

The Industrial Employment (Standing Orders) Act, 1946

Objectives

The Industrial Employment (Standing order) Act of 1946 is a benevolent social legislation. It aims to achieve a laudable objective for the protection of labour by providing uniform and stable conditions of service. The act requires employers of certain industrial establishments to clearly defined, with sufficient precisions, the condition of employment, i.e. standing order/service rules, and to make them known to the workmen employed by them.

Short title: This act may be called the Industrial Employment (Standing Orders) Act, 1946.

Extent: It extends to the whole of India.

Application: It applies to every industrial establishment wherein **one hundred or more workmen** are employed, or were employed on any day of the preceding twelve months.

Provided that the appropriate Government may, after giving not less than **two months' notice** of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any industrial establishment employing such number of number of persons less than one hundred as may be specified in the notification.

“appellate authority” means an authority appointed by the appropriate Government by notification in the Official Gazette.

“appropriate Government” means in respect of industrial establishments under the control of the Central Government or a Railway administration or in a major Port, mine or oil field, the Central Government, and in all other in all other cases the State Government.

“Certifying Officer” means a Labour Commissioner or a Regional Labour Commissioner, and includes any other officer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under this Act.

“employer” means the owner of an industrial establishment to which this Act for the time being applies.

“industrial establishment” means

an industrial establishment as defined in the Payment of Wages Act, 1936, **or**

- a factory as defined in the Factories Act, 1948, or

- a railway as defined in the Indian Railway Act, 1890,

or

the establishment of a person who, for the purpose of fulfilling a contract with the owner of any industrial establishment, employs workmen;

“**prescribed**” means prescribed by rules made by the appropriate Government under this Act ;

“**standing orders**” means rules relating to matters set out in the Schedule:

“**trade union**” means a trade union for the time being registered under the Indian Trade Union Act, 1926;

“**wages**” and “workman” have the meanings respectively assigned to them in the Industrial Disputes Act, 1947

Submission of draft standing orders (Section 3)

Within **six months** from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the **Certifying Officer five copies** of the draft standing orders proposed by him for adoption in this industrial establishment.

Certification of standing orders (Section 5)

On receipt of the draft the Certifying Officer shall forward a copy thereof to the trade union, **if any, of the workmen, or where there is no such trade union, if any, of the workmen or where there is no trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections**, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

After giving the employer and the trade union or such other representatives of **the workmen prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act**, and shall make an order in writing accordingly.

The Certifying Officer shall thereupon certify the draft standing orders, after **making any modifications there in which his order under may require, and shall within seven days** thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order to the

employer and to the trade union or other prescribed representatives of the workmen.

Appeals (Section 6)

Any employer, workmen, trade union or other prescribed representatives of the workmen aggrieved by the order of the **Certifying Officer under may, within thirty days** from the date on which copies are sent can appeal to the appellate authority, and the appellate authority, whose decision shall be final appellate authority will decide that modification need to done or not. The appellate authority shall, **within seven days of its order send copies** thereof to the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders a certified by it and authenticated in the prescribed manner.

Date of operation of standing orders (Section 7)

Standing orders shall, unless an appeal is preferred, come into operation on the **expiry of thirty days from the date on which authenticated copies thereof are sent, or where an appeal as aforesaid is preferred, on the expiry of seven days from the date on which copies of the order of the appellate authority are sent.**

Register of standing orders (Section 8)

A copy of all standing orders as finally certified under this Act shall be filed by the **Certifying Officer** in a register in the prescribed form maintained for the purpose, and the Certifying Officer shall furnish a copy there of to any person applying there for on payment of the prescribed fee.

Posting of standing orders (Section 9)

The text of the standing orders as finally certified under this Act shall be prominently posted by the **employer in English and in the language understood by the majority of his workmen** on special boards to be maintained for this.

Duration and modification of standing orders (Section 10)

Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen **be liable to modification until the expiry of six months** from the date on which the standing orders or the last modifications thereof came in to operation.

Payment of subsistence allowance (Section 10 A)

Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-

At the rate of fifty per cent of the wages which workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension;

At the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

If any dispute arises regarding the subsistence allowance payable to a workman the workman or the employer concerned may refer the dispute to the **Labour Court, constituted under the Industrial Disputes Act, 1947**

Certifying Officers and appellate authorities to have powers of Civil Court
Every Certifying Officer and appellate authority shall have all the powers of a Civil Court for the purposes of receiving evidence, administering oaths,, enforcing the attendance of witnesses, and compelling the discovery and production of documents, and shall be deemed to be a Civil Court

Clerical or arithmetical mistakes in any order passed by a Certifying officer or appellate authority, or errors arising therein from any accidental slip or omission may, at any time, be corrected by that Officer or authority or the successor in office of such officer or authority, as the case may be.

Oral evidence in contradiction of standing orders not admissible (Section12)

No oral evidence having the effect of adding to or otherwise varying or contradicting standing orders finally certified under this Act shall be admitted in any Court.

Temporary application of model standing orders (Section 12 A)

When the standing order not certified till then model standing order will apply **upto six month.**

Penalties and procedure (Section 13)

An employer who fails to submit draft standing orders and who modifies his standing orders otherwise than in accordance with the provision, shall be punishable with fine which may extend **to five thousand rupees**, and in the case of a continuing offence with a further fine which may extend to **two**

hundred rupees for every day after the first during which the offence continues.

Interpretation, etc., of standing orders (Section 13 A)

If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman or a trade union or other representative body of the workmen may refer the question to any one of the **Labour Courts constituted under the Industrial Disputes Act, 1947**, and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties.

Power of exempt (Section 14)

The appropriate Government may by notification in the Official Gazette exempt, conditionally or unconditionally any industrial establishment or class of industrial establishments from all or any of the provisions of this Act.

Power to make rules (Section 15)

The appropriate Government may after previous publication, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

In particular, and without prejudice to the generality of the foregoing power, such rules may--

- prescribe additional matters to be included in the Schedule, and the procedure to be followed in modifying standing orders certified under this Act in accordance with any such addition;
- set out model standing orders for the purposes of this Act;
- prescribe the procedure of Certifying Officers and appellate authorities;
- Prescribe the fee which may be charged for copies of standing orders entered in the register of standing orders;
- provide for any other matter which is to be or may be prescribed;
- Provided that before any rules are made under clause (a) representatives of both employers and workmen shall be consulted by the appropriate Government.

Every rule made by the Central Government under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for **a total period of thirty days which may be comprised in one session or in two or more successive sessions.**

Amendments

As per the amendment “Fixed Term Employment” has now been introduced irrespective of the industry of work. The amendment also directs that no employer of an industrial establishment shall convert the posts of the permanent workmen existing in his industrial establishment on the date of commencement of the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 as fixed term employment thereafter.

The hours of work, wages, allowances shall not be less than that of permanent workman and all statutory benefits available to a permanent workman proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute.

Quick overview

Application: 100 or more workmen

Model standing order: 6 Months

Copies of standing order: 5

Appeal: within 30 days

Subsistence allowance: 50% wages first 90 days, 75% wages after it.

Application of standing order: After the expiry of 30 days.

Dispute will go to the Labour court as given in the Industrial dispute Act 1947.