

Gujarat Payment Of Unemployment Allowance To Workmen In Factories Act, 1981

20 of 1981

[28 May 1981]

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The following Act of the Gujarat Legislature having been assented to by the President on the 20th May, 1981 is hereby published for general information. An Act to provide for payment of unemployment allowance to certain workmen in factories who are rendered unemployed on account of failure, refusal or inability of an employee to provide employment due to shortage of power and to provide for matters connected therewith. It is hereby enacted in the Thirty-second Year of the Republic of India as follows :-

1. Short Title, Extent And Commencement :-

This Act may be called The Gujarat Payment of Unemployment Allowance to Workmen in Factories Act, 1981. (2) It extends to the whole of the State of Gujarat. (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint. Noti. THE GUJARAT FACTORIES RULES, 1963 A-510 [Statement of Objects & Reasons Due to the announcement of

power cuts and dislocation of power supply industrial production is affected resulting in lay-off or reduction of employment in some cases. Under the provisions of Chapter V-A of the Industrial Disputes Act, 1947, lay-off compensation is payable to workmen, who are lay off due to failure, refusal or inability of an employer on account of shortage of coal, power or raw material or the accumulation of stock or the break down of machinery or for other reason to give employment to a workman whose name is borne on the muster roll of an industrial establishment. This lay-off compensation, however, is payable to workmen in industrial establishment in which 50 or more workmen are working and industrial establishments which are not of a seasonal character or in which work is not performed only intermittently. Moreover workmen (including Badli workmen) who have not completed one year of continuous service under an employer are not eligible for lay-off compensation under the said Act. These provisions are applicable in relation to industrial establishments which not only include factories which are working with the aid of power but also to all other establishments. In order to give relief to workmen who would not otherwise be entitled to any lay-off compensation under the Industrial Disputes Act, 1947, it is proposed to provide for payment of unemployment allowance for a temporary period to certain workmen working in factories who could not be given employment therein on any day or days for the reason of power shortage and to provide for matters connected therewith. This Bill seeks to achieve the aforesaid object.

2. Definitions :-

In this Act, unless the context otherwise requires,- (a) "Badli Workman" means a workman who is provided with a Badli card and who is employed in place of another workman who is temporarily absent and whose name is borne on the muster roll of the factory; (b) "enrolled workman" means a workman (whether Badli workman or permanent or temporary workman) whose name is borne on the muster roll, or as the case may be in Badli Register of a factory on the first day of a specified period; (c) "factory" means any premises including precincts thereof whereon ten or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, but does not include a factory in relation to industrial disputes concerning which the Central / . Pub. in Guj Govt. Gaz. Exry.. Pi. V

dt. 2-I-S-I9S0 at P.23-6.A-511 THE GUJARAT FACTORIES RULES. 1963 Government is the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947). (d) "Manager" means the person who is for the time being managing the factory, and includes any other officer duly authorised by the employer to act as Manager, such authorisation being notified to the workmen by displaying it on the notice board of the factory; (e) "Permanent Workman" means a workman who has been employed on a permanent basis or whose appointment has been confirmed in writing by the Manager or by a person, duly authorised in this behalf by the Manager, and includes a workman who has completed a probationary period of three months in the aggregate in the same or another occupation in the factory, and an apprentice who is asked or appointed to a post or vacancy of a permanent workman for the purposes of payment of wages to him during the period he works on such post or in such vacancy; (f) "Specified period" means such period (including its extension) as the State Government may for the whole State or any part thereof, from time to time by notification in the Official Gazette, specify in this behalf; (g) "temporary workman" means a workman who has been appointed in a factory for a limited period for work which is of an essentially temporary nature or who is employed temporarily as an additional workman in connection with temporary increase in work of a permanent nature; (h) "unemployment allowance" means unemployment allowance payable under Section 3; (i) the expression "workman" and any other words or expressions used in this Act but not defined therein shall have the same meanings respectively assigned to them in the Industrial Disputes Act, 1947.

3. Payment Of Unemployment Allowance :-

(1) Where any employer fails, refused or is unable to provide employment to an enrolled workman on any day during the specified period by reasons of :- (a) reduction of not less than twenty five percent of the maximum demand for electrical energy, or (b) reduction of not less than fifteen percent of the off-take of electrical energy, or (c) imposition of a weekly holiday, in addition to that prescribed under the Factories Act, 1948 (63 of 1948), or (d) closure of a shift in factories, or (e) restriction on hour of shifts in factories, on account of anv -A-512 Noti. THE GUJARAT FACTORIES RULES. 1963 (i) restriction on consumption or use of, or (ii) discontinuance of, or restriction on, or prohibition or regulation of supply of.-Electrical energy under the Borrfbay

Electricity (Special powers) Act. 1946, (Bom.XX of 1946). then notwithstanding anything contained in any law for the time being in force, the employer shall, subject to provisions of this Act, any to suchy enrolled workman an unemployment allowance at such rate per day and for such number of days in each calendar month during the specified period, as is provided in Sub-sections (2) and (3). (2) The rate of unemployment allowancepayable shall be equal to 50 percent of the total of the basic wages and dearness allowance that would have been payable to him per day had he been provided with employment during the specified period. (3) The number of days in each calendar month for which the unemployment allowance shall be paid at the rate aforesaid shall be equal to the average of the total number of days in each month on which an enrolled workman has actually worked during a period of one year immediately before the commencement of the specified period; PROVIDED that such number of days in each calendar month shall not exceed the number of days in that month on which he is not provided with employment. Explanation-Where the interval between two or more periods is less than one year, than for calculating the period of one year in relation to the last of such specified periods for the purposes of this sub-section, the specified period or periods immediately before such last specified period shall be excluded. (4) In computing the amount of unemployment allowance, the amount payable shall where necessary, be rounded off to the nearest rupees, fractions of fifty paise and over being counted as one. and less than fifty paise being disregarded. (5) Where an enrolled workman does not actually work for the full number of hours on any day, then in counting the number of days on which he has actually worked on such days, the number of hours during which such workman has worked on each such day shall be added together to ascertain the number of days.

4. Workmen Not Entitled To Unemployment Allowance In Certain Cases :-

No unemployment allowance shall be paid to any workman- (a) if he is entitled to any lay-off compensation under the provisions of the Industrial Disputes Act, 1947 (14 of 1947);A-513 THE GUJARAT FACTORIES RULES. 1963 Noti. (b) If he refuses to accept any alternative employment in the same factory in which he has been provided with his usual employment, or to any other factory belonging to the same employer in the same town or village or situated within a radius of 8 kilometres from the first mentioned

factory and in the opinion of the employer the work in such alternative employment does not require any special skill or previous experience and can be: done by the workmen; PROVIDED that the wages which would normally have been paid to the workmen are offered for the alternative employment also; (c) If such workman is not provided employment on any day due to any strike or slowing down of production on the part of the workmen in another part of the factory.

5. Recovery Of Money Due From Employer :-

(1) Where any money by way of unemployment allowance is due to a workman from an employer under the provision of this Act, the workman himself or any other persons authorised by him in writing in this behalf, or in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the State Government or one or more officers authorised by it for any area or areas, for the recovery of money due to him, and subject to the provisions of sub-section (2), if the State Government or the authorised officer is satisfied that any money is so due, it or such authorised officer shall issue a certificate for that amount to the collector, who shall proceed the same in the same manner as an arrear of land revenue; PROVIDED that every such application shall be made within one year from the date on which the money became due to the workman from the employer; PROVIDED further that any such application may be entertained after the expiry of the said period of one year, if the State Government or the authorised officer is satisfied that the applicant had sufficient cause for not making the application within the said period. (2) No certificate under sub-section (1) shall be issued unless the employer has been given an opportunity to show cause why he did not pay the unemployment allowance to the workman in accordance with the provisions of Section 3 and evidence (if any) produced by him is duly considered, if necessary, after giving him a hearing.

6. Penalty :-

Any person who commits a breach of the provision of this Act, shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine, or with both, and where the breach is continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first time and the Court trying

the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid by way of unemployment allowance to any person who in its opinion has been injured by such breach. THE GUJARAT FACTORIES RULES. 1963 A-514.

7. Cognizance Of Offence :-

(1) No Court shall take cognizance of any offence punishable under this Act, or of the abetment of any such offence save on complaint made by or under the authority of the State Government. (2) No Court inferior to that of a metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

8. Offences By Companies :-

(1) If an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge, of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any, neglect on the part of any director, manager, secretary or other officer of the company, such director, manager secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation- For the purposes of this section- (i) "company" means any body corporate and includes a firm or other association of individuals; and (ii) "director" in relation to a firm, means a partner in the firm.

9. Power Of Government To Make Rules :-

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication. (3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are

made, and shall be subject to such modification as the Legislature may during the session in which they are so laid, or the session immediately following. (4) Any modifications so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.