

NEW ACT TO REGULATE SHOPS & ESTABLISHMENTS IN MAHARASHTRA

1. INTRODUCTION

The Government of Maharashtra published the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (the “**New Act**”) earlier in September. The New Act will come into force on a specific date that is yet to be announced and will repeal the Bombay Shops & Establishments Act, 1948 (the “**Present Act**”) presently in force.

2. PREAMBLE OF THE NEW ACT

The New Act intends to provide for the regulation of conditions of employment and other conditions of service of workers employed in shops, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment, and other establishments, for matters incidental thereto.

3. KEY AMENDMENTS

We set out the key provisions of the New Act below, contrasted with the Present Act.

	Subject Matter	The Present Act	The New Act
1.	Applicability	The Present Act is applicable to all establishments, irrespective of the number of workers employed thereat.	The New Act will apply to establishments employing 10 (ten) or more workers. Establishments with less than 10 (ten) workers are required to intimate the facilitator (in whose jurisdiction the business is located) regarding certain details about its business. ¹
2.	Definition of “Establishment”	The definition of the term “establishment” is covered under two heads, namely, “establishment” and “commercial establishment”.	There is only one head of definition for “establishment”, which is comprehensive. Businesses carrying on manufacture, or any journalistic or printing work, or the business of banking, insurance, stocks and shares, brokerage or produce exchange have also been included

¹ The provisions of the New Act will not apply to establishments already having valid registration or renewal under the Present Act, until the expiry of their registration or renewal.

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			within the definition of the term “establishment”. ²
3.	Facilitators ³ and their duties	Inspectors are required to carry out the provisions of the Present Act within their respective jurisdictions.	Inspectors under the Present Act have been replaced with “facilitators” under the New Act. Their duties have been increased to include providing employers and workers with advice and all information relating to compliance with the new law.
4.	Registration process and maintenance of records	The process of registration is manual. Records are to be maintained electronically. The Ministry of Industry, Energy and the Labour Department released a notification dated April 8, 2015, for maintenance of registers electronically under the extant set of labour laws.	The process of registration is to be conducted electronically. Records are to be maintained electronically or manually, at the option of the employer.
5.	Validity of the registration certificate	The registration certificate will remain valid up to the end of the year for which it granted. The application for renewal of the registration certificate must be submitted not less than 15 (fifteen) days before the expiry of the registration certificate or the renewed registration certificate.	The registration certificate will remain valid for such period as may be requested by the applicant, not exceeding a period of 10 (ten) years. The application for renewal must be submitted online, not less than 30 (thirty) days before the expiry of the registration certificate, or the renewed registration certificate.
6.	Cancellation of Registration	-	The facilitator has the power to cancel the registration and remove an establishment from the register of establishments, if such establishment is found to have obtained its registration through

² The term “commercial establishment” under the Present Act includes establishment of any legal practitioner. This has now been removed from the definition of the term “establishment” under the New Act. However, the words ‘establishment carrying out any profession’ are wide enough to include establishments, which engage 10 (ten) or more legal practitioners within the ambit of the New Act.

³ We note that the manner of appointment and powers of “facilitators” under the New Act are similar to the mechanism provided under The Code on Wages Bill, 2017.

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			misrepresentation or suppression of material facts, or by submitting false or forged documents or false declaration or by fraud.
7.	Closing of establishment to be communicated to applicable authority	Within 10 (ten) days of the closing of the establishment.	Within 30 (thirty) days of the closing of the establishment.
8.	Leaves and Holidays	4 (four) paid festival holidays every year.	8 (eight) paid festival holidays in a calendar year.
		Every shop and commercial establishment must remain closed on 1 (one) day of a week, subject to certain exceptions.	An establishment may be kept open for business on all days in a week, subject to the conditions that every worker will be allowed weekly holiday of at least 24 (twenty four) consecutive hours of rest.
		Every employee who has worked for not less than 240 (two hundred and forty) days during a year is entitled to leave for a period of not less than 21 (twenty one) days leave.	Every worker who has worked for a period of 240 (two hundred and forty) days or more in an establishment during a calendar year will be allowed leave with wages, during the subsequent calendar year. The number of leaves with wages will be calculated at the rate of 1 (one) day for every 21 (twenty one) days of work performed by him during the previous calendar year.
		Every employee is entitled to earned leave accumulation up to a maximum of 42 (forty two) days.	Every employee will be entitled to earned leave accumulation up to a maximum of 45 (forty five) days.
		-	Every worker will be entitled to 8 (eight) days of casual leave with wages in a calendar year. This will be credited into the account of the worker on a quarterly basis, but will lapse if unavailed at the end of the year. However, this is subject to certain conditions.

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9.	Welfare Provisions	The Present Act contains provisions relating to cleanliness, ventilation, lighting, precautions against fire, and first aid.	The New Act contains more comprehensive provisions relating to health and safety of workers, first aid, drinking water, latrine and urinals, crèche facility and canteens.
		-	Every establishment with 50 (fifty) or more workers should provide a suitable room as a crèche for the children of such workers. A group of establishments can also provide a common crèche within a 1 (one) kilometer radius of the establishment, subject to the conditions prescribed by the chief facilitator.
10.	Discrimination against Women Employees	-	No woman worker will be: a) discriminated against in the matter of recruitment, training, transfers or promotion or wages; b) required or allowed to work in any establishment, except between the hours of 7 AM and 9.30 PM, unless the establishment has prescribed safety and transportation measures.
11.	Spread Over in an Establishment	The spread over of an employee in an establishment cannot exceed 11 (eleven) hours in any day.	The spread over of an employee in an establishment cannot exceed 10.5 (ten and a half) hours in any day. In case a worker is entrusted with intermittent or urgent work, the spread over cannot exceed 12 (twelve) hours.
12.	Wages for overtime	Every employee who works in excess of the limit of hours of work will be entitled to wages at the rate of twice his ordinary rate of wages for such overtime work. ⁴	Every worker of any establishment who is required to work beyond 9 (nine) hours a day, or 48 (forty eight) hours a week will be entitled to wages at the rate of twice his

⁴ The term 'limit of hours of work' has different connotation depending on the nature of the establishment.

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			ordinary rate of wages for such overtime work.
		Maximum limit for working overtime must not exceed 3 (three) hours.	The total number of overtime hours will not exceed 125 (one hundred and twenty five) hours in a period of 3 (three) months.
13.	Penalties	<p>The chapter relating to penalties is divided under the following heads:</p> <ul style="list-style-type: none"> a) contravention of certain provisions and offences; b) contravention of Section 12 (hawking prohibited before opening and after closing hours); c) employee contravening certain provisions of the Present Act; d) penalty for obstructing Inspector. <p>The penalties range from INR 1,000 (Indian Rupees one thousand only) to INR 5,000 (Indian Rupees five thousand only), and in case of continuous violation, with an additional fine, which may extend to INR 1,000 (Indian Rupees one thousand only) per day.</p>	<p>The chapter relating to penalties is divided under the following heads:</p> <ul style="list-style-type: none"> a) Penalty for contravention of provisions which of the New Act; b) Penalty for contravention of provisions which resulted in accident; c) Penalty for obstructions or refusal to provide register, etc. <p>The New Act has harsher penalties, ranging from INR 2,000 (Indian Rupees two thousand) to INR 5,00,000 (Indian Rupees five lakhs), and in case of continuous violation, with an additional fine, which may extend to INR 2,000 (Indian Rupees two thousand only) per day.</p>

4. INDUSLAW VIEW

The New Act, while maintaining welfare content for workers, is intended to be more business friendly. Digitization of the record maintenance and allowing establishments to remain open on all days in a week, subject to certain conditions, are a few examples that demonstrate this intent.

The legislature has taken concrete steps towards empowering women: introducing specific provisions relating to prohibition of discrimination against women workers; and requiring the availability of a crèche facility. Following the introduction of the Maternity Benefit Amendment Act, 2017, this legislation has provided clarity with respect to the provision of a crèche facility.

The penalties under the New Act have been substantially increased, giving the legislation more teeth, and making it riskier to ignore the law at an operational level. While the proposed legislation appears to provide respite from bureaucracy and facilitate the smooth functioning of a business, the true test of the efficacy of any law is its enforcement. On that count,

we have to wait and evaluate how the Labour Department, employers and employees will respond to the law once it is made effective.

The rules relating to the New Act are yet to be released. We will provide an update on these rules as and when they become available.

Authors: Avik Biswas, Vivek Daswaney, Ashi Bhat and Divakar Bhatia

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