Few Helping Turtles

# FHT Updates

# Labour Law 2

# 2nd Internal Answers & Questions

## 1. E.S.I. (Employees' State Insurance)

**Objective:** The Employees' State Insurance Act, 1948 provides social security benefits to employees facing financial distress due to sickness, maternity, or employment injury.

**Applicability:**

- Applies to non-seasonal factories and specific establishments (shops, hotels, cinemas, etc.) employing 10 or more persons.
- **Wage Limit:** Covers employees drawing wages up to ₹21,000 per month (₹25,000 for persons with disabilities).

**Key Benefits:**

1. **Medical Benefit:** Comprehensive care for the insured and their family.
2. **Sickness Benefit:** Cash compensation (70% of wages) for up to 91 days.
3. **Maternity Benefit:** Full wages for 26 weeks for confinement.
4. **Disablement Benefit:** Cash compensation for temporary (90% of wages) or permanent disablement due to employment injury.
5. **Dependants' Benefit:** Monthly pension to dependants if death occurs due to employment injury.

**Administration:** Administered by the Employees' State Insurance Corporation (ESIC).

## 2. S.I.A. (Social Impact Assessment) Limitation

*Note: In Indian law, SIA is primarily governed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act).*

**Concept:** SIA is a mandatory evaluation of the social consequences of government land acquisition for public projects, assessing displacement and social costs.

**Limitations (Latest Amendments):** Successive governments, primarily at the State level, have amended the Act to bypass or limit mandatory SIA to expedite land acquisition for rapid development.

**Common Exemptions:** States frequently exempt the following from SIA and consent requirements:

1. Industrial Corridors.
2. Infrastructure Projects (electrification, irrigation, affordable housing).
3. Public-Private Partnership (PPP) Projects.
4. National Security/Defence Projects.

**Impact:** While speeding up development, critics argue these limitations remove vital safeguards for marginalized communities and farmers, compromising fair rehabilitation.

# 3. Retired Employees Benefits

Indian statutes aim to ensure financial security for employees post-retirement.

**Key Statutory Benefits:**

1. **Employees' Provident Fund (EPF):** A mandatory savings scheme where employer and employee contribute (usually 12% each). The accumulated lump sum and interest are paid upon retirement (age 58).
2. **Employees' Pension Scheme (EPS), 1995:** Out of the employer's 12% EPF contribution, 8.33% goes to EPS. It guarantees a monthly pension upon retirement after a minimum of 10 years of service.
3. **Payment of Gratuity:** A lump sum appreciation payment made on retirement, resignation, or death, requiring a minimum of *five years continuous service* (except in death/disablement). Calculation is generally 15 days' wages per year of service.
4. **Medical Benefits:** Retired insured persons under ESI can continue medical benefits for themselves and their spouses by paying a nominal annual fee (e.g., ₹120).

# 4. E.S.I. Contribution

The ESI Scheme is funded by contributions from both employers and employees based on wages.

**Current Rates (Since July 1, 2019):**

- **Employer's Contribution: 3.25%** of wages.
- **Employee's Contribution: 0.75%** of wages.
- **Total Contribution: 4.00%** of wages.

**Key Rules:**

- **Responsibility:** The principal employer must pay both shares to ESIC. The employee's share (0.75%) is deducted from their wages.
- **Low-Wage Exemption:** Employees earning below a specific daily wage (currently ₹137/day) are exempt from their 0.75% contribution. The employer must still pay their 3.25% share.
- **Time Limit:** Contributions must be deposited within 15 days of the last day of the calendar month they fall due.

# 5. Daily Wages

**Concept:** A "daily wager" is employed day-to-day, paid based on days or hours worked, common in construction and seasonal labor.

**Legal Standing:**

1. **Minimum Wages Act, 1948:** Employers are legally bound to pay at least the minimum rates notified by the government for different classes of work (skilled, unskilled) on a daily or hourly basis.
2. **Regularization:** The Supreme Court (*Secretary, State of Karnataka vs. Umadevi*) ruled daily wagers do not have an automatic right to permanent employment just by working for years. Proper recruitment rules must be followed.
3. **Protections:** If a daily wager works continuously for 240 days in a year, they may gain protections under the Industrial Disputes Act, 1947, such as required notice and compensation before termination.

4. **Social Security:** While traditionally lacking, if employed in a covered establishment, daily wagers may be entitled to PF and ESI benefits, though practical implementation remains difficult.

## 6. Daily Average Wage Exempting E.S.I. Contribution

**Concept:** To protect the lowest-income workers, the ESI Act provides an exemption from paying the employee's share of the contribution.

**Current Limit:** Employees whose average daily wage is **₹137 or less** are exempt from paying their 0.75% contribution.

**Key Rules:**

- **Employer Liability Remains:** This exemption only applies to the employee. The employer **must still pay** their full 3.25% share of the contribution for these workers.
- **Full Benefits:** Despite not contributing, these exempted employees are still entitled to all benefits under the ESI Scheme (medical, sickness, maternity, etc.).

## 7. Maternity Benefit

**Objective:** Governed primarily by the Maternity Benefit Act, 1961, it protects the dignity of motherhood and provides for full and healthy maintenance of the woman and her child when she is not working.

**Applicability:** Applies to factories, mines, plantations, shops, and establishments with 10 or more employees (where the ESI Act does not apply).

**Key Provisions:**

- **Duration:** The total maternity leave is **26 weeks** (up to 8 weeks can be taken before the expected date of delivery).
- **Third Child Onwards:** For a woman having two or more surviving children, the benefit is limited to **12 weeks**.
- **Adopting/Commissioning Mothers:** Entitled to 12 weeks of maternity benefit from the date the child is handed over.
- **Creche Facility:** Mandatory for establishments with 50 or more employees.
- **Protection from Dismissal:** It is illegal to discharge or dismiss a woman while on maternity leave

## 8. E.S.I. Act 1948: Application to Maternity Benefit

**Relationship:** The ESI Act, 1948 and the Maternity Benefit Act, 1961 are mutually exclusive.

**Key Principles:**

- **ESI Coverage Precedes:** If a woman employee is covered under the ESI Act (i.e., works in a covered establishment and earns up to ₹21,000/month), she must claim maternity benefits under the ESI Act, **not** the Maternity Benefit Act.
- **Benefit Rate:** Under ESI, maternity benefit is payable at **100% of the average daily wages** for a period of 26 weeks.
- **Eligibility Condition:** To claim ESI maternity benefit, the insured woman must have contributed for at least **70 days** in the two immediately preceding contribution periods.

- **Confinement Expenses:** If an insured woman (or the wife of an insured person) gives birth in a place where necessary medical facilities under the ESI Scheme are unavailable, she gets a fixed confinement expense (currently ₹7,500).

## 9. Compensation for Death under Employees' Compensation Act, 1923

**Objective:** Provides financial compensation to dependants of employees who die due to an injury arising out of and in the course of employment.

**Calculation of Compensation (Section 4):** Where death results from the injury, the compensation is calculated as:

- **Formula: 50% of the monthly wages** of the deceased employee multiplied by the **relevant factor** (based on the employee's age at the time of death).
- **OR**
- **Minimum Amount:** An amount of ₹**1,20,000** (whichever is higher).

**Important Notes:**

- **Wage Ceiling:** For calculation purposes, the Central Government currently caps the monthly wage limit at ₹**15,000**. (So, max compensation = ₹7,500 x relevant factor).
- **Funeral Expenses:** In addition to the compensation, the employer must pay a minimum of ₹**5,000** towards funeral expenses to the eldest surviving dependant.

## 10. Welfare Facilities under Factories Act, 1948

**Objective:** Chapter V (Sections 42-50) mandates employers to provide specific facilities to ensure the comfort, health, and well-being of factory workers.

**Key Statutory Welfare Facilities:**

1. **Washing Facilities (Sec 42):** Adequate and suitable, separate for male and female workers.
2. **Facilities for Storing and Drying Clothing (Sec 43):** Places for keeping clothes not worn during working hours.
3. **Facilities for Sitting (Sec 44):** For workers obliged to work in a standing position, to take advantage of opportunities for rest.
4. **First-aid Appliances (Sec 45):** At least one equipped first-aid box per 150 workers. Factories with >500 workers must have an ambulance room.
5. **Canteens (Sec 46):** Mandatory for factories employing more than **250 workers**.
6. **Shelters, Rest Rooms, and Lunch Rooms (Sec 47):** Mandatory for factories employing more than **150 workers**.
7. **Creches (Sec 48):** Mandatory for factories employing more than **30 women workers** (to care for children under 6 years of age).
8. **Welfare Officers (Sec 49):** Must be appointed in factories employing **500 or more workers**.

## 11. Gratuity: When Payable?

**What is Gratuity?** Gratuity is a lump-sum financial benefit given by an employer to an employee as a token of appreciation for their long, continuous, and dedicated service to the organization. It is essentially a retirement benefit, though payable in other specific circumstances.

**Governing Act:** Payment of Gratuity Act, 1972.

**Condition for Payment (Section 4):** Gratuity is payable to an employee on the termination of their employment after they have rendered **continuous service for not less than five years**.

**When it becomes payable:**

1. **Superannuation:** On retirement at the designated age.
2. **Retirement or Resignation:** On voluntarily leaving the job (after 5 years).
3. **Death or Disablement:** Due to accident or disease.

**Crucial Exception:** The condition of five years of continuous service is **not necessary** if the termination of employment is due to death or disablement. In the case of death, gratuity is paid to the nominee or legal heir.

## 12. Child Labour Protection: When Enacted & Main Features

**Governing Act:** The primary legislation is the **Child and Adolescent Labour (Prohibition and Regulation) Act, 1986**.

**Historical Context:**

- **Original Enactment:** Passed in **1986** (originally named the Child Labour (Prohibition and Regulation) Act).
- **Major Amendment (2016):** The Act was significantly amended in **2016**, shifting the focus from mere regulation to a stricter prohibition.

**Main Features (Post-2016 Amendment):**

1. **Total Prohibition for Children:** It completely bans the employment of children (anyone under the age of 14) in *all* occupations and processes.
2. **Introduction of "Adolescent":** It legally defines an "adolescent" as a person between 14 and 18 years of age.
3. **Prohibition for Adolescents:** It bans the employment of adolescents in designated "hazardous occupations and processes" (like mining, explosives, etc.).
4. **Family Enterprise Exception:** A child can help their family or family enterprise (which is not a hazardous occupation) *only after* school hours or during vacations.
5. **Strict Penalties:** Employment of children is a cognizable offense. Punishments for employers include imprisonment (6 months to 2 years) and/or a fine (₹20,000 to ₹50,000) for a first offense.

## 13. Maternity Benefit: When Enacted?

**Governing Act:** The **Maternity Benefit Act, 1961**.

**Historical Context:**

- **Enactment:** It was enacted by Parliament on **December 12, 1961**.
- **Purpose:** To regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits.
- **Major Amendment (2017):** The Maternity Benefit (Amendment) Act, 2017 significantly increased the duration of paid maternity leave from 12 weeks to 26 weeks.

## 14. What is the Minimum Period for Maternity Benefit?

**Governing Act:** Maternity Benefit Act, 1961 (as amended in 2017).

**Eligibility Condition:** To be eligible for *any* maternity benefit, a woman must have actually worked in the establishment for a **minimum period of 80 days** in the twelve months immediately preceding the date of her expected delivery.

**Duration of the Benefit:**

- **General Rule:** The maximum period for which any woman shall be entitled to maternity benefit is **26 weeks** (previously 12 weeks).
- **Distribution:** Out of these 26 weeks, not more than **8 weeks** shall precede the date of her expected delivery.
- **Subsequent Children:** For a woman having two or more surviving children, the maximum period of maternity benefit is **12 weeks** (not more than 6 weeks preceding the expected delivery).

## 15. Employees' Compensation Act

**Objective:** The Employees' Compensation Act, 1923 (formerly the Workmen's Compensation Act) aims to provide financial protection to employees and their dependants through compensation for injuries or death arising out of and in the course of employment.

**Key Concepts:**

- **"Arising out of and in the course of employment":** The core principle. The injury/death must be directly related to the employee's duties and happen while they are working.
- **Strict Liability:** The employer is generally liable to pay compensation regardless of negligence, provided the injury occurred during employment.
- **Exceptions to Liability:** An employer is *not* liable if the injury (not resulting in death) is directly attributable to the employee being under the influence of drugs/alcohol, willful disobedience of safety rules, or willful removal of safety guards.
- **Types of Disablement:** Compensation is calculated based on whether the injury causes temporary partial, temporary total, permanent partial, or permanent total disablement.