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes to the workers employed in the factory;

- to draw up an onsite emergency plan and detailed disaster control measures for the factory and make known to the workers and to the general public living in the vicinity of the factory, the safety measures required to be taken in the event of accident taking place.
- to lay down measures for the handling usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C provides that the occupier is having specific responsibilities in relation to hazardous processes. He has to maintain the health records of the employees. He is to appoint experienced persons who possess specified qualifications in handling hazardous substances and competent to supervise such handling within the factory.

Welfare

Chapter V provides the welfare measures to be taken in a factory for the workmen employed in the factory.

The following are the welfare measures prescribed in the Act to be provided by the factory to their workmen-

- washing facilities;
- facilities for storing and drying clothing;
- facilities for sitting;
- first aid appliances;
- canteens;
- shelters, rest rooms and lunch rooms;
- crèches;
- appointment of welfare officers.

Washing facilities

Section 42 provides that in every factory adequate and suitable facilities for washing shall be provided and maintained for the use of the workers. Separate and adequately screened facilities shall be provided for the use of male and female workers. The washing facility shall be conveniently accessible and shall be kept clean.

Facilities for storing and drying clothing

Section 43 provides that the State Government may, in respect of any factory or class or description of factories, make rules requiring the provision therein of suitable places for keeping clothing not worn during working hours and for the drying of wet clothing.

Facilities for sitting

Section 44 provides that suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.

First aid appliances

Section 45 provides that first aid appliances shall be provided and maintained so as to be readily accessible during all working hours or cupboards equipped with the prescribed contents and the number of such boxes or cupboards to be provided and maintained shall not be less than for every 150 workers at any one time in the factory. Each first aid box or cupboard shall be kept in charge of a separate reasonable person who holds a certificate in the first aid treatment recognized by the State Government and he should always be readily available during the working hours of the factory.

In a factory where more than 500 workers are employed an ambulance of the prescribed size containing the prescribed equipment, nursing staff etc., shall be provided and made readily available at all times.

Canteens

Section 46 provides that if more than 250 workers are employed in a factory a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. The items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs shall be borne by the employer.

Shelters, rest rooms and lunch rooms

Section 47 provides that if more than 150 workers are employed adequate and suitable shelters or rest rooms and a suitable lunch room with provision for drinking water shall be provided and maintained for the use of the workers. The same shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

Crèches

Section 48 provides that if more than 30 women workers are employed there shall be provided and maintained a suitable room for the use of children under the age of 6 years of such women. The same shall be adequately ventilated and shall be maintained in clear and sanitary conditions and under the charge of women trained in the care of children and infants.

Welfare Officers

Section 49 provides that if 500 or more than workers are employed in a factory, the occupier shall employ in the factory such number of welfare officers as may be prescribed. In 'Shyam Vinyals Limited V. T. Prasad' –(1993) 83 FJR 18 (SC) it was held that an Assistant Personnel Officer cannot be held that he was in fact appointed as a Labor Welfare Officer simply because as a Assistant and Personnel Officer he was looking after the problems of the laborers and the welfare of the laborers.

Working hours of adults

Working hours

Chapter VI of the Act provides for the working hours of adults. This chapter provides for working hours in a day, weekly working hours, weekly holidays, intervals for rest. Spread over of duty, night shift etc.,

Section 54 provides that no adult worker shall be required or allowed to work in a factory for more than nine hours in any day.

Section 55 provides that the periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that the worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

Section 56 provides that the periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest, they shall not spread over more than ten and half hours in any day.

Section 51 provides that no adult worker shall be required or allowed to work in a factory for more than 48 hours in any week. In 'Richa & Company V. Shri Suresh Chand' – 2009 LLR 333 (SN) (Del HC) it was held that increase of 15 minutes working will not be violative of Section 51 of the Act.

Weekly holidays

Section 52 provides that no adult worker shall be required or allowed to work in a factory on the first day of the week unless-

- he has or will have a holiday for a whole day on one of the three days immediately before or after the said day; and
- the manager of the factory, has, before the said day or the substituted day whichever is earlier-
 - delivered a notice at the office of the Inspector of his intention to require the worker to work on the said day and of the day which is to be substituted; and
 - displayed a notice to that effect in the factory.

Compensatory holidays

Section 53 provides that if a worker is deprived of any of the weekly holidays he shall be allowed within the month in which the holidays were due to him or within two months immediately following that month, compensatory holidays of equal number to the holidays so lost shall be given.

Shift duty

Section 57 provides that where a worker in a factory works on a shift which extends beyond midnight-

- for the purposes of Section 52 and 53, a holiday for a whole day shall mean in his case a period of 24 consecutive hours beginning when his shift ends;

- the following day for him shall be deemed to be the period of 24 hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

Section 58 provides that the work shall not be carried on in any factory by means of a system of shifts so arranged that more than one relay of workers is engaged in work of the same kind at the same time.

Overtime

Section 59 provides that where a worker works in a factory for more than 9 hours in any day or for more than 48 hours in any week, he shall, in respect of the overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

Double employment

Section 60 imposes restriction that no adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as may be prescribed.

Register of adult workers

Section 62 provides that a register of adult workers shall be maintained, showing-

- the name of each adult worker in the factory;
- the nature of the work;
- the group, if any, in which he is included;
- where his group works on shifts, the relay to which he is allotted;
- such other particulars as may be prescribed.

Employment of women

Section 66 provides that the provisions of this Chapter shall, in their application to women in factories, be supplemented by the following further restrictions-

- no exemption from the provisions of Section 54 may be granted in respect of any woman;
- no woman shall be required or allowed to work in any factory except between the hours of 6 a.m. and 7 p.m.;
- the State Government may authorize the employment of any women between the hours of 10 p.m. and 5 a.m.;
- there shall be no change of shifts except after a weekly holiday or any other holiday.

Prohibition of employment of young children

Section 67 provides that no child who has not completed his 14th year shall be required or allowed to work in any factory.

Adolescent worker

Section 68 provides that a child who has completed his 14th year or an adolescent shall not be allowed to work in any factory unless-

- a certificate of fitness granted is in the custody of the manager of the factory; and
- such child or adolescent carries while he is at work a token giving a reference to such certificate.

Certificate of fitness

Section 69(1) provides that a certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the Manager of a factory that such person will be employed therein if certified to be fit for work in a factory, or on the application of the Manager of the factory in which any young person wishes to work, examine such person and ascertain his fitness for work in a factory.

Section 69(2) provides that the certifying surgeon, after examination, may grant to such young person, in the prescribed form or may renew-

- a certificate of fitness to work in a factory as a child, if he is satisfied that the young person has completed his 14th year, that he has attained the prescribed physical standards and that he is fit for such work;
- a certificate of fitness to work in a factory as an adult, if he is satisfied that the young person has completed his 15th year and is fit for a full day's work in a factory.

The certificate granted by the certifying surgeon shall be valid for a period 12 months from the date thereof. He shall revoke any certificate granted or renewed if in his opinion the holder of it is no longer fit to work in capacity stated therein in a factory. In case the certifying surgeon refuses to give certificate, he has to give reasons for the same. If a certificate is given under certain conditions, the young person shall not be allowed in any factory except in accordance with those conditions. The occupier is to pay the fee for getting the certificate from the certifying surgeon and the same shall not be recovered from the young person, his parents or guardian.

Working hours for children

Section 71 provides that no child shall be employed or permitted to work in any factory for more than four and a half hours in any day and during night. The period of work of all children employed in a factory shall be limited to two shifts which shall not overlap or spread over more than five hours each. Each child shall be employed in only one of the relays which shall not, except with the previous permission. No female child shall be allowed to work in any factory except between 8 a.m. and 7 p.m.

Register of child workers

Section 73 provides that the Manager of every factory in which children are employed shall maintain a register of child workers showing-

- the name of each child worker in the factory;
- the nature of his work;
- the group, if any, in which he is included;
- where his group works on shifts, the relay to which he is allotted; and
- the number of his certificate of fitness granted under Section 69.

Annual leave

Section 79 provides that every worker who has worked for a period 240 days or more in a factory during a calendar year shall be allowed leave with wages for a number of days calculated at the rate of-

- if an adult, one day for every 20 days of work performed by him during the previous calendar year;
- if a child, one day for every 15 days of work performed by him during the previous calendar year.

The following shall be deemed to be days on which the worker has worked for the purpose of computation of the period of 240 days or more-

- any days of lay off, by agreement or contract or as permissible under the standing orders;
- in the case of a female worker, maternity leave for any number of days not exceeding 12 weeks; and
- the leave earned in the year prior to that in which the leave is enjoyed.

but the above shall not be entitled for a worker to earn leave. The leave admissible shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

In calculating the leave fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

Carry forward of leave

If a worker does not in any calendar year take the whole of the leave allowed to him any leave not taken by him shall be carried over to the succeeding year. The total number of leave that may be carried forward shall not exceed 30 days in the case of an adult or 40 in the case of a child. A worker, who has applied for leave with wages but has not been granted, shall be entitled to carry forward the leave refused without any limit.

Availing of leave

A worker may, at any time, apply in writing to the Manager not less than 15 days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during the calendar year. Such application shall be made not less than 30 days before the date on which he wishes his leave to begin, if he is employed in a public utility service. An application for leave shall not be refused unless refusal is in accordance with the scheme for the time being in operation.

Wages during leave period

Section 80 provides that a worker shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of food grains and other articles. In case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of the total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked.

Advance payment

Section 81 provides that a worker who has been allowed leave for not less than four days, in case of an adult, and five days, in the case of a child, shall, before his leave begins be paid the wages due for the period of the leave allowed.

Encashment of leave

Section 79(3) provides that if a worker is discharged or dismissed from services or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, shall be entitled to the wages in lieu of the quantum of leave to which he was entitled immediately before such termination of his services. Such payment shall be made before the expiry of the second working day from the date of discharge, dismissal or quitting and where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death.