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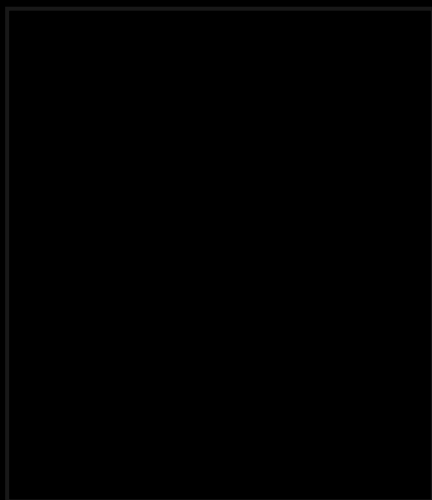
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Welcome to delegates for seminar on  
**LAYOFF AND RETRENCHMENT OF WORKMEN**  
as well as  
TRANSFER (OF OWNERSHIP) AND CLOSURE OF  
INDUSTRIAL ESTABLISHMENTS

Resource person

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# Learning objectives

- ✓ After attending this seminar you should be able to:-
- ✓ Understand the meaning and significance of layoff, retrenchment, closure and transfer as per the Industrial Disputes Act 1947.
- ✓ Know the lawful methods to layoff, retrenchment, closure and transfer.
- ✓ Avoid the costly errors in doing layoff, retrenchment, closure and transfer.
- ✓ Make positive difference to your organization and its business goals.

# What is layoff?

- ✓ The Indian news papers use the term **layoff** to mean “*termination of employees from service*”
- ✓ But in India layoff is **not** termination of employees from service.
- ✓ Layoff means temporary refusal of employment to any number of employees by the employer, due to specific reasons.
- ✓ Therefore as per the legal definition, the employee-employer relation continues and the employee will be still in the service of the employer during layoff.

# Layoff as defined under the Industrial Disputes Act 1947

Section 2(kkk) of the Industrial Disputes Act 1947 defines "lay-off" as under:

- ❖ the failure, or
- ❖ refusal or
- ❖ inability of an employer

on account of:-

- ✓ shortage of coal, power or raw materials or
- ✓ the accumulation of stocks or

# Layoff as defined under the Industrial Disputes Act 1947 (Continued----)

- ✓ the breakdown of machinery or
- ✓ natural calamity or
- ✓ for any other connected reason
- to give employment to a workman
- whose name is borne on the muster rolls of his industrial establishment and
- who has not been retrenched.

# Procedure for layoff of workmen under the Industrial Disputes Act 1947

- ✓ These provisions are applicable to those employees who are defined as workmen in Industrial Disputes Act 1947.
- ✓ Managerial employees are not protected by any law.
- ✓ The law relating to layoff is given in chapter V-A (5-A) and V-B (5-B) of Industrial Disputes Act 1947.
- ✓ Let us start with Chapter V-A.

# Chapter V-A of the Industrial Disputes Act 1947 on layoff

- ✓ Sections 25A, 25B, 25C, 25D, and 25E deals with layoff under Chapter V-A.
- ✓ **Industrial establishment** for the purpose of above sections, is limited only to:-
- ✓ *Factories, or Mines or Plantations* employing more than 50 and less than 100 workmen.

*(Factories, or Mines or Plantations* employing more than 100 workmen are covered under Chapter V-B)



# Chapter V-A of the Industrial Disputes Act 1947 on layoff

## Exceptions.

- ✓ It means the law of layoff is **not** applicable:-
- ✓ To factories, mines and plantations employing less than 50 workmen.
- ✓ To other industrial establishments like information technology, commercial markets, transport undertakings, shops etc.
- ✓ So, in such other industrial establishments layoff can be given without following the provisions of above sections.

# Chapter V-A of the Industrial Disputes Act 1947 on layoff

## Further exceptions

- ✓ The layoff provisions under Chapter V-A, are not applicable:-
- ✓ To workmen of industrial establishments which are of seasonal character, say sugar industry.
- ✓ To workmen who are in casual or badli employment.
- ✓ To workmen who have not rendered at least one year continuous service as on the date of layoff.

# Layoff procedure under Chapter V-A of Industrial Disputes Act 1947

- ✓ During the period of layoff the employer shall pay 50% of the basic wages and dearness allowance to the laid off workmen, as layoff compensation.
- ✓ Layoff compensation is not payable for the days of weekly holidays.
- ✓ If the layoff continues beyond 45 days in a year, the employer may enter into agreement with the workmen to continue the layoff without compensation.

# Layoff procedure under Chapter V-A of Industrial Disputes Act 1947 (continued---

- ✓ After 45 days of layoff the employer has the option to retrench the laid off workmen, in accordance with Section 25F of Industrial Disputes Act 1947.
- ✓ In such a case, the layoff compensation already paid can be adjusted towards the retrenchment compensation.

# Lay off compensation **need not** be paid in the following circumstances

- ✓ If the workmen refuses to accept alternative employment in the same establishment **or**
- ✓ In another establishment of the same employer located within 5 miles distance.
- ❖ Provided, the alternative employment does not call for any special skill or experience.
- ❖ Provided, the same wages are offered in the alternative employment also.

# Lay off compensation need not be paid in the following circumstances (Continued---

- ✓ If the laid off workman does not present himself for work at the establishment at the appointed time at least once a day and mark his attendance.
- ✓ If the layoff is due to strike or slowing down of production by workmen, in another part of the establishment.

# Retrenchment

- ✓ Section 25F in Chapter V-A of Industrial Disputes Act 1947 deals with retrenchment.
- ✓ Retrenchment means termination of service of any workman by the employer for any reasons (other than the reasons of indiscipline/ misconduct).
- ✓ Hence retrenchment permanently ends the employer- employee relation.

(Retrenchment in factories, mines and plantations employing more than 100 workmen is governed by Chapter V-B.)

# Definition of retrenchment

## Section 2(oo) defines retrenchment as under:-

✓ Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.

## but does not include—

- ✓ (a) voluntary retirement of the workman; or
- ✓ (b) retirement of the workman on reaching the age of superannuation.



# Definition of retrenchment ( Continued----

- ✓ **but does not include-**
- ✓ (bb) Termination as a result of **non-renewal** of the contract of employment between the employer and the workman concerned on its expiry.
- ✓ (c) Termination of the service of a workman on the ground of **continued ill-health**.

# Legal aspects of Retrenchment

- ✓ It is given in Section 25F of chapter V-A.
- ✓ Here separate definition of Industrial Establishment is not given.
- ✓ Hence the definition of industrial establishment is full and wide as given in Section 2(ka) of Industrial Disputes Act 1947.
- ✓ It means all industrial establishments including shops or commercial establishments are included.
- ✓ There is no limit on the number of workmen employed (except those covered in Chapter V-B).

# Legal aspects of Retrenchment

## Conditions precedent to retrenchment.

- ✓ The employer shall:-
- ✓ Give one month's advance notice to the concerned workman with reasons for retrenchment; **or**
- ✓ Pay one month's wages in lieu of notice period; **and**
- ✓ Pay retrenchment compensation, equivalent to fifteen days average pay for every completed year of service or any part exceeding six months; **and**
- ✓ If the workman is eligible for higher compensation under any contract or settlement, he shall get the same.

# Legal aspects of Retrenchment

## Conditions precedent to retrenchment (continued--).

✓ Give notice to the government (labour department).

✓ (To be eligible for notice and retrenchment compensation the concerned workman should have been in continuous employment under that employer for at least one year).

✓ (It means, workmen who have served less than one year can be removed from service, without following Section 25F).

# Procedure of Retrenchment

- ✓ If the workmen to be retrenched are Indian citizens, the employer should retrench the junior most employees first, using last come first go principle (Section 25-G).
- ✓ The above principle can be waived if there is an agreement between the employer and the workmen to be retrenched (Section 25-G).
- ✓ If the employer wants to appoint new employees in future, preference should be given to retrenched workers who are Indian citizens (Section 25-H).

# Transfer of ownership of industrial establishments

- ✓ Section 25-FF deals with transfer of ownership.
- ✓ Accordingly the workmen who are in continuous service at least for one year under that employer are eligible to notice and compensation as per Section 25-F, as if they are retrenched.
- ✓ Here also the definition of industrial establishment is wide as given in section 2(ka) of I D Act 1947.
- ✓ No need to give intimation to the labour department.
- ✓ (factories, mines and plantations employing more than 100 workmen will be governed by Chapter V-B)

# Circumstances in which notice and compensation is not to be given, in case of transfer of ownership

- ✓ If the service of workmen has not been interrupted by such transfer.
- ✓ If the service conditions of such workmen after the transfer are not less favorable.
- ✓ Under the terms of transfer the new employer agrees that, in the event of future retrenchment he will pay retrenchment compensation as if the service was uninterrupted.

# Closure of industrial establishments

- ✓ Section 25-FFA and 25-FFF of Chapter V-A.
- ✓ As per section 2(cc) "closure" means the permanent closing down of a place of employment or part thereof.
- ✓ According to Section 25-FFA the employer shall give at least sixty days of advance notice to the Government by stating the specific reasons for closure.
- ✓ **Exception:** The above notice is not required in case of
- ✓ Industrial establishments having less than 50 workmen,  
**or**
- ✓ Construction industry.

(Government in exceptional circumstances may waive the requirement of notice).



# Notice and compensation for closure

- ✓ Where the establishment is closed down for any reason, the workmen who were in continuous service for at least one year are eligible for notice and compensation in accordance with Section 25-F.
- ✓ **Reduced compensation**
- ✓ Where the establishment is closed due to unavoidable reasons beyond the control of employer, the total compensation payable shall not exceed three months average pay.

# No compensation in certain type of closure

- ✓ If a mine is closed due to exhaustion of minerals and the employer offers in another mine with similar service conditions.
- ✓ The services of such workmen is not interrupted due to such relocation.
- ✓ In the event of future retrenchment, the employer agrees to pay compensation for the entire service.
- ✓ In case of construction company which has completed its construction project in less than two years.

# Layoff, retrenchment, and closure, as per Chapter V-B (5-B) of Industrial Disputes Act 1947

- ✓ This chapter is applicable only to a **Factory** or **Mine** or **Plantation**, employing not less than 100 workmen.
- ✓ It is **not applicable** to industries of seasonal or intermittent nature.
- ✓ It is **not applicable** industries having less than 100 workmen.
- ✓ It is **not applicable** to other industrial establishments like transport, retail, information technology, hospitality etc.

# Layoff

- ✓ Section 25-M deals with layoff in Chapter V-B.
- ✓ Accordingly the employer has to apply for permission of the government for layoff.
- ✓ A copy of the said application shall also be given to the concerned workmen.
- ✓ The government may grant or refuse permission after taking into account the facts and circumstances.
- ✓ If government fails to communicate its decision within 60 days, the permission is deemed to be granted.

# Layoff ( Continued----)

- ✓ The decision of the government is final and binding on all the parties which will be in force for one year.
- ✓ The government on its own motion or on application by aggrieved party may review its decision.
- ✓ The government may also refer the matter to industrial tribunal for adjudication.
- ✓ In such a case the tribunal shall give its award within thirty days.
- ✓ Layoff without prior permission is illegal and workmen are eligible for all the benefits as if they were not laid off.

# Prior permission for layoff not required in the following cases

- ✓ The layoff is due to shortage of power or due to natural calamity.
- ✓ In case of mine the layoff is due to fire, flood, explosion, or excessive inflammable gas.

## **Government power to waive the permission**

- ✓ In exception circumstances like death of the employer or accident in the factory the government may waive the requirement of prior permission for layoff.

# Layoff compensation

- ✓ Laid off workers are eligible for compensation in accordance with Section 25-C.
- ✓ Compensation has to be continued even if layoff continues beyond 45 days.
- ✓ **No compensation**
- ✓ If employer offers alternative employment in the same establishment or another establishment of same employer within 5 Kilometer distance.
- ✓ If the new service conditions are not less favourable.

# Retrenchment under Chapter V-B

- ✓ Section 25-N deals with retrenchment.
- ✓ The workmen should be in continuous service of the employer at least for the past one year.
- ✓ Prior permission of the government is needed.
- ✓ Three month's advance notice or pay to the affected workmen.
- ✓ The government after considering all the facts and circumstance may grant or refuse the permission.
- ✓ If government does not communicate its decision within 60 days, the permission is deemed to have been granted.



# Retrenchment under Chapter V-B (continued--)

- ✓ The decision of the government is final and binding on all the parties, valid for one year.
- ✓ The government on its own motion or on the application of the affected party may review its decision.
- ✓ The government may also refer the matter to industrial tribunal.
- ✓ In such a case the tribunal shall give its award within thirty days.
- ✓ Retrenchment without permission is illegal and the affected workmen are entitled for all the benefits as if they were not retrenched.
- ✓ The government in exceptional circumstance may waive the requirement of prior permission.
- ✓ The retrenched workmen shall be paid by the employer, retrenchment compensation at the rate of 15 days average pay for every completed year of service.

# Closure of Industrial establishments as per chapter V-B

- ✓ Section 25-O deals with closure under chapter V-B.
- ✓ Accordingly employer shall make an application, ninety days in advance, to the government, seeking permission.
- ✓ A copy of the application to be simultaneously served by the employer on the affected workmen.
- ✓ Prior permission is not required in case of construction industry.

# Closure of Industrial establishments as per chapter V-B ( Continued---

- ✓ The government after considering all the facts and circumstance may grant or refuse the permission.
- ✓ If government does not communicate its decision within 60 days, the permission is deemed to have been granted.
- ✓ The decision of the government is final and binding on all the parties, valid for one year.
- ✓ The government on its own motion or on the application of the affected party may review its decision.

# Closure of Industrial establishments as per chapter V-B ( Continued---)

- ✓ The government may also refer the matter to industrial tribunal.
- ✓ In such a case the tribunal shall give its award within thirty days.
- ✓ Closure without permission is illegal and the affected workmen are entitled for all the benefits as if they were in service.
- ✓ The government in exceptional circumstance may waive the requirement of prior permission.
- ✓ If permission is granted / deemed to be granted the workmen shall be paid by the employer, compensation at the rate of 15 days average pay for every completed year of service.

# Punishment for illegal- layoff, retrenchment, and closure

## ✓ For illegal lay off or illegal retrenchment-

Imprisonment up to 1 month and penalty upto Rs. 1000 or both. (Section 25-Q)

## ✓ For illegal closure-

✓ Imprisonment up to 6 month and penalty upto Rs. 5000 or both. (Section 25-R)

For questions, clarifications and feedback

Please write to

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