

Labour & Industrial Law - II

Important Short Questions & Answers - Topics

1. Whitley Commission Recommendations:

The Whitley Commission was a committee appointed to review and make recommendations on various aspects of labor law in India. The commission submitted its report in 1931, which led to significant reforms in the labor legislation. Some key recommendations included the recognition of trade unions, the establishment of conciliation machinery for industrial disputes, the introduction of a minimum wage, the regulation of working hours, and the provision of social security measures for workers.

2. Full Bench Formula in Bonus:

The Full Bench Formula refers to a method used for calculating bonus payments to employees in India. It was established by a Full Bench decision of the Supreme Court. According to this formula, the bonus payable to an employee is determined based on a percentage of the allocable surplus of the establishment, which is calculated by deducting various specified amounts from the gross profits. The Full Bench Formula provides guidelines for the allocation of surplus between the employer and the employees, ensuring a fair distribution of bonus payments.

3. Maternity Benefit:

Maternity benefits are an essential part of labor law in India and aim to protect the rights of women workers. The Maternity Benefit Act, 1961, provides for various benefits to pregnant women and new mothers. It includes provisions for paid leave, medical benefits, nursing breaks, and other facilities to ensure the well-being of both the mother and the child. The act also prohibits the dismissal of a woman during her maternity leave and guarantees job security. Maternity benefit provisions play a crucial role in promoting gender equality in the workplace and supporting working women in balancing their work and family responsibilities.

4. Welfare of Labour:

The welfare of labor is a fundamental aspect of labor law in India. It encompasses a range of measures and initiatives aimed at promoting the well-being and improving the living conditions of workers. These measures may include provisions for basic amenities like housing, healthcare, sanitation, clean drinking water, education, and recreational facilities. Labor welfare initiatives are usually implemented by both the government and employers to ensure a healthy

and conducive working environment for workers. The objective is to enhance the overall quality of life of workers and create a harmonious relationship between employers and employees.

5. Set On and Set Off Allocable Surplus:

Set on and set off of allocable surplus refers to the process of allocating and distributing the surplus profits of an establishment for the purpose of calculating bonus payments to eligible employees. Under the Payment of Bonus Act, 1965, an employer is required to set aside a certain percentage of the allocable surplus as a bonus for employees. The employer can "set off" any previous losses against the current year's profits, and the remaining surplus is available for distribution as a bonus. On the other hand, the employer can "set on" any surplus from the previous year and add it to the current year's allocable surplus for calculating the bonus. These provisions ensure a fair and equitable distribution of profits as a bonus to eligible employees.

6. Social Security:

Social security refers to a system of measures and programs aimed at providing financial protection and support to individuals and families during various contingencies, such as old age, disability, sickness, unemployment, and maternity. In India, social security for workers is primarily governed by various labor laws, including the Employees' Provident Fund Act, the Employees' State Insurance Act, and the Maternity Benefit Act. These laws mandate the establishment of schemes like the Employees' Provident Fund (EPF) and the Employees' State Insurance (ESI) to provide financial assistance and medical benefits to workers. The goal is to ensure a basic level of income security and access to healthcare services for employees and their families.

7. ESI Corporation:

The Employees' State Insurance Corporation (ESIC) is a statutory body established under the Employees' State Insurance Act, 1948.

It is responsible for implementing the Employees' State Insurance (ESI) Scheme, which provides medical, cash, and other benefits to eligible employees and their dependents. The ESI Corporation manages a network of hospitals, dispensaries, and other medical facilities to deliver healthcare services to insured workers. It also administers the collection of contributions from employers and employees towards the scheme. The ESI Corporation plays a vital role in ensuring social security and access to medical care for employees engaged in various industries and establishments.

8. Child Labour:

Child labor refers to the employment of children below a certain age in any form of work that deprives them of their childhood, interferes with their ability to attend regular schools, and is mentally, physically, socially, or morally harmful. In India, child labor is strictly prohibited and is

governed by the Child Labour (Prohibition and Regulation) Act, 1986. The law prohibits the engagement of children in hazardous occupations and sets the minimum age for employment. It also establishes mechanisms for the enforcement of the law and provides for penalties for violations. The government, along with various non-governmental organizations, works towards eliminating child labor and promoting the education and welfare of children.

9. Definition of Wages:

The definition of wages is crucial in labor law as it determines the scope of various labor-related benefits and protections. In India, the definition of wages is provided under the Payment of Wages Act, 1936, and other labor legislations. According to the Act, wages include all remuneration, whether in cash or kind, payable to a worker for the work done or services rendered, including basic salary, allowances, and bonuses. However, certain components such as employer contributions to pension funds or provident funds are excluded from the definition. The definition of wages is significant for the calculation of various benefits such as overtime pay, bonus, and provident fund contributions.

10. Fair Wage:

A fair wage refers to the minimum wage rate that is deemed fair and reasonable for a worker's labor in relation to their skills, qualifications, and the prevailing economic conditions. The concept of a fair wage is important in labor law to ensure that workers receive a decent income for their work. In India, fair wages are determined by the Minimum Wages Act, 1948. The act establishes minimum wage rates for different industries and regions based on factors such as the cost of living, the nature of the work, and the skill level required. Fair wages aim to prevent exploitation and provide workers with a standard of living that meets their basic needs and enables them to live a dignified life.

11. ESI Corporation:

The Employees' State Insurance (ESI) Corporation is a social security organization established under the Employees' State Insurance Act, 1948 in India. It provides medical, financial, and other benefits to employees and their dependents. The ESI Corporation manages the ESI Scheme, which is applicable to establishments employing a certain number of employees. It aims to ensure health and social security coverage for workers in case of sickness, maternity, employment injury, or any related contingencies. The ESI Corporation administers the collection of contributions from employers and employees, maintains a fund, and operates dispensaries, hospitals, and other healthcare facilities. It also regulates the implementation of ESI-related provisions and resolves disputes between employers and employees regarding ESI benefits.

12. Minimum Wages:

Minimum wages are the lowest wage rates set by the government that employers are legally obligated to pay their workers. In India, minimum wage rates are determined by the respective

state and central governments. The Minimum Wages Act, 1948, establishes the framework for fixing and revising minimum wages to ensure fair remuneration for various categories of workers. The minimum wage rates take into account factors such as the type of work, skill level, geographical location, and cost of living. The objective of minimum wage laws is to prevent exploitation of workers, provide them with a decent standard of living, and reduce income inequality. The minimum wage rates are periodically revised by the government to keep pace with inflation and changing economic conditions.

13. Social Assistance:

Social assistance refers to various forms of government support provided to individuals or families facing economic hardships or vulnerabilities. In India, social assistance programs are implemented to address poverty, unemployment, disability, and other social challenges. These programs include schemes such as the National Social Assistance Program (NSAP), which provides financial assistance to the elderly, widows, and disabled individuals. Additionally, there are schemes like the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) that offer employment opportunities and income support to rural households. Social assistance programs play a crucial role in ensuring basic social security, alleviating poverty, and promoting inclusive growth. They aim to uplift marginalized sections of society and enable them to access essential resources and services.

14. Total Disablement:

Total disablement, in the context of Indian labor law, refers to a condition where a worker suffers from complete and permanent loss of physical or mental functions, rendering them incapable of engaging in any gainful employment. It is a severe form of disability that significantly impacts an individual's ability to earn a livelihood. The Employees' Compensation Act, 1923, provides compensation and benefits to workers who suffer from total disablement due to work-related injuries or occupational diseases. In such cases, the employer is liable to pay compensation to the disabled worker or their dependents, as specified under the Act. The compensation amount takes into account factors such as the worker's age, monthly wages, and the degree of disablement.

15. Occupational Diseases:

Occupational diseases are health conditions that arise due to exposure to specific hazards or risks present in the workplace. In India, the Employees' State Insurance (ESI) Act, 1948, recognizes certain occupational diseases and provides medical and financial benefits to employees affected by them. The ESI Corporation manages the healthcare services for workers suffering from occupational diseases under the ESI Scheme. Common examples of occupational diseases covered under the Act include respiratory disorders, dermatitis, musculoskeletal disorders, hearing loss, and conditions caused by exposure to harmful substances. Employers are required to provide a safe and healthy working environment, conduct regular health checks, and take measures to prevent and mitigate occupational

diseases. In case of diagnosis, affected workers are entitled to medical treatment, rehabilitation, and compensation as per the provisions of the Act.

16. Concept of Wages:

In Indian labor law, wages refer to the remuneration paid to workers in exchange for their labor or services. The concept of wages encompasses all forms of monetary payments, including basic pay, allowances, bonuses, and overtime compensation. The definition of wages may vary depending on the specific labor laws and regulations applicable to different sectors or categories of workers. Wages are essential for workers' livelihoods and serve as a means to fulfill their basic needs. The Payment of Wages Act, 1936, regulates the payment of wages and ensures that workers receive their wages in a timely and lawful manner. It governs aspects such as the frequency of wage payments, permissible deductions, and provisions for dispute resolution related to wages.

17. Fixation of Wages:

The fixation of wages refers to the process of determining and establishing the wage rates applicable to workers in a particular industry, sector, or occupation. In India, wage fixation is governed by various labor laws and mechanisms at the state and central levels. The Minimum Wages Act, 1948, provides a framework for fixing minimum wages, taking into account factors such as the nature of work, skill level, geographical location, and cost of living. The government appoints committees or boards to conduct wage surveys, consult stakeholders, and recommend appropriate wage rates. These recommendations are considered by the government while revising minimum wages. The fixation of wages aims to ensure fair and reasonable remuneration for workers, balancing the interests of both employers and employees.

18. Minimum and Maximum Bonus:

In Indian labor law, the concept of bonus refers to an additional payment made to employees by their employers as a share of profits or productivity. The Payment of Bonus Act, 1965, mandates the payment of a minimum annual bonus to eligible employees in establishments employing a certain number of workers. The Act sets a minimum bonus rate, which is a percentage of the employee's wages, subject to a specified maximum. The minimum bonus rate is typically 8.33% of the employee's annual wages, while the maximum bonus rate is set at 20%. The actual bonus amount may vary based on the employer's profits and other factors. The Act also outlines provisions for calculating and distributing bonuses and provides for dispute resolution related to bonus payments.

19. Social Insurance:

Social insurance is a system of protection provided by the government to individuals and their families against various risks and contingencies. In India, social insurance programs aim to ensure social security and financial stability for workers and their dependents. The Employees'

State Insurance (ESI) Scheme is a prominent example of social insurance in the country. It provides comprehensive medical, maternity, disability, and other benefits to employees and their families in case of sickness, injury, or related contingencies. Social insurance contributions are collected from employers and employees, and the funds are utilized to provide healthcare services and other benefits. The objective of social insurance is to reduce the financial burden on individuals during times of crisis and ensure access to essential services.

20. Disablement:

Disablement, in the context of Indian labor law, refers to a physical or mental condition that restricts or impairs a person's ability to engage in gainful employment. Disablement can result from work-related injuries, occupational diseases, or non-occupational causes. The Employees' Compensation Act, 1923, provides compensation and benefits to workers who suffer from disablement due to employment-related factors. The Act categorizes disablement into total disablement and partial disablement, depending on the extent of the impact on the worker's earning capacity. In cases of disablement, employers are legally obligated to provide compensation to the affected worker or their dependents. The compensation amount is determined based on factors such as the degree of disablement, the worker's wages, and other relevant considerations.

21. Notional Benefit:

Notional benefit refers to a theoretical or hypothetical advantage or entitlement that is considered for certain purposes, even if it may not result in actual financial gains or tangible benefits. In the context of Indian labor law, notional benefits are often taken into account when calculating compensation or other statutory entitlements for workers. For example, when determining the gratuity payable to an employee upon retirement, notional benefits such as the length of service or additional years of service beyond the qualifying period may be considered. These notional benefits are calculated based on predetermined formulas or provisions outlined in relevant labor laws. While notional benefits may not have direct financial implications, they play a role in determining the overall entitlements and compensatory measures for workers.

22. Labour Welfare:

Labour welfare refers to the range of measures and initiatives undertaken by employers, the government, and other stakeholders to promote the well-being and improve the quality of life of workers. In India, labor welfare measures are aimed at addressing the social, economic, and health needs of workers and their families. These measures encompass various aspects such as housing, healthcare, education, childcare, sanitation, and recreational facilities. The Factories Act, 1948, and other labor laws mandate certain welfare provisions for workers, including canteens, restrooms, first aid facilities, and safety measures. Additionally, trade unions, employer associations, and government bodies collaborate to implement welfare programs and initiatives. The objective of labor welfare is to create a conducive and harmonious work environment, enhance productivity, and ensure the overall well-being of workers.

23. Age Boards:

Age Boards, also known as the Central Advisory Boards on Minimum Age or the State Advisory Boards on Minimum Age, are statutory bodies established under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. These boards are responsible for advising the central or state governments, respectively, on matters related to the prohibition and regulation of child labor. Age Boards play a vital role in formulating policies, rules, and regulations concerning the employment of children and adolescents. They review and recommend amendments to existing laws, suggest measures for effective enforcement, and monitor the implementation of child labor eradication programs. Age Boards comprise representatives from the government, trade unions, employers' organizations, and non-governmental organizations working for child welfare. Their aim is to safeguard the rights and well-being of children, protect them from exploitative labor practices, and ensure their access to education and a nurturing environment.

24. Partial Disablement:

Partial disablement refers to a condition where a worker experiences a partial loss of physical or mental functions due to work-related injuries, occupational diseases, or non-occupational causes. In Indian labor law, the Employees' Compensation Act, 1923, provides compensation and benefits to workers who suffer from partial disablement. The Act categorizes disablement into total disablement and partial disablement, based on the extent of impact on the worker's earning capacity. In cases of partial disablement, where the worker's ability to earn a livelihood is diminished but not completely lost, the Act specifies the compensation payable. The compensation amount is determined by assessing the degree of disablement, the worker's wages, and other relevant factors. The objective is to provide financial support and rehabilitation measures to workers who experience partial loss of earning capacity.

25. Bonus Commission:

Bonus commission refers to an additional payment made to employees, typically salespersons or individuals working on a commission-based system, as an incentive or reward for achieving certain sales targets or meeting performance criteria. In India, the Payment of Bonus Act, 1965, governs the payment of bonuses to eligible employees. While the Act primarily focuses on the payment of an annual bonus based on profits, the concept of bonus commission may be applicable in sectors or employment arrangements where commissions are a significant component of employees'

compensation. The calculation and payment of bonus commission may vary depending on the terms and conditions of employment, industry practices, and company policies. Employers often structure bonus commissions to motivate and reward employees for their sales achievements and to align their interests with the company's growth and profitability.

26. Payment of Gratuity:

The payment of gratuity refers to a statutory monetary benefit provided to employees upon their retirement, resignation, death, or disablement due to employment-related factors. The Payment of Gratuity Act, 1972, mandates the payment of gratuity to eligible employees in establishments employing ten or more workers. Gratuity is calculated based on the employee's length of continuous service and last drawn wages. The Act specifies the formula for calculating gratuity and sets a maximum limit on the amount payable. Employers are responsible for disbursing gratuity to eligible employees or their nominees. The payment of gratuity aims to recognize and appreciate the long-term service of employees, provide them with financial security after retirement or during unexpected contingencies, and promote loyalty and commitment in the workforce.

27. Forfeiture:

Forfeiture, in the context of Indian labor law, refers to the loss or cancellation of certain benefits or entitlements due to the violation of employment terms or disciplinary actions taken against an employee. Forfeiture provisions may exist in employment contracts, collective agreements, or labor laws to address situations where employees engage in misconduct or breach their contractual obligations. For example, an employee may face forfeiture of bonuses, leave benefits, or other allowances if they are found guilty of misconduct, insubordination, or any other specified offenses. The extent and conditions of forfeiture are usually outlined in relevant employment agreements or policies. Forfeiture provisions aim to maintain discipline, ensure compliance with workplace rules, and deter employees from engaging in activities that may be detrimental to the employer's interests or the overall work environment.

Important Essay Questions & Answers:

1. Define the term workman, and discuss the employee's liability for compensation for injuries arising out of and in the course of employment.

In Indian labor law, the term "workman" is defined under the Industrial Disputes Act, 1947. According to Section 2(s) of the Act, a workman refers to any person (including an apprentice) employed in an industry to do manual, skilled, unskilled, technical, operational, or clerical work. It includes individuals who are employed either directly or through an agency, and it also covers individuals who have been dismissed, discharged, or retrenched from their employment.

Regarding the liability for compensation for injuries arising out of and in the course of employment, the Employees' Compensation Act, 1923, governs the provisions for compensation to employees in case of injuries. The Act mandates that an employer must provide compensation to an employee who sustains an injury by accident arising out of and in the course of their employment.

Here are the key aspects related to the employee's liability for compensation:

1. Employer's Liability: The employer has the primary liability to provide compensation to the employee for any injury suffered during the course of employment. This liability arises irrespective of whether the employer was negligent or not. It covers both physical injuries and occupational diseases resulting from employment-related activities.

2. Scope of Compensation: The compensation covers medical expenses, rehabilitation costs, loss of wages during treatment, temporary or permanent disablement, and in case of death, it includes funeral expenses and compensation to dependents.

3. Notification of Injury: It is the employee's responsibility to notify the employer regarding the injury as soon as possible. The notification should be given within 30 days of the occurrence of the accident or the manifestation of the occupational disease.

4. Employer's Obligations: Once the employer is notified of the injury, they are required to provide immediate medical assistance to the employee. The employer should also maintain proper records of accidents and occupational diseases and submit periodic reports to the appropriate authorities.

5. Compensation Amount: The compensation amount is determined based on the nature and extent of the injury. The Act provides a schedule of compensation for different types of injuries, and the amount is calculated as a percentage of the employee's monthly wages.

6. Dispute Resolution: In case of a dispute regarding the liability for compensation or the amount of compensation, the matter can be referred to the Employees' Compensation Commissioner or the Labor Court for resolution.

It is important to note that the liability of the employer for compensation is independent of any other legal action that the employee may initiate against the employer for negligence or other civil remedies. The Employees' Compensation Act provides a quicker and more streamlined process for obtaining compensation for work-related injuries.

Please keep in mind that labor laws can be subject to amendments and it is always advisable to consult the latest legislation or seek professional legal advice for specific cases.

2. Discuss the various benefits available under the employees state insurance act,1948.

The Employees' State Insurance Act, 1948 (ESI Act) is an important legislation in India that provides social security and health insurance benefits to employees in the organized sector. The Act is administered by the Employees' State Insurance Corporation (ESIC) and covers employees working in factories, mines, plantations, shops, and establishments with ten or more employees.

Under the ESI Act, the following benefits are available to eligible employees:

1. Medical Benefits: The ESI Act provides comprehensive medical benefits to insured employees and their dependents. This includes medical treatment, hospitalization, specialist consultations, surgeries, maternity benefits, and preventive healthcare services. The medical benefits are provided through a network of ESI dispensaries, hospitals, and tie-up arrangements with private medical institutions.

2. Sickness Benefits: Employees who are unable to work due to sickness or temporary disablement are entitled to receive cash benefits during the period of absence from work. The cash benefits are provided at the rate of 70% of the wages and are payable for a maximum of 91 days in two consecutive benefit periods.

3. Maternity Benefits: Female employees are entitled to maternity benefits under the ESI Act. This includes paid leave for a period of 26 weeks (earlier it was 12 weeks) for childbirth or miscarriage or medical termination of pregnancy. The cash benefits during maternity leave are provided at the rate of 100% of the wages.

4. Disablement Benefits: In case of permanent or temporary disablement due to an employment injury, employees are entitled to receive cash benefits. The cash benefits are provided at the rate of 90% of the wages in case of permanent disablement and 70% of the wages in case of temporary disablement.

5. Dependent Benefits: In the unfortunate event of the death of an insured employee due to employment-related injury or occupational disease, the dependents of the deceased employee are entitled to receive monthly payments. The amount of monthly payment is equal to 90% of the wages and is distributed among the dependents.

6. Funeral Expenses: The ESI Act provides for the payment of funeral expenses to the dependents or relatives of an insured person in case of his/her death. The expenses are reimbursed up to a maximum limit, which is currently set at Rs. 15,000.

7. Rehabilitation Allowance: Employees who suffer permanent disablement due to an employment injury are entitled to receive a rehabilitation allowance. The allowance is provided to assist the employee in his/her vocational rehabilitation and is paid at a rate specified by the ESIC.

It is important to note that to avail the benefits under the ESI Act, both the employer and employee need to contribute a certain percentage of wages towards the ESI fund. The employer's contribution is currently 3.25% of the wages, while the employee's contribution is 0.75% of the wages.

The ESI Act plays a crucial role in providing social security and healthcare benefits to employees in India. It ensures that employees and their dependents are protected against the financial burden of medical emergencies, disabilities, and maternity-related expenses, thereby promoting their overall well-being and welfare.

3. Define wages and discuss the authorized deductions from wages under the payment of wages act, 1936.

In India, the Payment of Wages Act, 1936 is a significant labor law that governs the payment of wages to workers employed in various industries and establishments. The Act defines wages and provides provisions for authorized deductions that can be made from wages. Let's discuss each aspect in detail:

1. Definition of Wages:

The Payment of Wages Act, 1936 defines wages as remuneration that includes any monetary amount, whether fixed or variable, expressed in terms of money or capable of being so expressed, which is payable to a person for work done or services rendered. It covers all types of monetary payments made to an employee, including basic salary, allowances, overtime wages, bonuses, commissions, and any other similar payments.

2. Authorized Deductions from Wages:

Under the Payment of Wages Act, 1936, certain deductions from wages are permissible. However, the Act imposes limitations on the total amount and types of deductions that can be made. The authorized deductions can be categorized as follows:

a. Statutory Deductions:

- i. Deductions for absence from duty: Employers can deduct wages for the period of unauthorized absence from duty, as per the proportionate calculation.
- ii. Deductions for damage or loss: Employers can make deductions for any damage or loss caused by the willful act or negligence of the employee. However, the total amount deducted in any wage period should not exceed the actual amount of damage or loss.
- iii. Deductions for recovery of advances: If an employee has taken any advances or loans from the employer, the Act allows deductions from wages for the recovery of such amounts. However, the total deduction should not exceed 75% of the wages earned in that wage period.
- iv. Deductions for subscriptions to provident fund or pension scheme: Employees' contributions towards provident fund or pension schemes can be deducted from wages, as per the applicable rules and regulations.

b. Permissible Deductions:

- i. Deductions for income tax: Employers can deduct income tax from wages, as per the applicable tax laws and regulations.
- ii. Deductions for payment to cooperative societies: Deductions can be made from wages for payments to cooperative societies approved by the state or central government.
- iii. Deductions for payment of insurance premiums: Employers can deduct insurance premiums from wages if the employee has given prior consent in writing.
- iv. Deductions for payment of contributions to social security schemes: Deductions can be made for the payment of contributions to social security schemes, such as employee state insurance schemes or any other similar schemes.

3. Prohibited Deductions:

The Payment of Wages Act, 1936 also specifies certain deductions that are strictly prohibited. Employers are not allowed to make deductions for fines, deductions for services rendered, deductions for amenities or services provided by the employer, or any deductions not authorized under the Act.

It is important to note that the total amount of deductions made from an employee's wages in any wage period should not exceed 50% of the wages earned by the employee.

Furthermore, employers are required to maintain registers and records related to wages, deductions, and other prescribed details under the Act. These records should be available for inspection by government authorities.

It is recommended to consult the specific provisions of the Payment of Wages Act, 1936 and seek legal advice to ensure compliance with the applicable labor laws in India, as the interpretation and implementation of these laws may vary based on the circumstances and jurisdiction.

4. Define gratuity and discuss the salient feature of the payment of gratuity act,1972.

Gratuity is a lump sum payment made by an employer to an employee as a token of appreciation for the services rendered by the employee. It is generally provided at the time of retirement, resignation, or death of the employee. The Payment of Gratuity Act, 1972 is an important legislation in India that governs the payment of gratuity to employees.

The salient features of the Payment of Gratuity Act, 1972 are as follows:

- 1. Applicability:** The act applies to establishments with ten or more employees, irrespective of whether they are employed directly or through a contractor. It covers employees working in factories, mines, oil fields, plantations, ports, railway companies, shops, educational institutions, and other establishments.
- 2. Eligibility:** An employee becomes eligible to receive gratuity after completing five years of continuous service with an employer. However, in the case of death or disablement, the eligibility period is not applicable.
- 3. Calculation of Gratuity:** The gratuity amount is calculated based on the employee's last drawn salary, the number of years of service completed, and a fixed formula provided in the act. The formula for calculating gratuity is: $(\text{Last drawn salary} \times 15/26) \times \text{Number of years of service}$.
- 4. Maximum Amount:** The maximum amount of gratuity that can be paid to an employee is currently capped at Rs. 20 lakh under the Payment of Gratuity Act. If an employee is entitled to a higher amount as per their employment contract or company policy, the higher amount will be paid.
- 5. Payment Timeframe:** The employer is required to pay the gratuity amount within 30 days from the date it becomes payable. If the gratuity is not paid within this timeframe, the employer is liable to pay interest on the overdue amount.

5. What is a bonus? Discuss the salient features of it and How the bonus is calculated and paid under the payment of bonus act,1965.

A bonus is an additional payment made to employees, typically in addition to their regular salary or wages. It is a form of incentive or reward given by employers to recognize and appreciate the contributions of employees towards the success of the organization. Bonuses can be given based on various factors, such as individual performance, company performance, or a combination of both.

The Payment of Bonus Act, 1965 is an Indian legislation that governs the payment of bonuses to employees. The Act applies to establishments employing a minimum of 20 persons and provides guidelines for the calculation and payment of bonuses. Let's discuss the salient features of the Act and how bonuses are calculated and paid under its provisions.

Salient features of the Payment of Bonus Act, 1965:

- 1. Applicability:** The Act applies to establishments in which 20 or more persons are employed on any day during an accounting year. It covers both private and public sector organizations.
- 2. Eligibility:** All employees, including contractual, temporary, and part-time workers, who have worked for a minimum of 30 working days in an accounting year, are eligible for a bonus under the Act.
- 3. Calculation of allocable surplus:** The Act defines the allocable surplus, which is the amount available for payment as a bonus. It is calculated by subtracting certain statutory deductions from the gross profits of the establishment.
- 4. Minimum and maximum bonus:** The Act specifies a minimum bonus of 8.33% of the salary or wages earned by the employee during the accounting year, subject to a maximum of 20% of such salary or wages. However, if the allocable surplus is insufficient, the minimum bonus may be lower.
- 5. Set-off and set-on provisions:** The Act allows for set-off and set-on provisions, which means that the employer can set off any statutory bonus paid in excess of the minimum bonus in previous years against the amount due as per the Act in the current year. Likewise, if the bonus payable exceeds the allocable surplus, the shortfall can be carried forward and set on in subsequent years.
- 6. Time limit for payment:** The Act requires employers to pay bonuses within eight months from the close of the accounting year. It can be extended with the approval of the appropriate government.

7. Disqualification for bonus: An employee can be disqualified from receiving a bonus if he/she is dismissed from service for fraud, misconduct, or any act of violence. However, the Act provides for an appeal process in such cases.

Calculation of bonus under the Payment of Bonus Act, 1965:

The Act provides two methods for calculating the bonus: the allocable surplus method and the set-on and set-off method. The method to be used depends on whether the establishment has sufficient profits to cover the minimum bonus.

1. Allocable surplus method: If the allocable surplus is sufficient to cover the minimum bonus, the bonus is calculated as a percentage of the employee's salary or wages. The Act specifies that the maximum bonus payable shall not exceed 20% of the salary or wages earned by the employee during the accounting year.

2. Set-on and set-off method: If the allocable surplus is insufficient to cover the minimum bonus, the employer can use the set-on and set-off provisions. In this method, the employer can set off the excess bonus paid in previous years against the amount due as per the Act in the current year. If there is still a shortfall, it can be carried forward and set on in subsequent years.

Payment of bonus under the Payment of Bonus Act, 1965:

Once the bonus is calculated, the employer is required to pay it to the employees within eight months from the close of the accounting year. If there is any delay, the employer may be liable to pay interest on the overdue amount.

It's important to note that the specific details and calculations may vary depending on the organization and its accounting practices. It is advisable for employers and employees to refer to the Payment of Bonus Act, 1965 and consult with legal professionals or experts for precise guidance related to their circumstances.

6. Discuss the provisions relating to health and safety under the factories act,1948.

The Factory Act of 1948 is an important legislation in India that regulates various aspects related to factories, including the health and safety of workers. The Act aims to ensure adequate measures are taken to protect the health and safety of workers employed in factories. Here are some provisions under the Factory Act, 1948 that specifically address health and safety:

1. Cleanliness (Section 11): The Act requires factories to maintain cleanliness within the premises, including proper ventilation, adequate lighting, and regular removal of waste and effluents.

2. Disposal of waste and effluents (Section 12): Factories must dispose of waste and effluents in a manner that does not cause any health hazards or environmental pollution.

- 3. Ventilation and temperature (Section 13):** Factories must provide adequate ventilation and maintain reasonable temperature levels to ensure the comfort and well-being of workers.
- 4. Dust and fume control (Section 14):** The Act requires factories to control dust and fumes that may be generated during manufacturing processes to prevent harm to workers' health.
- 5. Artificial humidification (Section 15):** If artificial humidification is used in a factory, it should be properly maintained, and measures must be taken to ensure that it does not have any adverse effects on workers' health.
- 6. Overcrowding (Section 16):** Factories must not be overcrowded to prevent congestion and potential hazards to workers' safety.
- 7. Lighting (Section 17):** Adequate lighting must be provided in factories to ensure a safe working environment and prevent accidents.
- 8. Drinking water (Section 18):** Factories must provide clean and potable drinking water to workers.
- 9. Latrine and urinal facilities (Section 19):** Sufficient and separate latrine and urinal facilities must be provided for male and female workers, and they should be maintained in a clean and hygienic condition.
- 10. Spittoons (Section 20):** Factories must provide spittoons at convenient places and ensure their cleanliness to prevent the spread of diseases.
- 11. Fencing of machinery (Section 21):** Dangerous machinery in factories must be securely fenced to prevent accidents and ensure worker safety.
- 12. Handling of hazardous substances (Section 41A):** The Act imposes responsibilities on factories regarding the safe handling, storage, and transportation of hazardous substances. It also mandates providing information, training, and personal protective equipment to workers dealing with such substances.
- 13. Welfare provisions (Chapter IV):** The Act includes provisions for the welfare of workers, such as first aid facilities, ambulance rooms, canteens, shelters, and restrooms.

These are some of the provisions related to health and safety outlined in the Factory Act of 1948. It is important for factories to comply with these provisions to ensure the well-being and safety of workers. It should be noted that individual states in India may have their own rules and regulations that supplement the provisions of the Factory Act to further enhance health and safety standards.

7. Explain the procedure for fixation and revision of minimum wages under the minimum wages act, 1948.

Under the Minimum Wages Act, 1948, the procedure for fixation and revision of minimum wages involves several steps. Here's a general overview of the process:

- 1. Notification:** The appropriate government (central or state) issues a notification stating its intention to fix or revise the minimum wages for a specific industry or occupation. This notification is published in the Official Gazette and widely circulated to stakeholders.
- 2. Formation of Committees:** The government forms one or more committees to assist in the determination of minimum wages. These committees typically consist of representatives from employers, employees, and independent experts or officials.
- 3. Data Collection and Analysis:** The committees collect relevant data and information related to the industry or occupation for which the minimum wages are being fixed or revised. This includes factors such as cost of living, the level of skill required, prevailing wage rates, productivity, and any other relevant socio-economic factors.
- 4. Hearings and Consultations:** The committees conduct hearings and consultations with stakeholders, such as employers' and employees' organizations, trade unions, industry associations, and any other interested parties. These hearings provide an opportunity for the parties to present their views, concerns, and suggestions regarding the proposed minimum wages.
- 5. Factors Considered:** The committees consider various factors while determining or revising the minimum wages. These factors may include the nature of work, skill levels, geographical location, working conditions, and the capacity of employers to pay.
- 6. Recommendations:** Based on the data, analysis, consultations, and other inputs, the committees formulate recommendations regarding the minimum wages. These recommendations are submitted to the appropriate government for further consideration.
- 7. Government Approval:** The appropriate government reviews the recommendations of the committees and takes a decision regarding the fixation or revision of minimum wages. The government may accept the recommendations as proposed or make modifications based on its assessment of the situation. The decision is communicated through an official notification.
- 8. Implementation and Enforcement:** Once the minimum wages are fixed or revised, they come into effect on a specified date mentioned in the notification. Employers are required to comply with the new minimum wage rates and ensure that workers are paid accordingly. The labor department or other designated authorities monitor and enforce compliance with minimum wage regulations.

It's important to note that the specific procedures and timelines for fixation and revision of minimum wages may vary between different countries or regions, as per their respective labor laws and regulations. The above explanation provides a general framework based on the Minimum Wages Act, 1948 in India.

8. What are various benefits available to the employees under the esi act?

The Employees' State Insurance (ESI) Act is a social security and health insurance scheme in India that provides various benefits to employees. The scheme is managed by the Employees' State Insurance Corporation (ESIC) and applies to establishments employing 10 or more employees in specific industries.

Under the ESI Act, employees and their dependents are entitled to the following benefits:

1. Medical Benefits:

The ESI Act provides comprehensive medical care to insured individuals and their family members. It includes outpatient and inpatient treatment, specialist consultations, diagnostic tests, medicines, surgeries, and hospitalization. The medical benefits are available not only to the employees but also to their dependent family members, such as spouse, children, and dependent parents.

2. Sickness Benefits:

If an insured employee falls ill and is unable to work, they are entitled to receive cash benefits. These benefits are provided during the period of certified sickness and are paid at the rate of 70% of the average daily wages for a maximum of 91 days in a benefit period.

3. Maternity Benefits:

Female employees are entitled to maternity benefits under the ESI Act. The benefits include paid leave for a period of 26 weeks, which can be extended to 30 weeks in certain cases. The cash benefits provided during maternity leave are paid at the rate of 100% of the average daily wages.

4. Disablement Benefits:

In case an insured employee suffers a temporary or permanent disability due to an employment-related injury, they are eligible for disablement benefits. The benefits are provided as cash compensation, which is calculated based on the degree of disability and the average daily wages of the employee.

5. Dependent Benefits:

In the unfortunate event of the death of an insured employee due to employment-related injuries or occupational diseases, the dependents are entitled to receive dependent benefits. The benefits are provided as monthly payments to the dependents, which may include the spouse, children, and dependent parents. The amount of the benefit is calculated as a percentage of the average daily wages.

6. Funeral Expenses:

The ESI Act also covers funeral expenses in case of the insured employee's death. A lump sum amount is provided to meet the expenses of the funeral, which is currently fixed at ₹15,000.

7. Rehabilitation Allowance:

If an insured employee sustains a permanent disablement due to an employment-related injury, they may be eligible for a rehabilitation allowance. This allowance is provided to support the employee's rehabilitation and reintegration into society.

It's important to note that these benefits are subject to certain conditions and eligibility criteria as defined by the ESI Act and its regulations. Employers are required to contribute a certain percentage of their employees' wages to the ESI fund, and employees are also required to make their contributions. These contributions help fund the various benefits provided under the ESI Act.

It is recommended to consult the official website of the Employees' State Insurance Corporation (ESIC) or seek professional advice to obtain the most accurate and up-to-date information regarding the benefits available under the ESI Act, as the specific details may vary based on the latest regulations and amendments.

9. Discuss the set on and set off of allocable surplus in the payment of bonus act,1985.

The Payment of Bonus Act, 1965 is an Indian legislation that provides for the payment of bonus to employees in certain establishments. The Act defines the terms "allocable surplus," "set on," and "set off" in relation to the calculation and payment of bonus.

1. Allocable Surplus:

Allocable surplus refers to the surplus profits earned by an establishment after deducting certain amounts specified under the Act. It is the amount from which the bonus payable to the employees is calculated. The Act prescribes the following deductions from the gross profits to arrive at the allocable surplus:

- Depreciation as per the Companies Act or Income Tax Act.
- Development rebate or investment allowance.
- Capital expenditure on the acquisition of any asset including land, building, or machinery.
- Amounts carried forward from previous years.
- Amount set aside as a reserve for future expansion or development.

2. Set On:

The term "set on" refers to the minimum bonus that must be paid to employees even if the allocable surplus is insufficient. The Act specifies that when an establishment has no available allocable surplus or the allocable surplus is less than the minimum bonus, the employees are still entitled to a minimum bonus payment. The minimum bonus is calculated as a percentage of

the salary or wage earned by the employee during the accounting year, subject to a maximum limit of 20%.

3. Set Off:

The term "set off" refers to the adjustment of losses incurred by an establishment against the allocable surplus of subsequent years. If an establishment incurs a loss in any accounting year, the Act allows the employer to carry forward that loss and set it off against the allocable surplus of subsequent years for the purpose of calculating bonus. However, the maximum set off allowed in any accounting year is limited to 50% of the allocable surplus.

It's important to note that the specific calculations and provisions related to allocable surplus, set on, and set off may vary depending on the applicability of the Act to different establishments, such as those in factories, mines, or plantations. It is advisable to refer to the Payment of Bonus Act, 1965 and consult legal experts or the relevant government authorities for the most accurate and up-to-date information.

10. Discuss the concept of wages. What is the constitutional goal with regard to wages?

Wages refer to the financial compensation paid to employees in exchange for their labor or services. The concept of wages is an integral part of the employer-employee relationship and plays a crucial role in the economy and society at large.

The constitutional goal regarding wages may vary depending on the country and its legal framework. However, in many jurisdictions, the constitution aims to ensure fair and just wages for workers. The specific objectives may include:

1. Fair Compensation: The constitution may seek to guarantee that workers receive a fair remuneration for their labor, commensurate with the value they contribute to the organization or the industry. This involves ensuring that wages are not unreasonably low or exploitative, and that they reflect the prevailing standards of living.

2. Social Justice: The constitutional goal often encompasses the promotion of social justice by addressing economic inequalities. It may seek to narrow the wage gap between different groups of workers, such as gender or ethnic disparities, and promote equal pay for equal work.

3. Adequate Standard of Living: The constitution may aspire to ensure that wages are sufficient to provide employees with an adequate standard of living. This includes the ability to meet basic needs such as food, shelter, healthcare, education, and other essential requirements.

4. Labor Rights Protection: The constitutional goal regarding wages often involves safeguarding the rights of workers. This includes ensuring that employees have the freedom to

organize and collectively bargain for fair wages, and protection against unjust labor practices such as discrimination, forced labor, or unfair wage deductions.

5. Economic Stability: The constitution may also have an objective of promoting economic stability through the regulation of wages. It may seek to prevent extreme wage fluctuations, maintain purchasing power, and balance the interests of workers, employers, and the overall economy.

It's important to note that the specific constitutional provisions and goals related to wages can differ across countries, reflecting the social, cultural, and economic contexts within each jurisdiction. Laws, regulations, and labor standards are typically put in place to implement and enforce these constitutional goals, ensuring that workers receive fair wages and enjoy certain protections in the workplace.

11. Discuss the provisions relating to "safety" under the factories act,1948.

The Factories Act, 1948 is an important legislation in India that aims to ensure the safety, health, and welfare of workers employed in factories. It contains various provisions pertaining to safety that employers must comply with to provide a safe working environment for their employees. Let's discuss these provisions in detail:

1. Fencing of Machinery: According to Section 21 of the Act, all moving parts of machinery in a factory must be securely fenced to prevent any contact with workers. This is done to avoid accidents and injuries caused by the machinery's operation.

2. Work on or near Machinery in Motion: Section 22 prohibits workers from working on or near any machinery while it is in motion, except in certain cases where it is necessary for the purpose of testing, repairing, or maintaining the machinery. Adequate safety measures must be taken in such cases to ensure the protection of workers.

3. Employment of Young Persons on Dangerous Machines: Section 23 restricts the employment of young persons (those below 18 years of age) on dangerous machines. Certain hazardous machines, such as power presses or machines used in metal molding, are prohibited for young workers due to the potential risks involved.

4. Precautions against Dangerous Fumes, Gases, etc.: Section 28 mandates that effective measures must be taken to prevent the accumulation of hazardous fumes, gases, dust, or any other substances that may be injurious to workers' health. Adequate ventilation and proper exhaust systems should be provided to maintain a safe working environment.

5. Safety Provisions in case of Fire: Sections 38 to 42 deal with fire safety. These provisions include measures such as providing fire escapes, fire alarms, fire extinguishers, and other necessary equipment to tackle fire emergencies. Fire drills and training programs should also be conducted regularly to educate workers about fire safety procedures.

6. Safety Officers: Section 40B of the Act empowers the state government to appoint safety officers in factories where more than 1,000 workers are employed, or when notified by the Chief Inspector. These safety officers are responsible for overseeing safety-related matters and ensuring compliance with safety provisions.

7. Welfare and Health Measures: Sections 42 to 50 cover various welfare and health provisions in factories. These include clean drinking water, adequate ventilation, lighting, and temperature control, proper sanitation facilities, first aid appliances, canteens, and more. The aim is to provide a hygienic and healthy working environment for the well-being of the workers.

8. Annual Leave with Wages: Section 79 ensures that workers are entitled to annual leave with wages after completing a certain period of continuous service. This provision aims to provide rest and recreation to workers, promoting their overall well-being and preventing fatigue-related accidents.

9. Handling and Storage of Hazardous Substances: The Act also includes provisions for the safe handling, storage, and transportation of hazardous substances. Employers must take necessary precautions to prevent accidents and mitigate the risks associated with such substances.

10. Provisions for Accidents: The Act contains provisions for reporting and investigating accidents that occur within the factory premises. The employer is required to maintain accident records and report certain types of accidents to the authorities.

It is important to note that these provisions are not exhaustive, and additional regulations and guidelines may apply depending on the specific industry or nature of the factory. The Factories Act, 1948 aims to promote a safe and healthy working environment, protecting the rights and well-being of workers in India.

12. Write a comment on the child labour(Prohibition and regulation) act, 1986.

The Child Labour (Prohibition and Regulation) Act, 1986 is a crucial legislation in India that seeks to address the issue of child labor and provide protection to children from exploitation. This Act prohibits the engagement of children in certain hazardous occupations and processes while also regulating the working conditions for children in non-hazardous industries. Here's a comment on the Act:

The Child Labour (Prohibition and Regulation) Act, 1986, plays a pivotal role in combating child labor in India. It recognizes the fundamental right of every child to be protected from exploitation and ensures their holistic development. The Act embodies a comprehensive framework that encompasses both the prohibition and regulation aspects of child labor.

One of the significant strengths of this Act is its clear prohibition of children's employment in certain hazardous occupations and processes. It identifies a list of hazardous occupations and

processes where the engagement of children is strictly prohibited. This provision is crucial as it aims to protect children from dangerous and harmful work conditions that may jeopardize their health, safety, and overall well-being.

Furthermore, the Act also establishes regulations for the working conditions of children in non-hazardous industries. It imposes restrictions on the working hours, age limits, and conditions of work for children. These regulations are intended to strike a balance between allowing children to acquire skills and experience in non-hazardous occupations, while safeguarding their rights and ensuring their education and development are not compromised.

The Act emphasizes the importance of education by mandating that every child has the right to free and compulsory education up to a certain age. It recognizes education as a fundamental tool for breaking the cycle of poverty and providing children with better opportunities for their future. By linking the prohibition of child labor with the provision of education, the Act takes a holistic approach towards addressing the root causes of child labor.

Another notable aspect of the Act is the establishment of enforcement mechanisms. It designates specific authorities at the central and state levels to enforce the provisions of the Act. These authorities play a crucial role in monitoring and inspecting workplaces to ensure compliance with the law. They also have the power to take legal action against those who violate the provisions, which acts as a deterrent against child labor.

While the Child Labour (Prohibition and Regulation) Act, 1986, is a significant step towards eradicating child labor, it is essential to acknowledge that challenges remain. The implementation and enforcement of the Act need to be strengthened, especially at the grassroots level, to effectively tackle the issue of child labor in all its forms. Moreover, raising awareness among employers, communities, and the general public about the importance of child rights and the consequences of child labor is crucial to foster a collective responsibility towards the eradication of child labor.

In conclusion, the Child Labour (Prohibition and Regulation) Act, 1986, serves as a vital legal framework in India's fight against child labor. By combining prohibition, regulation, and education provisions, the Act strives to protect children from hazardous work, ensure their education, and promote their overall well-being. However, continuous efforts, including improved enforcement, awareness campaigns, and social initiatives, are necessary to completely eliminate child labor and create a society where every child can thrive and reach their full potential.

13. Explain the salient features of the employee provident fund and miscellaneous provisions act, 1952.

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) is an important social security legislation in India. It establishes a compulsory provident fund scheme for employees working in specified industries and businesses. The EPF Act ensures the

financial security of employees after retirement and provides various benefits to them and their families. Let's explore the salient features of the EPF Act in detail:

- 1. Applicability:** The EPF Act applies to factories and other establishments specified by the government, employing 20 or more employees. However, the government can also extend its applicability to establishments with fewer employees if deemed necessary.
- 2. Provident Fund Scheme:** The primary objective of the EPF Act is to provide a retirement benefit to employees. Under this scheme, both the employer and employee make monthly contributions towards the provident fund. The employee's contribution is deducted from their salary, and the employer contributes an equal amount. The current rate of contribution is 12% of the employee's basic wages and dearness allowance.
- 3. Pension Scheme:** In addition to the provident fund scheme, the EPF Act also provides for a pension scheme. The employer contributes 8.33% of the employee's wages to the pension fund. The government also makes a matching contribution, subject to a maximum of Rs. 1,250 per month. The pension is payable after the employee reaches the age of 58 or completes 10 years of pensionable service.
- 4. Insurance Scheme:** The EPF Act includes an Employee Deposit Linked Insurance Scheme (EDLI). It provides life insurance coverage to employees in the organized sector. The insurance coverage is linked to the employee's provident fund balance and is payable to the nominee or legal heir in case of the employee's death during employment. The coverage amount is based on a specified formula and is subject to a maximum of Rs. 7 lakh.
- 5. Administration:** The EPF Act establishes the Employees' Provident Fund Organization (EPFO) as the central authority responsible for administering and implementing the Act. The EPFO is headed by a Central Provident Fund Commissioner and operates through regional offices across the country.
- 6. Employee's rights:** The EPF Act ensures certain rights and protections for employees. It mandates the maintenance of individual employee accounts, which contain details of contributions, interest, and withdrawals. Employees have the right to access their account statements and can file complaints or seek redressal through the EPFO's grievance mechanism.
- 7. Withdrawal and Advances:** Employees are allowed to withdraw their provident fund accumulations under certain circumstances such as retirement, resignation, termination, or in case of financial emergencies. The Act also permits advances for specific purposes like housing, medical treatment, education, and marriage.
- 8. Interest on Accumulations:** The EPF Act mandates the payment of interest on the employee's provident fund accumulations. The rate of interest is determined by the government

in consultation with the Central Board of Trustees, which manages the funds. The interest rate is typically higher than prevailing bank interest rates and is compounded annually.

9. Exemptions and Exceptions: The government has the power to grant exemptions or relaxations to certain establishments or classes of employees from the provisions of the EPF Act. However, such exemptions are generally subject to specific conditions and requirements.

The EPF Act has undergone several amendments over the years to address changing needs and improve the benefits provided to employees. It is a crucial legislation that ensures social security and financial stability for employees during their working years and after retirement.