

## HR Law Hotline

August 22, 2009

### INDIAN WORKMEN'S COMPENSATION (AMENDMENT) BILL, 2009 : PROPOSALS FOR ENHANCED COMPENSATION, GREATER COVERAGE

The Ministry of Labour introduced the Workmen's Compensation (Amendment) Bill, 2009 ("Bill") in the Parliament earlier this month. The Bill seeks to amend the Workmen's Compensation Act, 1923 ("WCA"). The Bill seeks to expand coverage of the WCA, increase the minimum compensation payable under WCA in the event of death or permanent disablement suffered by the personnel under the WCA; provide greater powers to Central Government and provide for speedy settlements of claims under the WCA.

#### BACKGROUND

Similar to the law on workmen's compensation in several countries the WCA in India protects the interest of the employees by providing for payment of compensation in the case of death or injury in the course of employment. Protection under the WCA also extends to certain occupational diseases arising out of and in the course of employment. WCA applies inter alia to persons employed in certain specified hazardous employments such as factories, mines, plantations mechanically propelled vehicles, construction work, etc. A list of hazardous employments is provided in Schedule II of the WCA. WCA has also been extended to commercial establishments in several states based on the state-specific labour laws.

#### PROPOSED CHANGES

The changes proposed under the Bill, are based on recommendations of the Second National Commission of Labour set up in the year 2002. The primary amendments are as follows:

(i) **ACT RECHRISTENED:** The terms "Workman" and "Workmen" as they presently exist under the WCA, is sought to be replaced by the term "Employee" and "Employees" respectively. This amendment is presumably to make the terminology more gender neutral.

(ii) **WIDER COVERAGE:** While Schedule II lists the hazardous employments covered by the WCA, currently, clerical employees of such establishments are excluded. The Bill seeks to expand the coverage of the existing WCA, and include persons employed in a clerical capacity in the employments covered by Schedule II as long as they are also connected with such hazardous employment. Further, certain hazardous employments are covered under Schedule II only if the establishment employs a minimum number of employees. The Bill seeks to remove such minimum threshold.

Clerical personnel working in premises where hazardous processes are carried out, are currently not covered under the WCA, even though they might be affected by such processes due to physical proximity. By expanding the coverage, such personnel will be eligible to receive compensation should they suffer any disablement / occupational disease in the course of employment.

(iii) **ENHANCED COMPENSATION:**

¶ Minimum compensation payable in the event of the death and permanent total disablement (as defined under the WCA) from an injury is proposed to be enhanced to INR 120,000 (presently INR 80,000) and INR 140,000 (presently INR 90,000) respectively.

¶ Funeral expenses payable by the employer to the dependent of the workman is proposed to be enhanced to a minimum of INR. 5,000 (presently INR 2,500)

¶ In addition to the compensation payable, it has been proposed to be reimburse to the employee the actual medical expenditure incurred by him for the treatment of injuries caused in the course of employment.

Enhancement of the compensation payable to the employee (or his dependents) is a welcome step, as the last increase in this regard took place in the year 2000. Further, the proposed change with respect to the actual medical expenditure incurred being reimbursed, should help the employees recover their medical costs.

(iv) **CENTRAL GOVERNMENT EMPOWERED:** The Bill proposes to empower the Central Government to enhance the minimum compensation amount for death and disablement and the funeral expenses as set out above. Further, currently, the maximum limit on the monthly wages, for the purpose of calculating compensation payable under the WCA is INR 4,000 per month. As per the Bill, this limit is proposed to be removed and powers have been given to the Central Government to specify the monthly wage limit.

At present, any enhancement of compensation requires a legislative amendment by the Parliament of India. The proposed amendment is expected to empower the Central Government to ascertain the appropriate compensation that may be payable, not having to wait for the legislature to amend the law.

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(v) **SPEEDY SETTLEMENT OF CLAIMS:** Claims under the WCA must be referred for adjudication to the Labour Commissioner. The Bill proposes to set a time limit of three months for adjudication and disposal of such claims.

Justice delayed is justice denied, and this amendment should go a long way to provide compensation to employees within a time bound framework. However, it remains to be seen, whether the three month time limit will be complied with, given the huge back log of cases and other shortcomings in the justice delivery system in India.

The amendments proposed in the Bill are employee friendly and a welcome step. It is hoped that the Bill is passed in the winter session of the Parliament.

- **Anupam Prasad & Sangeeta Rana**

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