

GUJARAT ACT No. 12 OF 2004.

(First published, after having received the assent of the President in the "*Gujarat Government Gazette*", on the 30th March, 2004).

AN ACT

further to amend the Industrial Disputes Act, 1947
in its application to the State of Gujarat.

It is hereby enacted in the Fifty-fifth Year of the Republic of India as follows :-

1. (1) This Act may be called the Industrial Disputes (Gujarat Amendment) Act, 2004.
- (2) It shall be deemed to have come into force on the 10th February, 2004.

**Short title
and
commence-
ment.**

2. In the Industrial Disputes Act, 1947 in its application to the State of Gujarat (hereinafter referred to as "the principal Act"), in section 2, - XIV
of
1947.

- (1) in clause (k), the words and letters "but does not include the termination of the service of a workman in accordance with the provisions of Chapter V-D" shall be added at the end;
- (2) in clause (oo), -
 - (i) in sub-clause (c), the word "or" shall be added at the end;
 - (ii) after sub-clause (c), the following sub-clause shall be added, namely :-

"(d) termination of the service of a workman in an industrial establishment situate in the Special Economic Zone declared as such by the Government of India;"
- (3) after clause (q), the following clause shall be inserted, namely :-

"(qa) "termination" means discontinuation by the employer of the service of a workman in an industrial establishment situate in the Special Economic Zone declared as such by the Government of India 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 if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
 - (c) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
 - (d) termination of the service of a workman on the ground of continued ill-health;"

3. In the principal Act, after Chapter V-C, the following Chapter shall be inserted, namely :-

Insertion of new Chapter V-D in XIV of 1947.

"CHAPTER V-D

25V. (1) The provisions of Chapters V-A and V-B shall not apply to an industrial establishment to which Chapter V-D applies.

Special provisions for Special Economic Zone.

(2) The provisions of this Chapter shall apply to an industrial establishment set up in the Special Economic Zone declared as such by the Government of India.

25W. For the purposes of this Chapter, --

Definitions of continuous service.

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lock out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer -

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

(i) ninety-five days, in case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which -

- (i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 or under this Act or under any other law applicable to the industrial establishment;
- (ii) he has been on leave with full wages, earned in the previous year;
- (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks.

20 of
1946.

Right of
workmen laid
off for
compensation.

25X. Whenever a workman (other than a *badli* workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off:

Provided that if during any period of twelve months, a workman is so laid off for more than forty-five days, no such compensation shall be payable in respect of any period of the lay off after the expiry of the first forty-five days :

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to terminate the workman in accordance with the provisions contained in section 25ZA at any time after the expiry of the first forty-five days of the lay-off and when he does so, any compensation paid to the workman for having been laid off during the preceding twelve months may be set off against the compensation payable for termination.

Explanation.- "*Badli* workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be

regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.

25Y. Notwithstanding that workmen in any industrial establishment have been laid off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.

Duty of employer to maintain muster rolls of workmen.

25Z. No compensation shall be paid to a workman who has been laid off -

Workman not entitled to compensation in certain cases.

- (i) if he refuses to accept any alternative employment in the same establishment from which he has been laid off, or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs, if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman, provided that the wages which would normally have been paid to the workman are offered for the alternative employment also;
- (ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day;
- (iii) if such laying off is due to strike or slowing down of production on the part of workmen in another part of the establishment.

25ZA. (1) No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be terminated (otherwise than as a punishment inflicted by way of disciplinary action) by that employer until -

Conditions for termination of workman.

- (a) the workman has been given one month's notice in writing and the period of notice has expired, or the workman has been offered in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid compensation equivalent to forty-five days salary for every completed year of continuous service in such manner as may be prescribed.

(2) Where the workman has been insured through insurance policy by the employer for the social security to receive the compensation in the case of termination, equivalent to forty-five days salary for every completed year of continuous service, the employer, instead of making payment of compensation under clause (b) of sub-section (1), shall forward all the necessary documents of such workman to the Insurance Company within fifteen days after termination.

Compensation to workman in case of transfer of undertaking.

25ZB. Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25ZA, as if the workman had been terminated:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if-

- (a) the service of the workman has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
- (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his termination, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

Sixty days notice to be given of intention to close down any undertaking.

25ZC. An employer who intends to close down an undertaking, shall serve at least sixty days before the date on which the intended closure is to become effective, a notice, in the manner as may be prescribed, on the State Government stating clearly the reasons for the intended closure of the undertaking.

Compensation to workman in case of closing down of undertaking.

25ZD. Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall be entitled to compensation in accordance with the provisions of section 25ZA, as if the workman had been terminated."

4. (1) The Industrial Disputes (Gujarat Amendment) Ordinance, 2004, **Repeal and savings.**
is hereby repealed.

- (2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.
