

FACTORIES SETUP IN MAHARASHTRA AND BOMBAY SHOPS AND ESTABLISHMENTS ACT, 1948

Approval, licensing and registration of Factories:

Under the provisions of Factories Act, 1948 the State Government may make rules:

- Requiring submission of plans of any class or description of factories to the Chief inspector or the State Government and also requiring previous permission in writing of the state government or the Chief inspector to be obtained for the site on which the factory is to be situated.
- Requiring for the purpose of considering applications for such permission the submission of plans and specifications.
- Prescribing the nature of such plans and specifications and by whom they shall be certified.
- Requiring the registration and licensing of factories and prescribing the fees payable for such registration and licensing and for renewal of licences.

If on an application for permission sent to the State government or Chief inspector by registered post, no order is communicated to the applicant within 3 months from the date of application, the permission applied for in the said application shall be deemed to have been granted.

In cases where the State Government or the Chief inspector refuses to grant permission to the site, construction or extension of a factory or to the registration and licensing of the factory, the applicant may within 30 days of the date of such refusal appeal to the Central Government if the decision appealed from was of the State Government and to State Government in any case.

Bombay Shops and Establishments Act, 1948:

The Bombay Shops and Establishments Act, 1948 was enacted to regulate conditions of work and employment together with regulation of establishments in shops, commercial establishments, residential hotels, restaurants, eating houses, theaters, and other places of public entertainment and other establishments. The Act also covers employment of children, young persons and women, leave and payment of wages, health and safety etc.

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It applies to the local areas specified in Schedule-I of the Act. The Shops and Establishments Department is headed by the Chief inspector, Shops and Establishment and he is further assisted by four Deputy Chief Inspectors.

Procedure for registration of establishment:

Employer of an Establishment has to apply to the inspector of the local areas concerned in the prescribed form along with the prescribed fees for getting the establishment registered under the Act.

On receipt of the application and the fees the inspector, on being satisfied about the correctness of the particulars contained in the application will register the establishment and issue a registration certificate.

If there is any change in such particulars the employers has to notify the same to the Inspector by applying in the prescribed form accompanied by prescribed fees and get the registration certificate suitably amended.

The employer has to get the registration certificate renewed every year by applying to the Inspectors by applying to the inspectors in the prescribed form.

Required documents for registration:

- Memorandum of Articles of Association/ Trust Deed
- Premises purchase Agreement
- List of Directors/ Managers
- First Bank Account opening proof/ Bank Account No. Details
- First income tax Assessment order
- BMC Declaration
- Date of commencement of Business

Closing and renewal of establishment:

If an employer is closing down a business he has to notify the same to the inspector under Section 8 of the Act within 10 days of his doing so. The inspector will then cancel his registration. If by any chance the employer loses, destroys or defaced his registration certificate he can obtain the same by applying to the inspector with the prescribed fees for issuance of the duplicate certificate.

There are provisions in the Act for the renewal of registration by submitting the relevant forms to the authority notified along with the old certificate of registration and renewal fees for minimum one year renewal and maximum of 3 year renewal. The prescribed form has to be submitted 15 days before the expiry date

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of certificate. In case of any change in the establishment, it has to be specified within 15 days after the expiry of the quarter to which the changes relate. It is to be noted that the establishment of the central government and state government are exempted from all provisions of Act by Section 4 and Schedule II, Entries 1 and 2. Also in the cases where the shop or commercial establishment is situated in the premises of a factory and is not connected with the manufacturing process of the factory, the provisions of the Act will apply to it otherwise the provisions of Factories Act will apply to it.

Restrictions on working hours of employees in shops and commercial establishments:

Generally the opening hours of shops is not earlier than 7 a.m. but the shops selling goods like milk, vegetable etc., are allowed to be open from 5 a.m. onwards.

Generally the closing hours of shops is that they must be closed at the latest by 8:30 p.m. but shops selling goods like pan, bidi etc. are allowed to keep open up to 11 p.m.

Commercial establishment are not allowed to be opened earlier than 8:30 p.m and closed later than 8:30 p.m in a day.

An employee in a shop and commercial establishment cannot be required or allowed to work for more than 9 hours in a day and 48 hours in a week.

He must be allowed an interval of rest of at least one hour after five hours of continuous work.

His spread over cannot exceed 11 hours in a day.

Every shop and commercial Establishment must remain closed on one day of the week. No deduction can be made from the wages of any employee in a shop or commercial establishment on account of any day on which it has so remained closed.

Restrictions placed on the employment of children and women:

The employment of children is totally prohibited and anybody who is below the age of 15 years is considered to be a child and no child can be allowed or required to work , whether as an employee or otherwise in any establishment.

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There is further restriction put on closing hours for women and giving them dangerous work. No women is allowed or required to work, whether as an employee or otherwise in any establishment after 9:30 p.m. Similarly no women is required or allowed to perform work involving danger to her life, health or morals.

Provisions regarding notice of termination of services of an employee:

According to Section 60 of the Act if an employer wants to terminate the services of any employee who has been in his continuous service employment for one year or more, the employer can terminate his employment by giving him 30 days clear notice in writing or wages in lieu of such notice. Also if an employee is in his continuous service for less than a year but more than three months, the employer can terminate his services by giving him 14 days notice in writing or wages in lieu of this notice. If this procedure is not followed the termination is bad in law and the employee is entitled to reinstatement with continuity of service and full back wages. The only exception to the rule is if an employee is terminated by way of discharge or dismissal for misconduct, the employer need not give any notice to the employee.

Compliance:

During the course of enforcement the inspectors have to visit various establishments and to detect breaches of the Act and the rules made there under and to launch prosecutions and defaulters accordingly.

The major breaches of the provisions of the Act consist of non-registration, non-renewal, opening of establishment before prescribed hours and closing of establishment before prescribed hours, leave issues of the employees including making them work on public holidays, employing child labor etc.

The major breaches of the provisions of the rule are of the nature of procedural lapse, for example, not maintaining register of employment, leave register, visit book, lime washing register, not providing leave book to the employee, not producing requisite record register, notices for inspection on demand etc.

The Majority of the offences under the Act are punishable with fine which would be not less than 50 Rupees and which may extend to 500 Rupees.