

published on 29.11.2015

Thirteenth Kerala Legislative Assembly

Bill No. 377

**THE KERALA INDUSTRIAL ESTABLISHMENTS
(NATIONAL AND FESTIVAL HOLIDAYS)
AMENDMENT BILL, 2015**

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2015

KERALA NIYAMASABHA PRINTING PRESS.

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BILL

further to amend the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958.

Preamble.—WHEREAS, it is expedient to amend the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 (Act 47 of 1958), for the purposes hereinafter appearing;

BE it enacted in the Sixty-sixth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Industrial Establishments (National and Festival Holidays) Amendment Act, 2015.

(2) It shall come into force at once.

2. *Amendment of section 2.*—In section 2 of the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 (Act 47 of 1958) (hereinafter referred to as the principal Act),—

(1) clause (a) shall be renumbered as clause (ab) of the said section;

(2) before clause (ab) as so renumbered, the following clauses shall be inserted, namely:—

“(a) “contract agency” means a person or body of persons or a partnership firm or an organization or a company engaged in the business for providing or rendering service of contract employees to any industrial, commercial or business activity;

(aa) “contractor” means a contractor as defined in clause (c) of sub-section (1) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (Central Act 37 of 1970).”

(3) in sub-clause (i) of clause (b) for the words “employed in any industrial establishment” the words “employed or engaged in any industrial establishment whether directly or through a contractor” shall be inserted.

(4) in clause (c),—

(i) for the words, “a person who has the ultimate control over the affairs of the industrial establishment,” the words “a person who has the ultimate control over the affairs of the industrial establishment including an occupier of a factory,” shall be substituted;

(ii) in the same clause, after the words “such other person” the words “and where any employee is engaged or employed in such industrial establishment by or through a contractor, that contractor” shall also be added at the end.

(5) in clause (e), in sub-clause (i),—

(i) the words “where twenty or more persons are employed, or were employed on any day of the preceding twelve months,” shall be omitted;

(ii) in item (b), after the words “a plantation” the words “as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (Central Act 69 of 1951)” shall be inserted;

(iii) after item (b), the following items shall be inserted, namely:—

“(c) an establishment as defined in clause (8) of section 2 of the Kerala Shops and Commercial Establishments Act, 1960 (Act 34 of 1960);

(d) a private security agency as defined in clause (g) of section 2 of the Private Security Agencies (Regulation) Act, 2005 (Central Act 29 of 2005);

(e) a motor transport undertaking as defined in clause (g) of section 2 of the Motor Transport Workers Act, 1961 (Central Act 27 of 1961);

(f) a contract agency.”.

(6) after clause (f), the following clause shall be inserted, namely:—

“(fa) “occupier” means an occupier as defined in clause (n) of section 2 of the Factories Act, 1948 (Central Act 63 of 1948);

(7) clause (g) shall be omitted.

(8) after clause (g) the following clause shall be inserted, namely:—

“(ga) “principal employer” means principal employer as defined in clause (g) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (Central Act 37 of 1970).”.

3. *Amendment of section 3.*—For section 3 of the principal Act, the following section shall be substituted, namely:—

“3. *Grant of National Holidays.*—Every employee in an industrial establishment shall be allowed in each calendar year a holiday of one whole day on the 26th January, 1st May, 15th August and 2nd October.”.

4. *Insertion of sections 3A, 3B and 3C.*—After section 3 of the principal Act, so substituted the following sections shall be inserted, namely:—

“3A. *Grant of Festival Holidays.*—Every employee in an industrial establishment employing twenty or more persons (including contract employees) or were employed on any day of the preceding twelve months, shall be allowed, in addition to the National Holidays allowed under section 3, nine festival holidays of one whole day each in a calendar year, for such festival days as the Inspector may, in consultation with the employer and employees specify in respect of any industrial establishment:

Provided that in the case of an industrial establishment which commences work for the first time after the commencement of a calendar year, the number of holidays for festivals allowable to an employee under this section during the remainder of that calendar year, shall be fixed by the Inspector and the number so fixed shall not be less than the number calculated at the rate of one day for every three months or part thereof the remainder of such calendar year.

3B. *Submission of list of holidays by the employer.*—(1) Every employer shall submit a list of festival holidays for approval for the succeeding year, in such manner, as may be prescribed, to the Inspector concerned:

Provided that in the case of an Industrial Establishment which fails or refuses to submit a list of holidays under this Act, the list of holidays published by the prescribed authority shall be deemed to be the approved list of holidays for such industrial establishments:

Provided further that, the list of holidays applicable to the Principal Employer's Industrial Establishment shall also be applicable to the contract employees engaged by him. If the Principal Employer's Establishment is not coming under the purview of this Act, then approved list of holidays of contract agency shall be applicable to the contract employees.

(2) Nothing stated above shall absolve the employer of the obligation to submit the list of festival holidays under this section.

3C. *Paid holiday to exercise franchise.*—Notwithstanding anything contained in sections 3 and 3A, when a general election or bye-election to the House of the People or State Legislative Assembly is held under the Representation of the People Act, 1951 (Central Act 43 of 1951) or an election to the local bodies is held under the Kerala Panchayat Raj Act, 1994 (Act 13 of 1994) or the Kerala Municipality Act, 1994 (20 of 1994), every employee, whose name is included in the electoral roll of the constituency or ward or division where such election is held, shall be allowed on the day of poll, a day's paid holiday to enable him to exercise his franchise:

Provided that this section shall not be applicable to any elector whose absence may cause danger or substantial loss in respect of employment in which he is engaged.”.

5. *Amendment of section 4.*—In section 4 of the principal Act, after the figure “3” the words, figure and letter “and section 3A” shall be inserted.

6. *Amendment of section 4A.*—In section 4A of the principal Act,—

(1) in sub-section (1), after the figure “3” the words, figure and letter “or section 3A” shall be inserted;

(2) after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Notwithstanding anything contained in sub-section (2), the employer of an industrial establishment in which the employee is eligible only for National Holidays under section 3 shall be exempted from submitting copy of notice under sub-section (2) to the Inspector.”.

7. *Amendment of section 5.*—In section 5 of the principal Act,—

(1) in sub-section (1), after the figure “3” the words, figure and letter “or section 3A” shall be inserted;

(2) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Where an employee works on any holiday allowed under section 3 or section 3A, he shall be entitled to twice the wages and to avail himself of a substituted holiday on any other day. Such wages shall be paid along with the wages for the wage period in which such holiday falls.”

(3) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Notwithstanding anything contained in sub-section (2), an employee who is eligible only for National holidays under section 3 shall be entitled to twice the wages when such employee works on any such holiday and shall be paid along with the wages for the wage period in which such holiday falls.”

(4) in sub-section (3),—

(i) after the figure “3” the words, figure and letter “or section 3A” shall be inserted;

(ii) in the proviso, for the figure “3”, the figure and letter “3A” shall be substituted.

(5) for sub-section (4) the following sub-section shall be substituted, namely:—

“(4) A contractor shall be responsible for payment of holiday wages to each employee employed by him as contract employee:

Provided that where the contractor fails to make payment of holiday wages, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to such contract employee. The principal employer may recover the same from such contractor either by deduction from any amount payable to such contractor under any contract or as a debt payable by the contractor.”

8. *Insertion of sections 5A, 5B and 5C.*—In the principal Act, after section 5, the following sections shall be inserted, namely:—

“5A. *Claim of Holiday Wages.*—(1) The Inspector may, on his own motion, after making an enquiry or inspection, as he considers necessary, direct the employer to pay the holiday wages due to the employee under sections 3, 3A, 3C and 5.

(2) Where an employee has any claim on any holiday wages under sections 3, 3A, 3C and 5, the employee himself or his representative or any office bearer of a registered trade union may apply to the Inspector for the payment of such holiday wages:

Provided that every such application under sub-section (2) except for holiday wages under sections 3, 3A, 3C and 5 shall be submitted within one year from the date on which the holiday wages become payable and the application for holiday wages under section 3C shall be submitted within three months from the date on which the wages become payable:

Provided further that any application may be admitted, if the Inspector is satisfied that applicant had sufficient cause for not making the application within such period, but it shall not exceed three years from the date on which such holiday wages become payable.

(3) Where any application under sub-section (2) is admitted, the Inspector shall, after affording a reasonable opportunity of being heard to the parties or after making such enquiry, as he may consider necessary, direct the payment of the amount due with interest thereon at the rate of ten per cent per annum from the date it fell due or at other rate notified by the Government.

(4) Any amount payable under this section shall be recovered by the Collector on a revenue recovery requisition issued for that amount by the Inspector as arrears of revenue due on land.

5B. *Appeal*.—(1) Any person aggrieved by an order or direction of the Inspector issued under sections 5 or 5A may file an appeal within thirty days from the date of receipt of such order or direction, before such Appellate Authority as the Government may, by notification, appoint in this behalf.

(2) On receipt of an appeal, the Appellate Authority may make such enquiries as he deems fit and after giving an opportunity of being heard to the parties, shall decide the appeal within a period of thirty days from the date of filing of such appeal. The decision of the Appellate Authority thereon shall be final:

Provided that the Appellate Authority may admit an appeal submitted after the expiry of the said period, if it is satisfied that the appellant had sufficient reasons for not preferring the appeal within the said period:

Provided further that no such appeal shall be admitted after the expiry of a period of three months from the date of delivery of the order appealed against.

(3) Every appeal under this section shall be made in such form as may be prescribed and shall be accompanied by a copy of the order appealed against along with such fee as may be prescribed.”

5C. *Maintenance of registers and records and display of notices.*—(1) Every employer shall maintain such registers and records and display in the premises of his establishment such notices as may be prescribed. All such registers and records shall be kept on the premises of the establishment to which they relate.

(2) No employer shall make or cause or allow to be made in any record, register, notice or form in written or electronic format, prescribe any entry which to his knowledge is false in any material particular, or wilfully omits or causes or allows to be omitted from any such record, register, notice or form an entry required to be made therein.

9. *Amendment of section 7.*—In section 7 of the principal Act, after clause (b), the following clauses shall be inserted, namely:—

“(ba) seize or take copies of such registers, records or notices or portions thereof which he considers relevant in respect of an offence under this Act or rule made thereunder when he has reason to believe that an offence has been committed under this Act or rule;

(bb) examine the employer, his agent or servant or any other person found in charge of the industrial establishment or other undertaking or any person whom the Inspector has reasonable cause to believe to be, or to have been, an employee in the industrial establishment;

(bc) require any person to produce any register or other document or to give any information in this regard.”

10. *Amendment of section 8.*—For section 8 the following section shall be substituted, namely:—

“8. *Penalty.*—Any employer, who contravenes any of the provisions of this Act or any rule or order made thereunder shall be punishable with fine, which may extend to five thousand rupees and for a second or subsequent offence with fine which may extend to ten thousand rupees.”

11. *Amendment of section 9.*—In section 9, for the words “five hundred rupees” the words “five thousand rupees” shall be substituted.

12. *Insertion of section 9A.*—After section 9, the following sections shall be inserted, namely:—

“9A. *Offences by Companies.*—(1) Where 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 punished accordingly:

Provided that nothing contained in this section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had 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, firm or other association of individuals whether incorporated or not and it is proved that the offence has been committed with the consent, connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the Company, partner or individual firm or other association of individuals whether incorporated or not, such Director, Manager, Secretary or other officer, partner or individual shall also be deemed to be guilty of that offence and shall be liable to be punished accordingly.

Explanation.—For the purpose of this section,—

(a) “Company” means Company as defined in the Companies Act, 2013 (Central Act 18 of 2013)

(b) “Director” means a director as defined in the Companies Act, 2013 (Central Act 18 of 2013).

9B. *Cognizance of offence.*—No court shall take cognizance of any offence punishable under this Act or any rule or order made thereunder unless a complaint is made by the Inspector, within six months from the date on which the alleged commission of the offence comes to his knowledge and no court inferior to that of a Judicial Magistrate of the First Class shall try any offence under this Act or any rule or order made thereunder.

9C. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Government or any authority or Inspector in respect of anything which is done in good faith or intended to be done in pursuance of this Act or any rule or order made under this Act.”

13. *Amendment of section 12.*—In section 12, in sub-section(2), for the word “fifty” the word “five thousand” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Kerala Industrial Establishment (National & Festival Holidays) Act, 1958 (Act 47 of 1958) is applicable to factories and to the Industrial Establishments employing twenty or more persons. A vast majority of the employees in the industrial establishments, which are not coming under the purview of this Act, are required to work on days of National importance and on the International Labour Day etc. that too without any compensatory benefits. This is causing hardships and is detrimental to the interests of the working class. Therefore, it is proposed to make provisions for allowing National Holidays on Republic day, International Labour Day, Independence Day and Gandhi Jayanthi for all establishments, irrespective of the number of persons employed therein.

Hardships of similar nature are also being faced by the contract employees and private security personnel working in industrial establishments. Therefore, it is proposed to make specific provisions extending the benefits of this Act to those employees also.

Government have received many complaints regarding the absence of holidays on the dates of polling to the General Elections to Parliament, State Legislative Assembly and local bodies. Exercising franchise is a constitutional right. Hence it is felt necessary to make provisions in this regard. It is proposed to make it obligatory for the employers to allow paid holidays to the eligible employees, during general or bye-elections to Parliament, State Legislative Assembly and local bodies, so as to enable them to exercise franchise in consonance with the provisions of the Representation of Peoples Act, 1951 (Central Act 43 of 1951).

According to sub-section (2) of section 5 of the Act, an employee is eligible for twice the wages and a substituted holiday on any other day, when he is required to work on any National or Festival Holiday. But in the cases where the employer fails or refuses to submit the list of Holidays for approval, as per the Act, the employees were not provided with the benefits envisaged under the Act. This is found unfair and therefore, it is proposed to make provisions for allowing National and Festival Holidays to the employees in an industrial establishment, even if an employer fails or refuses to submit the list of holidays for approval.

Government have decided to suitably amend the Kerala Industrial Establishment (National & Festival Holidays) Act, 1958 incorporating the above provisions in the Act for curing the existing defects and also to facilitate effective implementation of the Act by enhancing and augmenting the penalties.

This Bill seeks to achieve the above object.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Section 3B proposed to be inserted by clause 3 of the Bill seeks to empower the Government to prescribe the manner in which the list of holidays are to be prepared.
2. Sub-section (3) of section 5A proposed to be inserted in the Act by clause 8 of the Bill seeks to empower the Government to specify the other rate of holiday wages.
3. Sub-section (1) of section 5B proposed to be inserted by clause 8 of the Bill seeks to empower the Government to issue notification to appoint the Appellate Authority by a notification.
4. Sub-section (3) of section 5B proposed to be inserted in the Act by clause 8 of the Bill seeks to empower the Government to prescribe the forms and fees for appeal.
5. Section 5C proposed to be inserted by clause 8 of the Bill seeks to empower the Government to prescribe the manner of displaying the notices.
6. The matters in respect of which rules may be made or notifications may be issued are matters of procedure and are of routine or administrative nature. Further, the rules, after they are made, are subject to scrutiny by the Legislative Assembly. The delegation of legislative power is thus, of a normal character.

SHIBU BABY JOHN

EXTRACT FROM THE RELEVANT PORTIONS OF THE KERALA
INDUSTRIAL ESTABLISHMENTS (NATIONAL AND
FESTIVAL HOLIDAYS) ACT, 1958
(ACT 47 OF 1958)

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2. *Definitions.*—In this Act unless the context otherwise requires,—

(a) “day” means a period of twenty-four hours beginning at mid night;

(b) “employee” means—

(i) any person (including an apprentice) employed in any industrial establishment to do skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied;

(c) “employer” when used in relation to an industrial establishment means a person who has the ultimate control over the affairs of the industrial establishment, and where the affairs of any industrial establishment are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person;

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(e) “industrial establishment” means,—

(i) any establishment, industrial, commercial or otherwise, where twenty or more persons are employed, or were employed on any day of the preceding twelve months and includes—

(a) a factory as defined in the Factories Act, 1948 (Central Act 63 of 1948); and

(b) a plantation;

(ii) any other establishment which the Government may, by notification in the Gazette, declare to be an industrial establishment for the purposes of this Act;

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(f) “Inspector” means an Inspector appointed under sub-section (1) of section 6;

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(g) "Plantation" means any estate maintained for the purpose of growing cardamom, cinchona, coffee, rubber or tea, which is twelve hectares or more in extent, or in which twenty or more persons are employed, or were employed on any day of the preceding twelve months, for that purpose;

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3. *Grant of National and Festival Holidays.*—Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the 15th August, the 1st May and 2nd October and nine other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees specify in respect of any industrial establishment.

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4. *Employer to display statement of holidays.*—Every employer shall display in the premises of the industrial establishment, a statement showing the holidays allowed in each calendar year under section 3, in such form, within such time and in such manner as may be prescribed.

4A. *Power of employer to require employee to work on holidays.*—(1) Notwithstanding anything contained in section 3, an employer may, by notice in writing require any employee to work on any holiday allowed under that section.

(2) The notice under sub-section (1) shall be served on the employee in the prescribed manner. One copy of the notice shall be sent to the Inspector and another copy thereof shall be displayed in the premises of the industrial establishment, not less than twenty-four hours before such holiday.

5. *Wages.*—(1) Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him under section 3, whether or not the employer has not required, or could not require, him under sub-section (1) of section 4A to work on that holiday or whether that holiday falls or does not fall during the period of a strike or illegal lockout.

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(2) Where an employee works on any holiday allowed under section 3, he shall be entitled to twice the wages and to avail himself of a substituted holiday on any other day.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holiday allowed under section 3:

Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed under section 3, other than the 26th January, the 15th August, the 1st May and the 2nd October unless he has been in the service under the employer for a total period of thirty days within a continuous period of ninety days immediately preceding such holiday.

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(4) Any amount due to an employee under this Act shall be recoverable as arrears of land revenue under the Revenue Recovery Act for the time being in force.

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7. *Powers of Inspectors.*—Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter at all reasonable times and with such assistance, if any, who are persons in the service of the Government or of any local authority as he thinks fit, to take with him, any place which is or which he has reason to believe is, an industrial establishment;

(b) make such, examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise, the evidence of such person as he may deem necessary for carrying out the purposes of this Act.

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8. *Penalties.*—Any employer who contravenes any of the provisions of section 3 or section 5 shall be punishable with fine which may extend to two hundred and fifty rupees.

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9. *Penalty for obstructing Inspector.*—Whoever wilfully obstructs an Inspector in the exercise of any power conferred on him by or under this Act, or fails to produce on demand in writing by an Inspector any register, record or notice in his custody which may be required to be kept in pursuance of this Act, or of any rule made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

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12. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for purpose of carrying into effect the provisions of this Act.

(2) In making a rule under this Act, the Government may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

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