

THE MEGHALAYA SHOPS AND ESTABLISHMENT ACT, 2004

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THE MEGHALAYA SHOPS AND ESTABLISHMENT ACT, 2004

To provide for regulation of conditions of work and employment in shops and commercial establishments and establishments for public entertainment or amusement in the State of Meghalaya and for matters connected therewith.

Be it enacted by the Legislature of the State of Meghalaya in the Fifty-Fourth Year of the Republic of India as follows

1. Short title extend and commencement

- (1) This Act may be called the Meghalaya Shops and Establishment Act 2003
- (2) It extends to the whole of the State of Meghalaya.
- (3) It shall come into force on such date as the State Government may by notification in the Official Gazette, appoint, and different dates may be appointed for different areas or for different classes of shops or establishment.

2. Definitions

In this Act, unless is everything repugnant to the subject or context,

- (a) "child" means a person who has completed his fourteenth years;
- (b) "closed" means not open for the service of any customer or to any business connected with the establishment;
- (c) "commercial establishment" means an establishment in which there is conducted the business of advertising commission forwarding or commercial agency a department of a factory in which persons are employed in a clerical capacity in any room or place or no manufacturing process is being carried on a clerical department of any industrial or commercial undertaking including public transport any insurance company, joint stock company, brokers office or exchange or such other establishment or class thereof as the

State Government may, by notification,

declared to be a commercial establishment for the purposes of all or any of the provisions of this Act, but does not include a shop or an establishment for public entertainment or amusement;

(d) "day" means the period of twenty-four hours beginning at midnight; Provided that in the case of an employee whose hour or work extend beyond midnight, "day" means the period of twenty-four hours beginning when such employment commencement; (e)

"Employee" means a person employed either whole time or part time whether directly or through any agency, and whether for wages or other consideration or in connection with any establishment an includes an apprentice but does not include a member of the Employees Family;

(f) "employer" means a person owning or having ultimate control over the affairs of an establishment and includes the manager, agent or other person or other person acting in the general management;

(g) "establishment" means a shop or a commercial establishment or an establishment for public establishment or amusement;

(h) "establishment for public entertainment or a amusement" means a restaurant eat in house, cate, cinema, theatre and such other establishment or class thereof the State Government may, by notification declare to be, for the purposes of this Act an establishment for public entertainment but does not include a shop or a commercial establishment;

(i) "holiday" means a period of six consecutive hours between the hours of half past seven O'clock and meridian and seven O'clock past meridian.

(j) "Inspector" means an inspector appointed under section 19 or this Act; (k)

"leave" means leave provided in Section 11,12 and 13 of this Act;

(l) "notification" means a notification published in the official Gazette;

(m) "opened" means opened for the service of any customer or to any business connection with the establishment;

(n) "prescribed" means prescribed by rules made under this Act;

(o) "rules" means rules made by the State Government under this Act;

(p) "shop" means any premises where goods are sold either by retail or wholesale or where services are rendered to customers and includes an office, a storeroom godown or warehouse whether in the same premises or otherwise used in connection with such trade or business, workshops including automobile garages occupants establishment,

drawing and designing firms, solicitor's establishment but does not include a commercial establishment or a shop attached to a Factory where the persons employee in the shop are allowed the benefit provided for workers under the Factories Act, 1948 (General Act No. 63 of 1948) or an establishment for public entertainment or amusement;

(q) "Wages" means pay at whatever intervals paid and includes dearness and such other allowance payable in terms of money and includes the value of lodging and such other amenities whose value is capable of being computed in terms of money; and (r) "week" means the period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the prescribed authority;

3. Registration

(1) Every establishment shall be registered under this Act. The registration shall be valid for calendar year and thereafter shall be renewed for every calendar year. (2) The application for registration or for renewal of registration shall be made to the Labour Commissioner or to such other officer as the Labour Commissioner may authorise in this behalf in such forms and within such date and containing such particulars as may be prescribed.

(3) The fees payable for registration or for renewal of registration shall be such as may be prescribed by the State Government.

(4) Where an establishment is registered under this Act or when the registration of an establishment is renews there shall be issued to the employer a certificate of registration or a renewal certificate of registration as the case may be containing such particulars as may be prescribed.

(5) The certificate of registration or the renewal certificate, as the case may be, shall be kept prominently displayed at some conspicuous place of the establishment.

(6) If any employer carries on business without a valid registration certificate or after the expiry of the last date of submission of application for registration or for renewal, he shall be liable to pay a penalty equal to the free prescribed for registration or renewal of registration as the case may be plus an additional penalty at rupees five per day for each day of continued default after the expiry of the last date for submission of an application for registration or renewal, as the case may be, and the said penalty shall for the purpose of its recovery be deemed to be fine imposed under this Act;

Provided that no employer shall be liable for any penalty under this section if he has submitted a valid application for a certificate of registration or renewal thereof within the period prescribed to the proper authority;

4. Opening and Closing hour

No establishment shall on any day be opened earlier than and closed later than at such hours as may be fixed by the State Government by general or special orders. **5. Hour of work**

(1) No employee shall be required or permitted to work for more than eight hours on any day;

Provided that on any day in which stock taking and preparation of account take place, an employee may be allowed or permitted to work overtime, that the total number of hours of work including overtime work shall not exceed ten hours. (2) No employee shall be required or permitted to work for more than four hours on any day, unless he has been allowed an interval for rest at least one hour:

6. Closing of Shops

Every shop shall remain closed on one day in each week:

Provided that in addition to one day the State Government may by notification require that any specified class of shops shall remain closed between such hours in the afternoon or such days in each week as may be satisfied;

Provided further that this section shall not apply to,

- (a) Shops or classes of shops dealing mainly in dairy product breads, pastries, sweetmeats and flowers;
- (b) Pharmacies or shop dealing mainly in medicines, surgical appliances bandages or other medical requisites;
- (c) Shops dealing mainly in articles required for funerals, burials or cremations as may be specified by the inspectors within their respective jurisdiction;
- (d) Shops dealing in tobacco, cigar, cheroot, cigarettes, biddies, pans, liquid refreshment sold in retail for consumption on the premises, ice, newspaper or periodicals; and
- (e) Barber's and hair dresser's shops

7. Prohibition of employment of Children

No child shall be employed in any establishment

8. Prohibition of employment of women and persons below seventeen years during night

No women or any person who has not attained the age of seventeen shall be required or allowed to work whether as an employee otherwise in any establishment before 6 A.M or after 7 P. M.

“Provided that the State Government shall by notification in the Official Gazette relax the prohibition of employment of women in certain establishment from the application of

Section 8 above”

9. Payment of Wages

- (1) Every employer shall fix periods in respect of which wages to the employees shall be payable and shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act.
- (2) No wages period so fixed shall exceed one month.
- (3) The wages of every employee in any shop or establishment shall be paid on a working day before the expiry of the seventh day of the last day of the wage period in respect of which wages are payable.
- (4) All wages shall be paid in cash.
- (5) Where the employee has been discharged, the wages earned by him shall be paid before the expiry on the second working day after the day on which he has been discharged.
- (6) No deduction shall be made from the wages on account of closure of any establishment (or of any establishment) or of any holiday allowed under this Act.

10. Wages Overtime

An employee shall be entitled to wages at the rates of twice the ordinary rate of wages in respect of overtime work.

Explanation: For the purpose of this section “Ordinary rate of Wages” means the basic wages plus such allowance, including the cash equivalent of the advantage occurring through the supply of meals and the concessional sale to employee is of food grains and other articles as the employee is for the time being entitled to, but does not include bonus.

11. Annual leave with Wages

- (1) An employee shall be entitled after twelve months continuous service to privilege leave with wages for a period of sixteen days in the subsequent period to twelve months.

Provided that such privilege leave with wages may be accumulated up to maximum period of thirty days.
- (2) An employee shall also be entitled during every twelve months of continuous service to medical leave with wages for a period not exceeding twelve days on the round of any sickness incurred or accident sustained by him and to casual leave with wages for a period not exceeding twelve days on any reasonable ground.
- (3) If an employee entitled to any leave under sub-section (1) is discharged by his employer before he has been allowed the leave, or if having applied for and been refused the

leave, he quits his employment before he has been allowed the leave, the employer shall pay him the wages payable under this Act in respect of the leave.

- (4) If an employee entitled to any leave under sub-section (2) is discharged by his employer when he is sick or suffering from the result of an accident the employer shall pay him the wages payable under this Act in respect of the period of the leave to which he is entitled at the time of his discharged in addition to the amount. If any payable to him under sub-section (3)

Explanation: An employee shall be deemed to have completed a period of twelve months continuous service within the meaning of this section, notwithstanding any interruption on services under these twelve months brought about,

(a) By sickness, accident, or authorised leave including authorised holidays, not exceeding ninety days in the aggregate for all three; or

(b) By lock-out; or

(c) By strike is not an illegal or

(d) By intermittent periods of voluntary unemployment not exceeding thirty days in the aggregate. Authorised leave shall be deemed not to include any weekly holiday allowed under this Act which occurs at the beginning or end of an interruption brought by the leave.

12. Weekly holiday for employee in a commercial establishment for public entertainment of amusement

Every employee in a commercial establishment and in an establishment of public entertainment or amusement shall be allowed to avail holiday or at least one and half day in each week.

13. Leave for attending religious ceremonies etc.

Discharged of employees. Every employee shall be entitled to leave of absence for any days, he may select not exceeding three in number in any one year for the purpose of attending ceremonies or performing function or duties connected with or enjoined by his religion.

14. Paid Holiday

Every employee in an establishment shall be granted a paid holiday on each of the following occasions and on such other days as may be notified by the State Government from time to time declare

(a) 26th January

(b) 1st May

(c) 15th August, and

(d) 2nd October,

15. Discharged of employees

(1) No employee who has been in continuous service for not less than six months shall be discharged from service except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice:

Provided however that such notice shall not be necessary where such employee is discharged on ground of misconduct supported by satisfactory evidence recorded at an inquiry held for purpose.

(2) An employee who has been discharged under sub-section (1) may appeal to such appellate authority as may be prescribed and within such time as may be prescribed either on the ground than there is no reasonable cause or on the ground that he had not been qualify of misconduct as held by the employer.

(3) The appellate authority may, after giving notice to the member as may be prescribed to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out the employment or direct payment or compensation without reinstatement or grant such other relief as may deem fit in the circumstances of the case.

(4) In directing the reinstatement of an employee the appellate authority shall also direct the payment of such amount of compensation as may be specified by him in case the employer fails to reinstate the employee in accordance with the direction. (5) The decision of the appellate authority shall be final and binding on both the parties and be given effect to within such time as may be specified in the order of the appellate authority.

(6) Any compensation required to be paid by the employer under sub-section (3) & (4) but not paid, shall for the purpose of its recovery be deemed to be fined imposed under this Act.

16. Cleanliness, ventilation and lightning

(1) The premises of every establishment shall be kept clean and free from affiviarising from any dria or privy or other nuisance and shall be cleaned as such times and by such methods as may be prescribed.

(2) The premises of every establishment shall be ventilated and sufficiently lighted during all working hours, with such standards and by such method or methods as may be prescribed.

- (3) If it appears to an Inspector that the premises of any establishment within his jurisdiction are not sufficiently kept clean or lighted or ventilated he may serve on the employer order in writing specifying the measures which in his opinion would be adopted and requiring him to be carried out before a specified date.

17. Precautions against fire

Every employer shall take proper precaution against fire in such manner as may be prescribed.

18. Appeals

Appeal against any order of the Inspector under Section 16 and shall lie to such authority and within such time as may be prescribed.

19. Appointment of Inspectors

State Government may by notification in the official Gazette appoint such officer or such persons or they think fit to be Inspectors for the purposes of this Act within such local limits may assign to them respectively.

20. Powers and duties of Inspectors

- (1) Subject to the rules made by the State Government in this behalf an Inspector may within the local limits for which he is appointed,
- (a) Enter at any reasonable times with such assistants if any, being persons in the service of the Government or any local authority as the things fit; any place which is or which he has reason to believe is an establishment;
 - (b) Make such inspection of the premises and of any prescribed registers/ records and take notice on the spot or otherwise evidence to any person as he may deem necessary for carrying out the purpose of this Act; and
 - (c) Exercise such other powers as may be prescribed and necessary for carrying out the purpose of this Act;

Provided that no one shall be required under this section to answer any question or give evidence tending to incriminate himself.

21. Inspector to be public servant

Every Inspector appointed under sub-section (1) and (2) of Section 19 shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code (Act 45 of 1860).

22. Employer to produce registers records etc. For inspection

Every employer shall on demand produce for inspection of an Inspector all registers records and notice required to be kept under and for the purposes of this Act.

23. Penalties

Whenever contravenes any of the provisions of this Act or any rules made there under shall, on conviction be punishable with imprisonment for the term which may extend of six months or with fine which may extend to five thousand rupees;

Provided that for any second or subsequence offence the employer shall be punishable with imprisonment only for a term which shall not be less than two months but may extend to six months.

24. Cognizance of Offence

(1) No court shall take cognizance of any offence punishable under this Act except on a complaint made

(a) By the employee of an establishment either by himself or through the registered trade union or voluntary organisation within three months from the date on which the offence is alleged to have been committed; or

(b) By the Inspector within six months from the date on which the alleged offence comes to his knowledge.

(2) No court inferior to that of judicial Magistrate of the first class shall try any offence punishable under this Act or any rules or orders made there under.

25. Maintenance of Registers and Records and Display of Notice

Subject to the general or special orders of the State Government and employer shall maintain such register and records and display on the premises of his establishment such notices as may be prescribed. All such registers and records shall be kept in the premises of the establishment to which they relate.

26. Protection of Action Taken in Good Faith

No suit, prosecution or other legal proceedings shall lie against any, person or State Government or such authority or anything which is in good faith done or intended to be done under this Act or any rule or order made hereunder.

27. Delegation of Powers

(1) The State Government may, by notification in the official Gazette authorise any officer or authority subordinate to them to exercise all or any of the powers vested in them by or under this Act, except the power mentioned in Section 30 subject to such restriction and conditions, if any as may be specified in the notification.

- (2) The exercise of the powers delegated under sub-section (1) shall be subject to control and revision by the State Government or by such authority as may be empowered by them in the behalf.

28. Power of Government to suspend provisions of the Act during fairs and festivals

The State Government may, by notifications on account of such holiday or other occasion as may be prescribed suspend the operation of all or any of the provisions of this Act in respect of any establishment for such period and subject to such conditions as it may deem proper.

29. Exemption from application of the Act

This Act shall not apply to,

- (a) Persons employed in any establishment in a position of management
- (b) Persons whose work mainly involves travelling and person employed as canvassers and caretakers.
- (c) Establishment under the Central or any State Government, local authorities, the Reserve Bank of India or any other Bank any Railways Administration and Cantonment authorities.
- (d) Any Water Transport Service or Major Transport Service or any system of public conservancy or sanitation, any industry or business undertaking which supply light or water to the public and such other public utility companies or associations or classes thereof as the State Government may by notification exempt from the operation of this Act.
- (e) Stalls and refreshment rooms at railway stations, docks, wharf and airports. (f) Establishment for the treatment or care of the sick: infirm, destitute or mentally unfit person.
- (g) Shops or stalls in any public exhibition or show so far as such shops or stall, deal in retail trade which is solely subsidiary or ancillary to the main purpose of such exhibition or show.
- (h) Shops or stalls in any public fair or bazar held for charitable purposes.
- (i) Shops or classes of shows dealing mainly in vegetable, meat and fish. (j) Establishment in mines and oilfields.
- (k) Any person employed in confidential capacity, messenger watchman or exclusively in connection with the collection, despatch, delivery and conveyance or customs formalities of goods or such other persons or classes or persons as the State Government may by notification exempt from the operation or all or any of the

provisions of this Act; and

- (l) Such seasonal commercial establishment engaged in the purchase of raw jute or cotton ginning or cotton or jute pressing and the clerical department of such seasonal factories and such other establishment as the State Government may by notification exempt from the operation of all or any of the provisions of this Act.

30. Powers of Rules

- (1) The State Government may, subject to the condition of previous publication by notification in the official Gazette, make or rules for carry out the purpose of this Act.
- (2) In particular, and without prejudice to the generally of the foregoing power, such rules may, provide for all or any of the following matter namely:
 - i. Health safety welfare of employee, holidays for occasion:
 - ii. The form and the date for application of registration of renewal of certificate fees payable for such registration or renewal
 - iii. The particulars with respect to certificate or registration or renewal thereof.
 - iv. The manner of taking precaution against fire:
 - v. The setting of an appellate authority the limitation for filling appeal and manner of giving notice: and
 - vi. Any other matter which has to be, or may be prescribed.
 - vii. Every rule made under this section shall be laid before the Meghalaya Legislative Assembly.

31. Repeal and Saving

- (1) The Meghalaya Shops and establishment Act. (Assam Act XIII 1948 as adapted by Meghalaya) is hereby repealed.
- (2) Notwithstanding the repeal of the Meghalaya Shops and Establishment Act (Assam Act XIII 1948 as adapted by Meghalaya) any order made, any notification issued or any action taken under the Act so repealed shall be deemed to have been made or taken under the corresponding provisions of this Act and shall continue to be in operation until cancelled or suspended by order made or notification issued under the corresponding provisions of this Act.