

EXTRACT OF —
GOA, DAMAN AND DIU SHOPS AND ESTABLISHMENTS ACT AND RULES

Application :- The Goa, Daman and Diu Shops and Establishments Act 1973 extends to the whole of the Union territory of Goa, Daman and Diu and it shall come into force in such areas and on such dates as the Government may from time to time, by notification appoint.

2. Definition

- (1) "Child" — means a person who has not completed his twelfth year of age;
- (2) "Commercial Establishment" — means any establishment which carries on any business, trade or profession or any work in connection with or incidental or ancillary to any business, trade or profession and includes — (i) a society registered under Societies Registration Act, 1960 or charitable or other trust whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary to such business, trade or profession; (ii) an establishment which carries on the business of advertising, commission agency or which is a clerical department of a factory or of any industrial or commercial undertakings; (iii) an insurance company, joint stock company, bank, broker's office or exchange; and (iv) any other establishment which the Government may notify to be a commercial establishment but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;
- (3) "Employee" — means a person principally or wholly employed in, and in connection with, any establishment, and includes an apprentice or any clerical or other staff of a factory or industrial establishment which falls outside the scope of the Factories Act, 1948 (Central Act 63 of 1948) but does not include the husband, wife, son, daughter, mother, father, brother, sister or dependent relative of an employer or his partner, which is living with and depending on such employer or partner and is not in receipt of any wages;
- (4) "Employer" — means a person having charge of or owing or having ultimate control over the affairs of an establishment and includes the manager, agent or other person acting in the general management or control of an establishment;
- (5) "Establishment" — means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment to which the Goa, Daman and Diu Shops and Establishments Act, 1973 applies and includes such other establishment as the Government may by notification in the Official Gazette, declare to be an establishment for the purpose of the Act;
- (6) "Residential hotel" — means any premises used for the reception of guests and travellers desirous of dwelling or sleeping therein and includes a club;
- (7) "Restaurant or eating house" — means any premises in which is carried on wholly or principally the business of supplying meals or refreshment to the public or a class of the public for consumption on the premises and includes a Halwa shop but does not include a restaurant attached to a theatre or a restaurant or a canteen attached to a factory if the persons employed therein are allowed the benefits provided for workers under the Factories Act, 1948 (Central Act 63 of 1948);
- (8) "Shop" — means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers and includes a place, storeroom, godown, ware house, sale depot and work place whether in the same premises or elsewhere, used mainly in connection with such trade or business, but does not include a factory, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment or a shop attached to a factory where the persons employed are allowed the benefits provided under the Factories Act, 1948 (Central Act 63 of 1948);

"Shop"—means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers and includes office, storeroom, godown, ware house, sale depot and work place whether in the same premises or elsewhere, used mainly in connection with such trade or business, but does not include a factory, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment or a shop attached to a factory where the persons employed are allowed the benefits provided under the Factories Act, 1948 (Central Act 63 of 1948);

(9) "Theatre"—includes any premises intended principally or wholly for the exhibition of pictures or other optical efforts by means of cinematograph or other suitable apparatus or for dramatic or circus performances or for any other amusement or entertainment;

(10) "Wages"—means every remuneration, whether by way of salary, allowances or otherwise expressed in terms of money or capable of being so expressed which would, if the terms of employment, expression implied were fulfilled be payable to an employee in respect of his employment or of work done in such employment, and includes:—
(i) any remuneration payable under any settlement between the parties or order of a tribunal or court; (ii) any remuneration to which the employee is entitled in respect of overtime work or holiday or any leave period; (iii) any additional remuneration payable under the terms of employment whether called a bonus or by any other name; (iv) any sum which by reason of the termination of employment of the employee is payable under any law, contract or instrument which provides for the payment of such sum whether with or without deductions, but does not provide for the time within which the payment is to be made; (v) any sum to which the employee is entitled under any scheme framed under any law for the time being in force, but does not include:—
(i) any bonus whether under a scheme of profit sharing or otherwise which does not form part of the remuneration payable under the terms of employment, or which is not payable under any award or settlement between the parties or order of a court; (ii) the value of any house accommodation or of the supply of light, water, medical attendance or other amenity or of any services excluded for the computation of wages by a general or special order of the Government; (iii) any contribution paid by the employer to any pension or provident fund and the interest which may be accrued thereon; (iv) any travelling allowance or the value of any travelling concession; (v) any gratuity payable on the termination of employment or (vi) any sum paid to the employee to defray special expenses incurred by him on account of the nature

(11) "Young person"—means a person who is not a child but has not completed eighteen years of age.

3. **House of Work**—(1) Subject to other provisions of the Act, no employees in any establishment shall be required or allowed to work thereon for more than eight hours in any day or forty eight hours in any week.

(2) Any employee may be required or allowed to work in an establishment for any period in excess of eight hours a day, on payment of overtime wages, subject however that the maximum period of such excess in a week shall be six hours.

(3) For the purchase of stock taking and preparation of accounts an employer may with the previous intimation to the Inspector require or allow any employee to work in an establishment for not more than any fifteen days in a year, in excess of the period fixed at (1) above, on payment of overtime wages, so however, that the excess period shall not in aggregate exceed twenty four hours.

4. **Interval for rest and spread over the periods of work and closing of shops**—(1) No employee in any establishment shall be required or allowed to work therein for more than five hours in any day unless he has had an interval for rest of at least one hour.

(2) The periods of work of an employee in any establishment shall be so arranged that, alongwith his interval for rest, they shall not spread over more than twelve hours in any day provided that where an employee work on any day for the purpose of stock-taking and preparation of accounts the spread over shall not exceed fourteen hours in any such day, on payment of overtime wages.

(3) Every shop shall remain closed on one day of the week which shall be fixed at the beginning of the year.

(4) In case of establishments other than shops every employee shall be allowed in each week a holiday of one whole day.

Employment of children, young persons and women — (1) Proof of age :- An Inspector may require an employer to produce an authentic extract from the records of any school or from the Registrar of Birth, Deaths and Marriages, or in the absence of such extract, at least a certificate from the Government Medical Officer showing the age of an employee.

(2) No child shall be required or allowed to work in any establishment.

(3) No young person shall be required or allowed to work in any establishment before 6 a. m. or after 7 p. m. and for more than 7 hours in any day or forty two hours in any week nor he shall be allowed to work overtime.

(4) The periods of absence from duty in respect of which a woman employee is entitled to maternity leave shall be treated as authorised absence from duty, and the women employee shall be entitled to maternity leave but not to any wages for any of those periods.

(5) Every women who has been for a period of not less than six months preceeding the date of delivery, in continuous employment of the same employer whether in the same or different shops or commercial establishments shall be entitled to receive from her employer for the period of:- (i) six weeks leave immediately preceeding the day of delivery; and (ii) six weeks leave following the day of delivery.

6. Health and Safety — (1) The premises of every establishment shall be kept clean and healthy as prescribed under the rules.

(2) No person shall smoke or use a naked light or cause or permit any such light to be used in the immediate vicinity of any inflammable material in any establishment.

(3) Every dangerous part of a machinery in an establishment other than a shop shall be securely fenced by safety guards of substantial construction, so also where manufacturing process is varied on with the aid of electric power, suitable devices for cutting off power in emergencies from running machines shall be provided and maintained.

7. Wages :- (1) Every employer shall be responsible for payment to his employees of all wages and sums required to be paid under this Act.

(2) Every employer shall fix period in respect of which wages shall be payable. No wage period shall exceed one month.

(3) Where any employee in any establishment is required to work overtime he shall be entitled, in respect of such overtime work, to wages at twice the ordinary rate of wages provided that where the normal hours of work are ordinarily less than eight hours a day and forty eight hours a week, he shall be entitled in respect of work in excess of such normal hours upto eight hours a day, and forty eight hours a week to wages at the ordinary rate of wages and in respect of work in excess of eight hours a day and forty eight hours a week at twice the ordinary rate of wages in addition to the wages for the normal hours of work.

(4) Ordinary rate of wages per hour shall be calculated by dividing the total wages payable to a person employed for the hours actually worked by him during the wage period by the number of such hours in the wage period. provided that hours worked by a person employed in excess of the normal daily hours during the wage period shall be excluded in calculating the number of hours actually worked by him.

(5) The wages of an employee shall be paid before the expiry of the seventh day after the last day of the wage period in respect of which the wages payable.

Deduction :- (1) The wages of an employee shall be paid to him without deductions of any kind, except those authorised by or under the Act.

(2) No deductions for breach of contract shall be made from the wages of an employee who is under the age of eighteen years.

(3) No deduction for breach of contract shall be made from the wages of an employee, unless :—

(a) There is a provision in writing, forming part of the terms of the contract of employment requiring the employer to give notice of the termination of such employment and the period of notice does not exceed either.

(i) Fifteen days or the wage - period whichever is less :

(ii) The period of notice which the employer is required to give of the termination of that employment.

(b) This rule has been displayed in English and in Marathi or Konkani at or near the main entrance of the establishment and has been so displayed for not less than one month before the commencement of the absence in respect of which the deduction is made.

(c) a notice has been displayed at or near the main entrance of the establishment giving the names of the persons from whose wages the deduction is proposed to be made, the number of days wages to be deducted and the condition if any, on which the deduction will be remitted.

(4) No deduction for breach of contract shall exceed wages of the person employed for the period by which the notice of termination of service given falls short of the period of such notice required by the contract of employment.

9. **Fines** — (1) No fine shall be imposed on any employee save in respect of such acts and omission on his part as the employer, without the previous approval of the Government or of the prescribed authority, may have specified by a notice.

29) A notice specifying such acts and omission shall be exhibited in the prescribed manner in the premises in which the employment is carried on.

(3) No fine shall be imposed on any employee until he has been given an opportunity of showing cause against the fine or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three paise in the rupee of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on any employee who has not completed the age of fifteen years.

(6) No fine imposed on any employee shall be recovered from him after the expiration of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

10. **Leave** — (1) Every employee who has served for a period of two hundred and forty days or more during a continuous period of twelve months in any establishment shall be entitled during the subsequent period of twelve months, to leave with wages for a period of fifteen days and such leave with wages may be accumulated upto a maximum period of forty five days.

An employee may apply in writing to the employer, not less than seven full working days before the date of availing himself of his leave to allow all the leave or any portion thereof to which he is entitled as at (1) above provided that the number of instalments for taking leave shall not exceed three during a period of twelve months.

(3) An employee who has been allowed leave for not less than five days shall, before his leave begins, be paid the wages due for the period of the leave allowed, if he makes a request thereof.

(4) Every employee in any establishment shall also be entitled during the first twelve months of continuous service and during subsequent twelve months of service.

(i) to leave with wages for a period not exceeding nine days, on the ground of any sickness incurred or accident sustained by him; and

(ii) to casual leave with wages for a period not exceeding six days on any reasonable ground.

(5) No application from an employee for leave on grounds of sickness of himself, his wife or child shall be refused but if in any case the employer is not satisfied about the correctness, he may require the employee to submit a medical certificate in respect thereof or get the employee or the wife or the child as the case may be, examined at his (Employees) own expenses by a registered medical practitioner (lady doctor in case of female).

(6) If an employee is discharged by his employer or if he quits employment before he has been allowed such leave as given at para 1 above, the employer shall pay him the amount payable in respect of period of leave.

11. Termination of Employment :- (1) No employer shall without a reasonable cause and except for misconduct, terminate the service of an employee who has been in his employment continuously for a period of not less than six months, without giving such employee at least one month's notice in writing or wages in lieu thereof and a gratuity amounting to fifteen days average wage for each year of continuous employment.

(2) An employee in any establishment shall be deemed to have been in continuous employment for a period of not less than six months if he has worked for not less than one hundred and twenty days in that establishment within a period of six months immediately preceding the date of termination of service of that employee.

(3) Every employer shall display or cause to be displayed at or near the main entrance of the establishment a copy of the list of acts and omissions in English and in Marathi or Konkani which shall be treated as misconduct on the part of the employees.

(4) Where any gratuity is payable to an employee, he shall be entitled to receive his wages from the date of termination of his service until the date on which the gratuity so payable is actually paid subject to maximum of wages for two months.

(5) No employer shall terminate the services of an employee unless an enquiry is held against the employee concerned in respect of any alleged misconduct.

(6) An employee against whom an enquiry has to be held shall be given a charge sheet clearly setting forth the nature and details of misconduct alleged against him and requiring explanation. He shall be given an opportunity to answer the charge. He shall be permitted to defend by another workman of the establishment as also to produce witnesses in his defence, and cross examine any witness on whose evidence the charge rests. A concise summary of evidence led on either side and the employee's plea shall be recorded in a register to be maintained for this purpose.

12. Appeal :— (1) The Commissioner, Labour and Employment, shall be the appellate Authority for the purpose of hearing and deciding appeals arising out of the termination of services of employees as well as the authority for purposes of matters specified in sub-section (7) of section 3 and section 62 of the Act.

13. Miscellaneous :— (1) Nothing in this Act shall apply to employees in any establishment whose average monthly wages exceed rupees five hundred (Rs. 500/-).

(2) Every employer shall give an order of appointment to his employees in the establishment before such employee joins the service and obtain acknowledgement in token of having served the order.

(3) No employee shall work in any establishment, nor shall any employer knowingly permit an employee to work in any establishment on a day or part of a day on which the employee is given a holiday or is on leave in accordance with the provisions of this Act.

14. Penalties :— (1) Any person who contravenes any of the provisions of the rules made under the Goa, Daman and Diu Shops and Establishment Act, 1973, shall on conviction be punishable with fine which may extend to Rupees fifty (Rs. 50/-).

(2) Any employer who contravenes any of the provisions of section 4, 5, to 8, 10 to 25, 27 to 39, 41 and 57 shall be punishable for a first offence with fine which may extend to Rs. 25/- for a second offence with fine which shall not be less than Rs. 50/- and which may extend to Rs. 100/- and for a third or subsequent offence with fine which shall not be less than Rs. 100/- and which may extend to Rs. 250/-.