



Industrial Employment (Standing Orders) Central (Amendment)
Rules, 2018.

Fixed Term Employment

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Ministry of Labour and Employment Department on 16th March, 2018 released a notification published in the Gazette of India, making and amendment to Industrial Employment (Standing Orders) Central Rules, 1946.

DATE OF ENFORCEMENT: This rules will come into effect form the date of its publication in the Official Gazette i.e. 16th March, 2018.

This PPT contains clause by clause detail of changes occurred in Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 (The Act)

Fixed Term Employment (FTE) – Added as a Classification of Workmen



Amendment to *Schedule I Item 1* of the Industrial Employment (Standing Order) Act, 1946 (the Act)

- Schedule I, lists matters to be provided in the Standing Order of an employer.
 - It lists 11 matters that needs to be elaborated in a standing order, the first one being classification of workman.
- The amendment adds *Fixed Term Employment* as one more classification of workmen.
 - The word “*fixed term employment workmen in apparel manufacturing sector*” has been substituted by the word “*fixed term employment*”.
 - Thus, with this amendment the classification of fixed term employment workmen is extended to all sectors covered under the Act.

Amendment to the Rule - 1

- Consequent of introduction of Fixed Term Employment, the amendment to rules introduces safeguard to ensure that the concept is not used to exploit workers.
- Therefore, Rule 3A requires “*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*”

Amendment to Rule 5: Insertion of Item 6A

- While applying for certification of standing order, the employer is required to provide particulars of workmen in the application for certificate.
- Item 6A has been inserted in Rule 5 which has introduced number of Fixed Term Employment workmen as a category of workmen.
- Therefore, every employer applying for certification should submit details of FTE, as well.

Definition of Fixed Term Employment – Introduced in Model Standing Order



Amendment to Model Standing Order (MSO), which is schedule 1 to the Rules.

- Model Standing Order in Schedule I to rules is guideline to employers in drafting their Standing Orders for Certification.
- Please also note that, as per section 12A of the Act, in the absence of a Certificate of Standing Order, Model Standing Order shall be deemed to be adopted.
- Paragraph 2 of the (MSO) has inserted item 3A and has introduced Fixed Term Employment under the classification of workmen. Further, sub- paragraph (h) has been introduced which defines
 - **Fixed Term Employment. “A fixed term employment workman is a workman who has been engaged on the basis of a written contract of employment for a fixed period”**

Service Condition of FTE – On Par with Permanent, Proportional Statutory Benefit



Further Amendment to Model Standing Order (MSO)

- **Parity with Permanent Workmen** - The new paragraph h(a) also lays down
 - *“The hours of work, wages, allowances and other benefits of fixed term employment workmen shall not be less than that of a permanent workmen”*
- **Proportionality of Statutory Benefits** - Sub paragraph h(b) introduces concept proportionate statutory benefits eligibility to fixed term employment workmen on par with the permanent workmen.
 - *“He shall be eligible for all statutory benefits available to a permanent workmen 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**”*
 - Thus, it is possible to argue, a Fixed Term Employment workmen need not serve full five years to be eligible to get gratuity under the Payment of Gratuity Act. If the contract period is let us say is 3 years, Gratuity should be paid proportionately irrespective of the eligibility criteria mentioned in the Payment of Gratuity Act.

Further Amendment to Model Standing Order (MSO)

- No Entitlement Notice on Termination
 - In paragraph 13 for sub- paragraph (b) of MSO, the following is introduced
 - “**No workman employed on fixed term employment** basis as a result of non-renewal of contract or employment or on the expiry of such contract period without it being renewed, **shall be entitled to any notice or pay in lieu thereof, if his services are terminated.**”
 - Therefore, FTE on expiry of the term of employment is not entitled to any notice.

Change in Central Rules

- Considering that the changes is in Central Rule, the impact on the ground is minimal till State Government introduce this concept in their state Industrial Employment Standing Orders Rules.

In General, Concept of FTE recognized and mentioned in a labour law

- For Sectors where Standing Order is mandatory, immediate Opportunity to introduce FTE.
- Mostly Manufacturing and other employers where local Shop Act makes it applicable.
- Introduction would need amending Standing Orders, in a unionized environment, will need Union Consent which is easier with statutory backing and Labour Commissioner can over rule unions

For Establishments – Under Shop Act (which will include retail, IT etc)

- This change will impact, only in those states where Shop Act makes the IESO Act applicable to establishments registered under Shop Act (E.g; Karnataka, Maharashtra, though new Shop Act of Maharashtra, is silent on it) that too only when the respective states make the changes to introduce FTE

What is Standing Order

- The Industrial Employment (Standing Orders) Act, 1946 (IESO Act) and the Rules made under that Act by the Central and various state governments is the reference point.
- IESO Act provides for certification of Standing Orders by essentially employers in Manufacturing Sector by the jurisdictional Labour Officer.
- Some of the State Shop and Commercial Establishment Act (Maharashtra, Karnataka etc) make IESO Applicable to Non-Manufacturing Employer's as well.
- IESO Act in Schedule I provides for the matters to be provided in a Standing Order
- Accordingly the classification of employment is the first matter to be provided in a Standing Order
- In Oct 2016, a new classification of employees “Fixed term Employment workmen in apparel manufacturing sector”
- Now the classification of “Fixed Term Employment workmen” to all sectors.

How is Standing Order Certified and Implemented?

Applicability

- The Industrial Employment (Standing Orders) Act, 1946 (IESO Act) and the Rules applicable to employers engaging more than 100 workers (some states have reduced this threshold even to 20)
- Submission of Draft Standing Order
 - such Employer to whom it is applicable, shall submit a draft standing order to the Jurisdictional Labour Commissioner for certification
- Tripartite Consultation (elaborate procedure mandated)
 - Labour Commissioner shall ensure consultation of Unions (if there were one) and employer and consider objections and counter objections
- Final Certification
 - Labour Commissioner after considering all objections and counter objections certify the final Standing Order, Certified Standing Order
 - Which is literally the HR Policy Certified by Labour Commissioner