

## FAQs ON SHOPS AND ESTABLISHMENT LAW IN MAHARASHTRA



Under the Constitution of India, labor welfare is a subject in the concurrent list where both the central and state governments are competent to enact legislations subject to certain matters reserved for the central government. One such state enacted legislation is the law to regulate the conditions of employment and service. Various state governments have enacted legislations governing shops and commercial establishments to regulate the conditions of employment in commercial establishments within their respective jurisdictions. Although the shops and establishment legislations in each state is similar, there are some differences in their applicability and conditions.

This primer covers the law governing the shops and establishments in the state of Maharashtra.

## 1. What is the law governing the shops and establishments in Maharashtra?

The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (**S&E Act**) and the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules, 2018 (**S&E Rules**) govern shops and commercial establishments in Maharashtra.

The S&E Act came into force from 19 December 2017 and the S&E Rules came into effect from 23 March 2021.

## 2. What is the main object of the S&E Act?

The main object of the S&E Act is to govern and regulate the conditions of employment and service of workers in shops, residential hotels, restaurants, eatery houses, theatres, other places of public amusement or entertainment and other establishments.

### 3. What is the extent of applicability of the S&E Act and S&E Rules?

The S&E Act and S&E Rules are applicable to all establishments employing at least 10 workers in Maharashtra.

However, the S&E Act and S&E Rules are not applicable to establishments / offices of the centre, state, local authorities, Mumbai port trust, railway administration, Reserve Bank of India, consular and diplomatic officers, air service companies, institutions for mentally unfit, educational activities (*except individual coaching or tuition classes*), court law libraries, worker whose work is inherently intermittent and member of the family of an employer.

The S&E Act and S&E Rules are also not applicable to workers discharging confidential or managerial functions (*explained below*) in an establishment.

### 4. What is a 'shop'?

The term 'shop' means any premises where goods are sold (*retail or wholesale*) or where services are rendered to customers. It includes an office, a storeroom, godown, warehouse or workplace mainly used in connection with trade or business, but does not include a factory.





## 5. What is an 'establishment'?

The term establishment is provided a wide meaning under the S&E Act. It includes any place from which any business, trade, profession is carried on including manufacturing, journalism, printing, and any work incidental to any business, trade or profession or manufacture.

The term also includes a shop, establishment of any medical practitioner, professional or consultant, society registered under the Societies Registration Act, 1860 and establishments where the provisions of the Factories Act, 1948 do not apply. It must be noted that the courts in India have provided a wide interpretation to the term 'establishment'.

## 6. Who is considered to be a 'worker'?

A worker means any person employed in any establishment to do any manual, unskilled, skilled, technical, operational, or clerical work for compensation. It does not include any person who is a trainee or apprentice in an establishment.

## 7. Can an employer engage part-time workers in a shop or establishment?

Yes, an employer is permitted to engage part time workers, however, such worker cannot be made to work for more than 5 hours in a day or work overtime.

The wage for a part-time worker must be the higher of: a) the per day minimum wages applicable OR b) wages fixed for permanent workers doing similar nature of work, divided by 8 hours plus a 15% of the wages.

## 8. Who is an 'employer'?

An employer is a person owning or having ultimate control over the affairs of an establishment. This includes the partner in case of a partnership, a director in case of a company and in case of a government establishment, then the person appointed to manage the affairs of such establishment.

### 9. What does 'managerial function' mean?

All functions which are inherently supervisory in nature and are bestowed with powers and authority to take all policy and administrative decisions in an organization are managerial functions.

For example, the power to sanction leave, award increment, take disciplinary action, terminate, suspend or dismiss a worker or indulge in policy making decisions regarding any aspect of the business or service, conditions of workers and such other similar powers.

### 10. Who are the authorities to ensure the implementation of the S&E Act and S&E Rules?

A 'Chief Facilitator' is appointed by the state government to implement provisions of the S&E Act and S&E Rules throughout Maharashtra.

Further, one or more 'Facilitators' are also appointed by the state government and may assign them to specific local limits. A facilitator may exercise powers such as advising the employers and workers, inspecting establishments, maintain a monthly diary and canceling of registrations.

The chief facilitator controls and supervises the functioning of the facilitator apart from exercising all the powers and functions of the facilitator.







### 11. Are there any registration requirements for establishments?

Yes, the employer of every establishment with 10 or more workers is required to submit an online application along with certain documents and fee for registration of the establishment with the facilitator.

On receipt of the application along with documents and fee, the facilitator may register the establishment in the register. Subsequently, the facilitator will issue a registration certificate along with the labor identification number to the employer within 7 days. If the application is incomplete, the facilitator may reject the application. The employer must also disclose the names, designation, and brief nature of duties of persons discharging confidential or managerial functions to the facilitator. The online application for registration can be accessed from <https://lms.mahaonline.gov.in/> and the procedure to be followed is provided at <https://mahakamgar.maharashtra.gov.in/lc-registration-of-shops-and-establishments.htm> (as on 28 June 2021).

For establishments employing less than 10 workers, its employer is required to give intimation of commencement of business to the facilitator.

### 12. What is the validity of the registration that is granted and what is the process for renewal of registration?

The registration is valid for such period as requested by the applicant subject to a maximum period of 10 years. For renewal, an application must be submitted online at least 30 days before the date of expiry of the registration certificate. The online application for renewal of registration can be accessed from <https://lms.mahaonline.gov.in/> and the procedure to be followed is provided at <https://mahakamgar.maharashtra.gov.in/lc-renewal-application-for-shop-establishment.htm> (as on 28 June 2021). The facilitator may renew or reject the application within 7 days.

### 13. What are the on-going compliances an employer is required to undertake under the S&E Act and the S&E Rules?

An employer must comply with the following:

- a) **Notify any Changes:** Notify any change in any of the particulars submitted during registration of the establishment with the facilitator within 30 days from the date of such change.
- b) **Notify Closure:** In case of closure of establishment, notify that the establishment has been closed for business to the facilitator within 30 days from the date of closure of the business. The online application for closure of establishment and cancellation of registration can be accessed from <https://lms.mahaonline.gov.in/> and the procedure to be followed is provided at <https://mahakamgar.maharashtra.gov.in/lc-cancellation-application-for-shop-establishment.htm> (as on 28 June 2021).
- c) **Issue Identity Cards:** Issue identity cards to all workers which must be produced to the facilitator on demand. It must contain particulars such as name of the employer, details of the establishment, name and age of the worker, date of joining, department, nature of work, designation, aadhaar card number and signatures of employer or manager.





- d) **Maintenance of records:** Maintain a muster-roll cum wages register which is digitally or manually authenticated by the employer or a person authorized by him. However, if an employer maintains a muster-roll cum wages register under the Maharashtra Minimum Wages Rules, 1963, a muster-roll cum wages register under the S&E Act is not required to be maintained separately.
- e) **File Annual Return:** Required to upload the annual return in form R provided under the S&E Rules, on the website within 2 months for the year ending on 31 December.

#### 14. What is the maximum limit for the working hours for a worker?

A worker can be required to work in an establishment up to 9 hours in any day and 48 hours in any week. Such worker must not be required to work continuously for more than 5 hours unless she is given a break of at least 30 minutes. It must be noted that the period between the commencement and the termination of the work of a worker on any day must not exceed 10.5 hours.

In case of a worker entrusted with intermittent nature of work or urgent work, the period must not exceed 12 hours. The working hours may be relaxed in case of work of urgent nature with the previous permission of the facilitator.

#### 15. Are there any overtime payments to be made if the worker works beyond the prescribed limit?

Yes, where a worker in an establishment is required to work beyond 9 hours a day or 48 hours a week, she will be entitled to wages at the rate of twice her ordinary rate of wages for the overtime work. The total number of overtime hours must not exceed 125 hours in a period of 3 months.

#### 16. What are the conditions specifically with respect to women workers?

The S&E Act and S&E Rules provide certain conditions for employment of women workers in an establishment irrespective of the number of woman workers employed. Some of the conditions are a) to take all measures and safeguards to prevent or deter the acts of sexual harassment, b) proper lighting and illumination to all places where a women worker may move, c) maintain a complaint box, d) have enough woman security guards and e) separate washrooms.

Further, a women worker must not be discriminated on matters relating to recruitment, training, transfers or promotion or wages. It is also provided that a women worker is not required to work in an establishment between 09:30 p.m. and 07:00 a.m. However, she may be allowed to work between 09:30 p.m. and 07:00 a.m. with her consent and where adequate protection of her dignity, honor and safety, protection from sexual harassment and transportation from the establishment to the doorstep of her residence is provided by the employer or its authorized representative.

#### 17. What is the minimum number of leaves to be provided to the workers?

Every worker is entitled to the following leaves –

- a) **Weekly leave:** 1 weekly holiday with wages.
- b) **Casual leaves:** 8 days with wages every calendar year which will lapse at the end of the year. The wages are required to be credited to the account of the worker on a quarterly basis.







- c) **Festival leaves:** 8 festival holidays in a calendar year with wages at a rate equivalent to the daily average of her wages. If the employer requires any worker to work on any of these days, the worker must be paid double the amount of the daily average wages along with leave on any other day in lieu of the compulsory holiday.
- d) **Earned leave:** Every worker who has worked for more than 240 days during a calendar year must be allowed leave with wages in the subsequent calendar year, at the rate of 1 day for every 20 days of work performed by him during the previous calendar year.

Further, every worker in employment for at least 3 months in any year must be allowed leave of up to 5 days for every 60 days on which she has worked. Every worker must be paid for earned leave at a rate equivalent to the daily average of her wages for the days on which she actually worked during the preceding 3 months, excluding overtime.

- e) **Accumulation:** Up to 45 days of earned leave can be accumulated. However, if the employer refuses to sanction leave as per paragraph 17(d) above, the worker will have a right to encash leave over 45 days.

Also, the employer is required to provide a leave book to each worker and also retain a copy of the same. All the entries of sanctioned earned leave must be noted in the leave book. Any earned leave refused by the employer is also required to be noted in the leave book.

**18. What are the welfare measures that are required to be undertaken by the employer?**

The employer is required to take measures relating to a) the health and safety of the workers including cleanliness, lighting, ventilation, and prevention of fire; b) first-aid facilities; c) sufficient supply of wholesome drinking water; d) washrooms for men and women; e) creche facility in establishments where 50 or more workers are employed and f) canteen in establishments where at least 100 workers are employed.

**19. What is the penalty for contravention of the S&E Act and S&E Rules?**

Any contravention / non-compliance with the provisions of the S&E Act and the S&E Rules is punishable with a fine up to INR 100,000. In case the contravention continues, an additional fine of up to INR 2,000 per day may also be levied.

In case of a repeated contravention or non-compliance of the same provision, an employer may be liable to pay a fine up to INR 200,000.

If a contravention by the employer has caused serious bodily injury or death of a worker, such employer may be punished with imprisonment of up to 6 months and / or pay a fine between INR 200,000 and INR 500,000.

**20. What is the consequence of non-cooperation with the facilitator?**

Any obstruction to the facilitator from discharging their powers of inspection, examination, inquiry, investigation or refusing to produce a register or other document, is punishable with a penalty of up to INR 200,000.

**21. Can a person charged of offences under the S&E Act and S&E Rules enter a compromise and agree to have the charges dropped against her i.e., can the offences be compounded?**

Any offence that is not punishable with imprisonment, OR with imprisonment and fine both, may be compounded. on an application by the accused person before or after the institution of prosecution for the offence. The offence can be compounded by the compounding officer after payment of the compounding fee as determined by the compounding officer.

However, if a person commits an offence for the second time or thereafter within a period of 5 years, compounding will not be permitted.

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