

The Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962

Extent and Application

An act to consolidate and amend the law relating to the regulation of conditions of work and employment in shops and commercial establishments was passed by the Uttar Pradesh Legislature in 1962. All the provisions of the Act apply to commercial establishments and cane co-operative societies in the State and also to those employees of vacuum pan sugar factories in the State to whom the provisions of the Factories Act, 1948, do not apply. However, its section 5 and 8 are not applicable in several establishments which are given in Schedule I.

Provisions of the Act

Various provisions of this Act made for shops and commercial establishments of Uttar Pradesh are as under:

1. Under Section 3, a list of employees shall be displayed at a conspicuous place in the shop or commercial establishment and a copy thereof shall be sent to the Inspector concerned.
2. Under Section 4 (A), it has been mentioned that the Chief Inspector shall maintain a register of all shops and commercial establishments in form 'K' to which this Act applies, provided that such different registers may be maintained for different areas and for different classes of shops and commercial establishments.
3. Under Section 5, no shop or commercial establishment, not being a shop or commercial establishment mentioned in Schedule I, shall on any day open before 9 a.m. or close later than 8 p.m. provided that in summer (period from midnight of March 14 to midnight of September 14 in any year) the employer may open before 10 a.m. but not before 9 a.m. provided further that shops exclusively or mainly dealing in food grains, pulses and oil seeds may open earlier but not before 8 a.m. No employer shall on any day open before 9 a.m. or keep open after 7 p.m. any commercial establishment, not mentioned in Schedule I of the Act. The shops and commercial establishments wherein only wholesale business of food grains, pulses and oil seeds is carried on, and which are situated in a grain *mandi* specified in this behalf by the District Magistrate having jurisdiction over the area may open earlier, but not before 6 a.m.

4. Under Section 6, no employer shall require or allow an employee to work on any day for more than five hours in case of a child, six hours in case of a young person and eight hours in case of any other employee, provided that any employee, not being a young person or a child, may be required or allowed to work longer than the aforesaid hours of work, so however, that the total number of hours of work including overtime does not exceed ten on any one day except on a day of stock taking or making of accounts provided further that the total number of hours of overtime work shall not exceed fifty in any quarter. Whenever any employee is required or allowed to work overtime, the employer shall within 24 hours of the expiry of the period of such work, furnish information giving the name of the employee and the duration of overtime work to the Chief Inspector and to the Inspector concerned. Any employee, who has worked in excess of the hours of work fixed (i.e. eight hours), shall be paid by his employer, wages at twice the ordinary rate.

5. Under Section 7, the working hours in a shop or commercial establishment shall be so arranged that each employee gets an interval of not less than half an hour for rest after not more than five hours of continuous work, and the periods of work and intervals of rest of an employee do not spread-over more than twelve hours in one day.

6. Under Section 8, every employer shall keep his shop or commercial establishment, not included in Schedule I, closed on one day in a week and on public holidays (including Republic Day, Holi Parewa, Birthday of Dr. Ambedkar, Independence Day, Birthday of Mahatma Gandhi, Diwali Parewa, Kartiki Poornima and Idu'l Fitr.) in a year.

7. Under Section 9, every employee, not being a watchman or a caretaker, shall be allowed by the employer, holiday on

- (i) every close day which is a public holiday; and
- (ii) one whole day in each week.

8. Under Section 10, every employee, who has been in continuous employment of the same employer for a period of twelve months or over, shall in addition to any holiday allowed under Section 9, be entitled to earned leave for not less than fifteen days for every twelve months of such service provided that a watchman or a caretaker who has been in continuous employment for a period of twelve months or over shall be entitled to not less than sixty days earned leave for every twelve months of such service.

Every employee who has been in continuous employment of the same employer for a period of six months or over shall, subject to such conditions as may be prescribed, be further entitled to sickness leave for not less than fifteen days in any one calendar year.

Every employee shall be also entitled to casual leave for not less than ten days in any one calendar year. Every application from an employee for casual leave shall be in writing.

Any earned leave not availed of in any year by an employee shall be added to such leave accruing to the employee in the year following, provided that the total period of earned leave admissible to an employee at any time shall not exceed 45 days.

Where the services of an employee are terminated by his employer, or where the employee terminates the employment, the employer shall be liable to pay to the employee wages for the number of days for which the earned leave is due to him.

9. Under Section 11, if earned leave is refused the employee is entitled of its encashment in addition to one's regular wages.

10. Under Section 12, if holiday is declared the employee is entitled of wages for the day.

11. Under Section 13, every employer shall fix a wage period, may be monthly, fortnightly, weekly or daily. Where the wage period consists of a month, every employer shall pay the wages of his employee, before the expiry of the seventh day after the last day of the wage period in respect of which the wages are payable. Where the wage period is either a fortnight or a week, payment shall be made by the employer before the expiry of three days after the last day of the wage period in respect of which the wages are payable, where the wage period is daily, payment shall be made by the employer before the expiry of 24 hours of the wage period.

12. Under Section 14, an employee proceeding on earned leave shall, on demand, be given advance payment of the wages for half the period of the leave, and the wages for the wage period immediately preceding such leave.

13. Under Section 15, the deductions admissible from the wages are fines, absence from duty, damages caused due to neglect, house rent and other conveniences utilised by the employee, recovery on advances, loans, income tax, provident fund, refreshment, revenue stamp, insurance premium, payment for security deposits, payment towards super annuation fund. The deductions against advances can not exceed one third of the wages.

14. Under Section 16, no fines in excess of 3 per cent of the wages payable to an employee for any wage period shall be imposed on him by the employer.

15. Under Section 17, the employer shall maintain a register of fines and realisation thereof in form 'E'. Fine is to be realised only when approved by the Chief Inspector.

16. Under Section 18, the wages of an employee, if not paid as provided by or under this Act, shall be recoverable in the manner provided in the Payment of Wages Act, 1936.

17. Under Section 19, no employee, other than an employee engaged for a specified period or in a leave vacancy, shall be discharged from service by his employer except on the ground that:

- a) The post held by him has been retrenched; or
- b) He is unfit to perform his duties on the ground of physical infirmity or continued ill-health, and he has been served with a notice in writing containing the grounds of discharge. But nothing like this shall apply to dismissal for misconduct that includes willful insubordination or disobedience strike without proper notice, theft, fraud or dishonesty, illegal gratification, habitual absence without leave, drunkenness, fighting, righters or disorderly behaviour endangering the life of others, habitual negligence of duty, threatening or intimidating other employees of the undertaking disclosing information of the commercial establishment, sleeping in duty, gambling, deliberately delaying the production process or carrying out orders.

18. Under Section 20, according to subsection (1) no employee, other than an employee engaged for a specified period or in a leave vacancy, shall terminate his employment, except after notice of thirty days, or of such longer period, as may be required under the terms of his employment. According to subsection (2) where an employee fails to comply with these provisions, his unpaid wages for a period not exceeding 15 days may be forfeited to his employer.

19. Under Section 21, no child shall be required or allowed to work in any shop or commercial establishment except as an apprentice in such employment as may be notified by the State Government in the Gazette.

20. Under Section 22, no woman or child shall be required or allowed to work, whether as an employee or otherwise in any shop or commercial establishment during night.

21. Under Section 23, no employer shall knowingly require or allow a woman to work, and no woman shall work in any shop or commercial establishment during the period of six weeks following the day on which she is delivered of a child.

22. Under Section 24, a pregnant woman employee may, by seven clear days' notice (in form 'F' made available by the employer to the employee concerned at any time

during working hours) in writing, require her employer to relieve her from duty for a period not exceeding six weeks preceding the expected date of delivery.

23. Under Section 25, the period of absence from duty in respect of which a woman employee is entitled to maternity benefits under Section 26 of this Act, shall be treated as authorised absence from duty, and the woman employee shall be entitled to maternity benefits, but not to any wages, for any of these periods.

24. Under Section 26, every woman employee, who has been in continuous service of the same employer, is entitled to receive 12 weeks maternity leave with wages.

25. Under Section 27, a woman employee, during the period she is nursing her child, shall in addition to the regular intervals of rest, be entitled to two breaks of half an hour each for the aforesaid purpose.

26. Under Section 28, no employer shall discharge or remove from service any woman employee on account of, or during the period of absence from duty allowed to her under Section 26.

27. Under Section 29, the State Government may appoint a Chief Inspector and a Deputy Chief Inspector for the whole of Uttar Pradesh, and as many Inspectors for different areas thereof as may be considered necessary.

28. Under Section 30, an Inspector may, at all reasonable times, enter any place which is, or which he has reason to believe to be, a shop or commercial establishment, for the purpose of examining the registers, records or other documents kept therein and obtain a copy thereof.

29. Under Section 31, the Chief Inspector, the Deputy Chief Inspector and every Inspector appointed under Section 29, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

30. Under Section 32, every employer

a. Employing up to ten employees shall also maintain a register in respect of attendance and payment of wages, deductions and leave facilities in form 'CC'.

b. Employing employees exceeding ten but not exceeding 25 shall maintain the register of attendance and wages in form 'G' and also maintain a register of leave in form 'H'.

c. Employing employees exceeding 25 shall be required to maintain a register of attendance and wages in form 'G', a register of leave in form 'H', and a register of deductions from wages in form 'D'.

31. Under Section 33, any person who contravenes or fails to comply with any of the provisions of this Act, or of the rules made there under, other than those of subsection (1) of Section 20, shall be guilty of an offence under this Act.

32. Under Section 34, if the person committing an offence under this Act or the rules made there under is a company, the company as well as every person in-charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

33. Under Section 35, any person guilty of an offence under this Act shall be liable to fine which may, for the first offence, extend to hundred rupees and, for every subsequent offence, to five hundred rupees.

34. Under Section 36, no court shall take cognizance of any offence under this Act or the rules made there under except on complaint in writing made within six months of the date on which the offence is alleged to have been committed.

35. Under Section 37, no suit, prosecution or other legal proceedings shall lie against any officer or authority under this Act, for anything done, or intended to have been done, in good faith in pursuance of the provisions of this Act or the rules or orders made there under.

36. Under Section 38, whenever a shop or commercial establishment is actually opened, it shall be presumed that it is opened for the service of any customer or for the business, trade or manufacture normally carried on in the shop or commercial establishment.

37. Under Section 39, the provisions for the Workmen's Compensation Act, 1923, and of the rules made there under, shall '*mutatis mutandis*' apply to every employee of a shop or commercial establishment.

38. Under Section 40, the State Government may make rules to carry out the purposes of the Act.

39. Under Section 41, the United Provinces Shops and Commercial Establishments Act, 1947 is hereby repealed.

Registration of Shops and Commercial Establishments

Under Section 4, every owner of a shop or commercial establishment shall within three months of the commencement of such business or within three months of the commencement of the U.P. Dookan Aur Vanijya Adhishthan (Sanshodhan) Adhiniyam,

1976, whichever is later, apply to the Chief Inspector for registration of his shop or commercial establishment through an application in form 'L'.

The Chief Inspector shall on being satisfied that the prescribed fee has been deposited, register the shop or commercial establishment in the register of shops or commercial establishments and issue a registration certificate in form 'M' to the owner. Every owner of a shop or commercial establishment shall get his shop or commercial establishment registered for five financial years and if it is a case of renewal, renewed for five financial years which may be up to ten financial years at the time of next renewal under this Act on payment of prescribed fee.