

EDITOR'S NOTE

Hello Readers,

The compliance Calendar for Nov 2014 includes remittances for Professional Tax, PF and ESI

In important judgements, the Honourable Supreme Court of India has held that termination for unauthorized absence, without enquiry is not justified and change in condition of service without prescribed procedure will be illegal. The Honourable Madras High Court has pronounced that reinstatement would be justified when enquiry is not proper and abandonment of service will depend on intention of employee. In a case before the Honourable Karnataka High Court the judgement is that model standing orders will apply till the employer sends standing orders for certification. The Honourable Delhi High Court has held that performing incident work by a person would be deemed employee for coverage under the Provident Fund Act. The honourable Bombay High Court, in its verdict has said that Part-time medical practitioner on contract basis is neither a 'workman' under ID Act nor an 'employee' under Provident Fund Act



In News to Note - Labour Minister of India, Mr Narendra Singh Tomar has said that new labour laws will be enacted soon to spur investment. FICCI has suggested deletion of section 10 in contract labour (R&A) act. Drivers engaged by managers and reimbursed by the company will be covered by the Provident Fund Act. To make inspections easier, all establishments will be issued with a Labour Identification Number (LIN)/Shram Pehchaan Sankhya. The Madhya Pradesh Government has introduced the effective implementation of voluntary compliance scheme (VCS) in factories and establishments

We hope you find the contents of this newsletter relevant and useful. We welcome your suggestions and inputs for enriching the content of this newsletter. Please write to contactadp@adp.com

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Compliance Calendar for the month of Nov 2014

Due Date	Activity	Due Under	Mode
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Professional Tax Status Remittances

10th Nov 14	Andhra Pradesh & Madhya Pradesh	State wise regulations	By Challan
15th Nov 14	Gujarat	Gujarat PT regulations	By Challan
20th Nov 14	Karnataka	Karnataka PT regulations	By Challan
21st Nov 14	West Bengal	West Bengal PT regulations	By Challan
30th Nov 14	Maharashtra, Assam & Orissa	State wise regulations	By Challan
20th Nov 14	Karnataka	Karnataka PT regulations	Online

Labour Welfare Fund Remittances

20th Nov 14	Kerala	Kerala State Labour Welfare Fund	By Challan
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PF Central

15th Nov 14	Remittance of Contribution	EPF & MP Act 1952	By Challan
15th Nov 14	International worker with wages and Nationality	EPF & MP Act 1952	Statement in IW 1

ESI Central

21st Nov 14	Remittance of Contribution (Main code and Sub Codes)	ESIC Act 1948	By Challan
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IMPORTANT JUDGEMENTS

TERMINATION FOR UNAUTHORIZED ABSENCE, WITHOUT ENQUIRY, NOT JUSTIFIED AND CHANGE IN CONDITION OF SERVICE WITHOUT PRESCRIBED PROCEDURE WILL BE ILLEGAL

In a case of **Raghubir Singh Vs General manager, Haryana Roadways, Hissar**, the honourable Supreme Court of India through the verdict by its bench comprising honourable justices **Mr. Sudhansu Joyti Mukhopadhyaya & Mr. V Gopala Gowda** pronounced that

- Service of the charge-sheet upon the delinquent employee by publishing the same in the newspaper is not proper since it does not reach his hands.
- An employer is duty bound to conduct the enquiry following the industrial employment (standing orders) act, 1946 or give justified reasons for dispensing with the same.
- Any action by the employer changing the conditions of service of the workman without following due procedure would be bad in law.
- When the employee was falsely implicated in a criminal case by his employer, termination of his service on account of misconduct of unauthorized absence without proper enquiry is not justified.
- Disciplinary proceedings under the Haryana civil service (Punishment and appeal) rules, 1987 are not tenable when the employee is covered under the definition of workman under section 2(s) of the industrial disputes act, 1947 because he, in fact, is to be governed by the model standing orders framed under the industrial employment (standing orders) act, 1946.
- An industrial dispute may be raised at any time by the workman irrespective of long delay is subject to justified reasons of abnormal delay, beyond his control.
- Limitation act is not applicable under article 137 of the constitution of India while deciding an industrial dispute raised by the workman.
- Rejection of reference of dispute on the ground of delay, without appropriate reason by the labour court, is not justified.
- When the termination of service of a workman is effected by the employer in violation of principles of dismissal is liable to be set aside.
- Workman is entitled to reinstatement with back-wages if the order of his termination is held to be bad in law by the court.
- Supreme Court has power to exercise its jurisdiction under article 136 of the constitution of India in cases where there has been miscarriage of justice by the lower court or justice has been denied to the workman who has been relentlessly litigating for his legitimate rights.

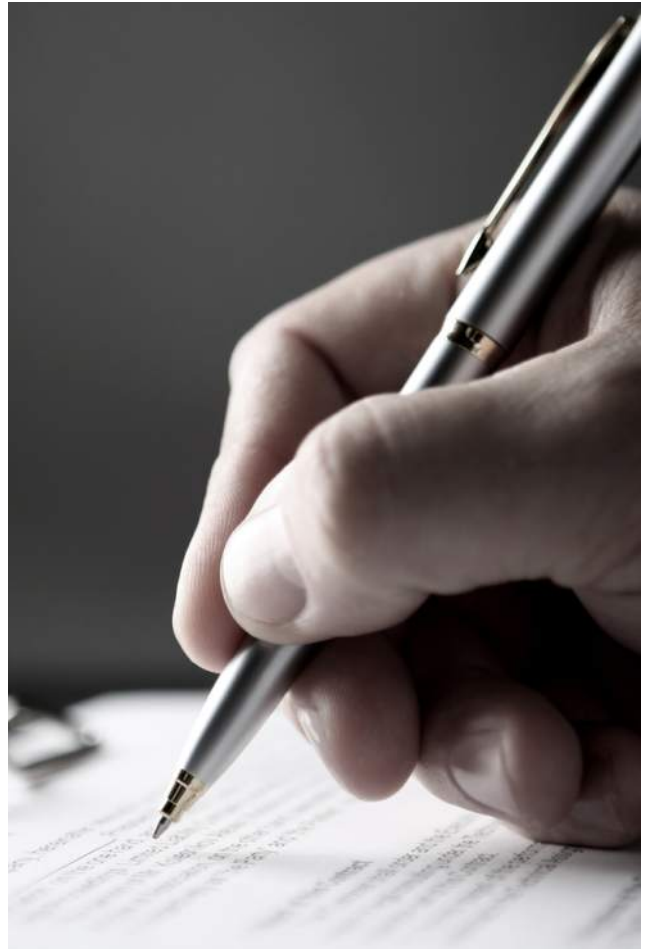




REINSTATEMENT WOULD BE JUSTIFIED WHEN ENQUIRY IS NOT PROPER AND ABANDONMENT OF SERVICE WILL DEPEND ON INTENTION OF EMPLOYEE

In an extraordinary case of **M/s. Milan Biri Factory & Others Vs The Regional Provident Fund Commissioner**, the honourable Madras High Court through honourable justice Mr. R. Mahadevan pronounced that

- When the order of termination of services of the workman was passed without issuing second show cause notice, without supplying relevant documents, charter of duties and not holding the enquiry properly, awarding reinstatement by the labour court to the workman is justified.
- Vitiating the enquiry proceedings by the labour court has no placed reliance upon the audit objections but the copy thereof was not furnished to the delinquent in such a procedure is against the principles of natural justice.
- Abandonment or relinquishment of service by the employee is always a question of intention which cannot be attributed to an employee without adequate evidence.
- A plea of abandonment by the management is not sustainable if no notice was issued to the employee who is unauthorized absent from duty for resuming his duty.



MODEL STANDING ORDERS APPLY TILL THE EMPLOYER SENDS STANDING ORDERS FOR CERTIFICATION

In a case of **C.C.I. Ltd Udupi Vs. Deputy labour commissioner and appellate authority under the payment of gratuity act & Ors**, the honourable Karnataka High Court through the verdict by the bench comprising honourable Justice Mr. Ram Mohan Reddy pronounced that

- Gratuity of an employee can be forfeited strictly as per provisions of section 4(6) of the act and not otherwise.
- When no notice was issued by the employer to the employee over the allegation of occasioning damages sustained by the petitioner due to misconduct committed by the employee, entailing forfeiture of gratuity in its entirety is not justified.
- When no material documents constituting substantial legal evidence justifying forfeiture of gratuity is placed by the petitioner before the controlling authority, order of forfeiture of gratuity passed by the employer has been rightly set aside by the controlling authority and confirmed by the appellate authority under the payment of gratuity act, 1972.



PERFORMING INCIDENT WORK BY A PERSON WOULD BE DEEMED EMPLOYEE FOR COVERAGE UNDER PROVIDENT FUND ACT

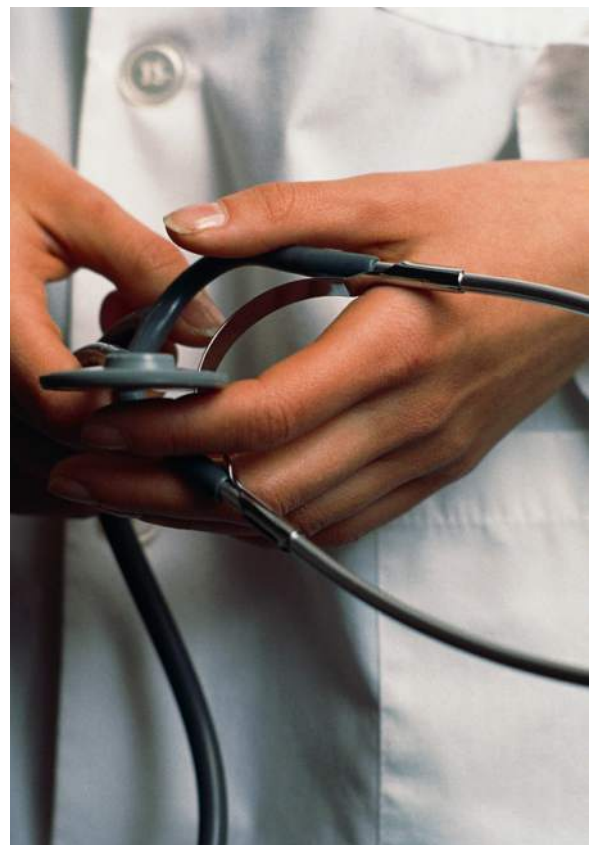
In a case of **Sinha Shipping Pvt Ltd Vs the assistant provident fund commissioner, Regional office Delhi North**, the honourable **Delhi High Court** through the verdict by honourable **Justices Mr. Suresh Kait** pronounced that

- Employer's plea that out of 20 employees, as per list already submitted to the EPF authority, 2 the managing director of the company, not performing any work of the employer has not submitted any document showing exact strength of its man-power.
- If an employee does some work which is ancillary incidental or has relevance or link with the objects of the establishment, he would be covered by the definition of employee under the act irrespective of his being casual, temporary, permanent or engaged through contractor.
- If any amount towards salary/wages is paid by the employer to any person employed as a personal worker by an officer of the company and the employer fails to prove that such amount is actually reimbursement to that officer, the amount so paid would be wages paid to an employee of the employees' provident funds and miscellaneous provident act.
- When the name of the petitioner-employer itself shows that it is engaged to deal with ships for the last more than a decade petitioner cannot be allowed at this belated stage to say that it is not involved in the manufacturing of ships and do not come under the first schedule of the act without submitting any documentary evidence to establish its exact nature of activity.

PART-TIME MEDICAL PRACTITIONER ON CONTRACT BASIS IS NEITHER A 'WORKMAN' UNDER ID ACT NOR AN 'EMPLOYEE' UNDER PROVIDENT FUND ACT

In a case of **M/S Hindustan lever limited Vs. The Assistant provident fund commissioner and another**, the honourable **Bombay High Court** through the verdict by honourable **Justices Mr. Z.A. Haq** pronounced that

- A part-time medical practitioner, engaged on contract basis for fixed remuneration as per retainer ship agreement, is neither a 'Workman' under section 2(a) of the industrial disputes act, 1947 of employee as provided in section 2(f) of the employees' provident funds and miscellaneous provisions act, 1952.
- Definition of employee as per section 2(f) of the employees' provident funds and miscellaneous provisions act, 1952 and definition of the industrial disputes act, 1947 are different.
- As per paragraph 26B of the scheme as framed under the employees' provident funds and miscellaneous provisions act, 1952 "if any question arises whether an employee is entitled or required to become a member, or as regards the date from which he is so entitled or required to become a member the decision thereon of the regional provident fund commissioner shall be final and that of the assistant provident fund commissioner"



NEWS TO NOTE

INDIA TO ENACT NEW LABOUR LAWS SOON TO SPUR INVESTMENT: TOMAR



- Comprehensive changes in labour laws are being made to facilitate investment and entrepreneurship, including drafting a single law for the micro, small and medium enterprises.
- “We are amending our labour laws in order to encourage investment, ease of doing business and entrepreneurship. Amendments have also been proposed to enhance safety at workplace and working conditions especially for women” labour minister Narendra Singh Tomar said at Melbourne.
- He was addressing the labour and employment ministerial conference of G-20 nations here.
- One of the key requirement to boost labour market participation rate is to minimize the skill mismatch in job market by enhancing the skill base of the workforce in emerging economies like India.

DELETION OF SECTION 10 IN CONTRACT LABOUR (R&A) ACT SUGGESTED

- To provide flexibility to engage contract workers, FICCI also suggested deletion of section 10 of the Contract labour (Regulation & Abolition) act 1970.

LABOUR LAW TO BE AMENDED BY MADHYA PRADESH ALSO

- Madhya Pradesh will soon amend its labour laws and rationalize land management rules to make them more investor-friendly, becoming the second BJP-ruled state after Rajasthan that place to do so.
- These changes are likely to be announced following the state's high profile 'Global investment summit' which is scheduled to be held in Indore in Oct 2014.
- In early June, the Rajasthan state cabinet cleared 20 amendments to four labour laws-industrial disputes act, Factories act contract labour (Regulation and Abolition) act and Apprenticeship act-in order to make it easy to hire and fire workers, close and open industries, among other things.

DRIVERS ENGAGED BY MANAGERS AND REIMBURSED BY THE COMPANY WILL BE COVERED

- The drivers, as engaged by the managers of the company whose wages are reimbursed by the company through the managers, will be covered under the employees' provident funds & miscellaneous provisions act since the company has been providing uniforms, foot wears, monsoon equipment, winter clothing and even overtime when their services were required by their managers beyond their duty hours. In another case the Karnataka high court has held that the drivers, engaged by the executives, will not be treated as employees' of the company for coverage under provident fund Act.



LABOUR IDENTIFICATION NUMBER (LIN)/SHRAM PEHCHAAN SANKHYA

- In order to simplify the labour inspections, submission of returns for compliance of Labour Laws, the establishments have been assigned a unique Labour Identification Number (LIN)/Shram Pehchaan Sankhya(LPS)
- LIN/SPS will be used for all your future inspections/returns, view your establishment's profile on Unified Portal of Ministry of Labour & Employment i.e. <http://efilelabourreturn.gov.in/uwp/home>
- Filing of self-certified and simplified Single Online Return by the industry for 16 labour laws. This will be subject to random verification. Timely redressal of grievances through the portal Complete database at one place to add to informed policy process

INTERNATIONAL WORKERS AND THEIR BENEFICIARIES CAN NOW GET DISBURSEMENT OF PROVIDENT FUND BENEFITS INTO THEIR OVERSEAS BANK ACCOUNTS

The Employees' Provident Fund Organisation has vide its letter No. IWU/8(2)2009/banking agreement dated 20 October 2014, laid down the mechanism for disbursement of Provident Fund claims to overseas bank accounts of International Workers including their beneficiaries.

IMPLEMENTATION OF VOLUNTARY COMPLIANCE SCHEME (VCS) IN FACTORIES AND ESTABLISHMENTS

Madhya Pradesh Government introduces the effective implementation of voluntary compliance scheme (VCS) in factories and establishments. The link may help for online Registration of shops and commercial establishments in the state of Madhya Pradesh .

<http://mpsc.mp.nic.in/LabourPortal/LabourCommissioner/StaticPages/RegistrationDocuments.aspx>



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