

Regulatory Procedure

(Labor Laws Regulating the Relationship between Employer & Employee & Labor
Laws Assigning Levies)



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1 Disclaimer

This information memorandum is to introduce the subject matter and provide a general idea and information on the said matter. Although, the material included in this document is based on data/information gathered from various reliable sources; however, it is based upon certain assumptions, which may differ from case to case. The information has been provided on as is where is basis without any warranties or assertions as to the correctness or soundness thereof. Although, due care and diligence has been taken to compile this document, the contained information may vary due to any change in any of the concerned factors, and the actual results may differ substantially from the presented information. SMEDA, its employees or agents do not assume any liability for any financial or other loss resulting from this memorandum in consequence of undertaking this activity. The contained information does not preclude any further professional advice. The prospective user of this memorandum is encouraged to carry out additional diligence and gather any information which is necessary for making an informed decision, including taking professional advice from a qualified consultant/technical expert before taking any decision to act upon the information.

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2 Introduction of SMEDA

The Small and Medium Enterprises Development Authority (SMEDA) was established in October 1998 with an objective to provide fresh impetus to the economy through development of Small and Medium Enterprises (SMEs).

With a mission "to assist in employment generation and value addition to the national income, through development of the SME sector, by helping increase the number, scale and competitiveness of SMEs", SMEDA has carried out 'sectoral research' to identify policy, access to finance, business development services, strategic initiatives and institutional collaboration and networking initiatives.

Preparation and dissemination of prefeasibility studies in key areas of investment has been a successful hallmark of SME facilitation by SMEDA.

Concurrent to the prefeasibility studies, a broad spectrum of business development services is also offered to the SMEs by SMEDA. These services include identification of experts and consultants and delivery of need based capacity building programs of different types in addition to business guidance through help desk services.

3 Role of Legal Services Cell, SMEDA

The Legal Services Cell (LSC) as part of Business & Sector Development Services (B&SDS) Division of SMEDA plays a key role in providing guidance and overall facilitation and support to SMEs on legal matters.

LSC believes that information dissemination to SMEs on the existing regulatory environment is of paramount importance and plays a pivotal role in their sustainable development.

In order to facilitate SMEs LSC has developed user-friendly systems, which provide them detail description of the laws and regulations including processes and steps required for compliance.

The purpose of this document is to provide SMEs whether individuals or companies with information pertaining to the principal labor laws applicable across Pakistan, so as to enable them to ascertain the applicability or otherwise of the governing law in their area of choice. (It is pertinent to note that upon the passage of the 18th Amendment Act on April 19, 2010 the subject of “labor” (which earlier found mention in the Concurrent Legislative List) was devolved on to the Provincial legislatures, which has resulted in such legislation now being a Provincial prerogative.)

COMPLIANCE UNDER LABOR LAWS

The laws can broadly be categorized as follows:-

- a) Firstly, the law that regulates the relations between employer and employee;
- b) Secondly, the law that provides for compulsory levies;
- c) Thirdly, the law that provides for minimum standards for employees; and
- d) Fourthly, the law that sets standards for work place

4 Labor Laws Regulating the Relationship between Employer & Employee

The primary (federal) law that regulates the relationship between employer and employee is:

4.1 Industrial Relations Act (IRA), 2012

The law operates in the following three areas:

- Relating to formation of trade unions;
- Improvement of relations between employers and workmen in the Islamabad Capital Territory (“ICT”) and in trans-provincial establishments and industry;

4.1.1 Applicability

The Act extends to the whole of Pakistan and applies to all persons employed in any establishment or industry, in the ICT or carrying on business in more than one province, but does not apply to any person employed:

- In the Police or any of the Defense Services of Pakistan;
- In the administration of the State other than those employed as workmen
- As a member of the Security Staff of the Pakistan International Airlines Corporation or drawing wages in pay group not lower than Group V in the establishment of that Corporation;
- By the Pakistan Security Printing Corporation or the Security Papers Limited;
- By an establishment or institution for the treatment or care of sick, infirm, destitute or mentally unfit persons excluding those run on commercial basis.

4.1.2 Important definitions under the Act

“**Employer**” Section 2(ix):- in relation to an establishment, means any person or body of persons, whether incorporated or not, who or which employs workmen in the establishment under a contract of employment and includes “any person responsible for the management and control of the establishment”.

“**Establishment**” Section 2(x):- means any office, firm, factory, society, undertaking, company, shop

or enterprise which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches in the ICT or falling in more than one province.

“Industrial Dispute” Section 2(xvi) means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person.

“Industry” Section 2(xvii) includes any business, trade, calling, employment or occupation for production of goods or provisions of services in the ICT and falling in more than one province, and excluding those set up exclusively for charitable purposes.

4.1.3 Responsibilities of Employer under IRA2012

- ✓ not to impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such a contract to join a trade union or continue his membership of a trade union (section 31 (1)(a))
- ✓ not to refuse to employ or refuse to continue to employ any person on the ground that such person is, or is not a member or officer of a trade union (section 31 (1)(b))
- ✓ not to discriminate against any person in regard to any condition of employment or working on the ground that such person is, or is not a member or officer of a trade union (section 31 (1)(c))
- ✓ not to dismiss, discharge, remove from employment or transfer or threaten to dismiss, discharge or remove from employment or transfer a workman or injure or threaten to injure him in respect of his employment by reason that the workman (i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union; or (ii) participates in the promotion, formation or activities of a trade union (section 31(1)(d))
- ✓ not to induce any person to refrain from becoming, or to cease to be a member or officer of a trade union by conferring or offering to confer or procuring or offering to procure any advantage for such person or any other person (section 31(1)(e))
- ✓ not to compel or attempt to compel any officer of the collective bargaining agent to arrive at a settlement by using intimidation, coercion, pressure, threat, et al. (section 31(1)(f))
- ✓ not to interfere with or in any way influence the balloting for the determination of the collective bargaining agent (section 31(1)(g))
- ✓ not to recruit any new workman during the period of a notice of a strike or currency of a strike which is not illegal except upon the satisfaction of a Conciliator (section 31(1)(h))
- ✓ not to close down the whole of the establishment in contravention of Standing Order 11-A of the WP Ord. VI of 1968 (section 31(1)(i))
- ✓ not to commence, continue, instigate or incite others to take part in, or expend or supply money or otherwise act in furtherance or support of, an illegal lockout (section 31(1)(j))
- ✓ nothing in sub-section (1) of section 31 shall be deemed to preclude an employer from requiring that a person upon his appointment or promotion to a managerial position shall cease to be, and shall be disqualified from being, a member or officer of a trade union of workmen (section 31(2))

4.1.4 Penalties under IRA 2012 for Employer

- ✓ Contravention of section 17, liable to imprisonment which may extend to 15 days or fine or both (section 67(1))
- ✓ Contravention of section 31, liable to imprisonment which may extend to 30 days or fine (Rs. 50,000) or both (section 67(2))
- ✓ Contravention of section 32 other than clause (d) of sub-section (1), liable to imprisonment which may extend to 30 days or fine (Rs. 20,000) or both (section 67(3))
- ✓ Contravention or abetment of contravention of clause (d) of sub-section (1) of section 32 by an officer of a trade union, a workman or person other than a workman, liable to imprisonment which may extend to 30 days or fine (Rs. 30,000) or both (section 67(4))
- ✓ Contravention of section 47, liable to imprisonment which may extend to 30 days or fine (Rs. 75,000) or both (section 67(6))
- ✓ Breach of settlement (first offence imprisonment which may extend to 30 days or fine (Rs. 30,000) or both) and for each subsequent offence, with fine (may extend to Rs. 75,000) (section 68)
- ✓ Failure to implement settlement agreement, liable to imprisonment which may extend to 15 days or fine (Rs. 30,000) or both (section 69)
- ✓ For false statement, liable to imprisonment which may extend to 15 days or fine (Rs. 75,000) or both (section 70)
- ✓ For discharging officer of trade union in certain circumstances (contravention of section 64), liable to imprisonment which may extend to 15 days or fine (Rs. 30,000) or both (section 71)
- ✓ For embezzlement or misappropriation of funds, liable to imprisonment which may extend to 30 days or fine not to exceed the amount found by a Court to be embezzled (section 72)
- ✓ For obstructing inspector in exercise of any power under section 29, or failure to produce on demand by an inspector any register or other document et al., fine (may extend to Rs. 75,000) (section 73)
- ✓ For contravening section 27 or 28, imprisonment which may extend to 15 days or fine (may extend to Rs. 100,000) (section 74), and no Court to take cognizance unless complaint in writing by Registrar (section 74)
- ✓ For any other offences, if no penalty is provided, fine (may extend to Rs. 10,000) (section 75)

5 Labor Laws Assigning Levies

The following, inter alia, are the labor laws assigning levies on the employers for the benefit of their employees or workers:-

- Employees' Old Age Benefits Act, 1976(EOBI)
- Provincial Employees Social Security Ordinance, 1965(PESS)

- Workers Welfare Fund Ordinance, 1971(WWF)
- West Pakistan Maternity Benefits Ordinance,1972
- Workers Children (Education) Ordinance,1972
- Companies Profit (Worker’s Participation) Act,1968
- Workers Compensation Act,1923

5.1 Employees’ Old Age Benefit Act, 1976 (EOBI)

[along with Rules (1976) & Regulations (1980)]

5.1.1 Applicability

EOBI applies to every industry or establishment wherein the employer employs five or more persons directly or indirectly. The law continues to apply to every such industry or establishment even if the number of persons employed is reduced to less than five.

5.1.2 Purpose of the Law

The law provides benefit to employees in the following areas:

- Old Age Pension
- Old Age Grant
- Survivor’s Pension
- Invalidity Pension

5.1.3 Payment of Contribution

Every employer is required to pay contribution at the rate of 5% per month of every person in his insurable employment. Contribution by the insured person is at the rate of 1% of the wages in the prescribed manner. Government of Pakistan may make such contribution to the institution as it may determine from time to time.

Maximum EOBI Contributions Effective July 01,2015

Sr. No.	Contribution By	Maximum Contribution	Minimum Wage	Total Contribution
1	Employer (sec.9)	5% x Minimum Wage	12,000	650
2	Employee (sec.9B)	1% x Minimum Wage	12,000	130
Total				780

Contributions; fall due, at the end of the month, to which they relate - shall be paid not later than the 15th of the following month.

5.1.4 Penalty for non-payment

Punishment with imprisonment for a term, which may extend to two years, or with fine, which may extend to Rs. 10,000/- or with both (section 37)

5.1.5 Registration requirement under the EOBI

An employer to whom the Act becomes applicable is required to be registered with the Institution within thirty (30) days from the day on which the Act becomes applicable to such employer as well as of every insured person employed.

In addition, every insured person may also communicate his name and other prescribed particulars to the Institution.

5.1.6 Procedure of Registration

The employer is required to communicate to the Institution the name and particulars of the industry or establishment in Form PR-01 and of every insured person employed therein in Form PE-01.

The institution on receipt of such communication shall register the name of the industry or establishment or the insured person in such manner, and issue to the industry or establishment a Certificate of Registration in Form PI-02 and to every insured person a Registration Card in Form PI-03.

The employer shall file with the Institution, information at the time of registration and thereafter in the month of July every year as set out in Form PR-02 for Self-Assessment Scheme and in Form PR-02A for normal scheme along with copy of paid challan as set out in Form PR-03.

5.1.7 Maintenance of Records and Submission of Returns by employers

Every employer must maintain and keep following records for inspection and verification by the Institution or its authorized officials:

- i. Full particulars of all persons employed by him including the persons in his insurable

-
- employment, their occupations, wages, attendance, dates of entry and exit, insured person's registration numbers and such other particulars as maybe necessary for the proper identification of all persons in his insurable employment;
- ii. Pay roll of all persons employed showing therein full details of the disbursement of wages to them;
 - iii. Duplicate copies of the returns submitted to the Institution;
 - iv. Such other records which the employer is or may be required to maintain under the Act or the rules or the regulations or which the Institution may require the employer to maintain from time to time

In addition, every employer shall submit to the Institution a quarterly return in Form PR-02 containing full particulars of every person in his insurable employment accompanied by receipted copies of the Contribution Payment Slips in Form PR-03 in respect of each month of the relevant quarter, within fifteen days of the end of the quarter to which it relates.

Explanation - Quarter means a period of 3 calendar months commencing from 1st January, 1st April, 1st July and 1st October, each year.

5.2 Provincial Employees' Social Security Ordinance, 1965(PESS)[along with Rules (1966) & Regulations (1967)]

5.2.1 Applicability

This law extends to the whole of Pakistan and applies only to such areas, classes of person, industries or establishments from such date or dates and with regard to the provision of such benefits as Government may, by notification, specify in this behalf.

5.2.2 Purpose of the Law

The purpose of the Ordinance is to provide benefit to certain employees or their dependents under the following circumstances:

- In the event of sickness
- Maternity benefits
- Employment injury or death
- For matters ancillary thereto

5.2.3 Payment of Contribution

The employer shall in respect of every employee, whether employed by him directly or through any other person pay to the Institution a contribution at such times, at such rate [not more than 6%] and subject to such conditions as may be prescribed (section 20).

The following table summarizes the latest contributions payable:-

Revised Maximum Social Security Contributions Effective July 01,2013

Type of Scheme	Max. Employers' Contribution P.M. 6%	Max. Worker's Contribution P.M.	Total P.M. Contribution
Normal or Regular Scheme [s.20(1), proviso] In Sindh & Punjab	Rs. 900 (6% of max. Rs. 15,000 wages)	N/A	Rs. 900
Self Assessment (Sindh) [optional under s.20A(1)]	Rs. 360	Rs. 20 [s.20A(3)]	Rs. 380
Punjab (6% of wage limit)	Rs. 900	Rs. 40	Rs. 940

- As per the Punjab Schedule - for all employees who are paid monthly remuneration up to wages ceiling of Rs. 5000/- p.m. or Rs. 200/- per day, the rates of Social Security Contributions are:-
- Establishments with 5 to 10 employees: Rs. 83.33 - 166.67
 - Establishments with 11 to 20 employees: Rs. 104.17 – 189.39v
 - Establishments with 21 to 30 employees: Rs. 138.89 – 194.41
 - Establishments with 31 to 50 employees: Rs. 83.33 – 134.40
 - Establishments not covered above: 7%

5.2.4 Mode of Submission of Returns and Payments

As per Rule 4 (1) (i) of the Provincial Employees' Social Security(Contributions) Rules, 1966 - the employer is required to show the amount of contribution payable as follows:

- i. By entering on a form of pay roll approved by the Institution, by writing registration numbers of the secured persons against their names as shown there on, together with the amount of the employers and employees contributions applicable there to and submit a true copy of such form to the Institution; or
- ii. By completing and submitting to the Institution a contribution schedule, to be obtained from the local office of the Institution at which the employer is registered and which shall provide for the submission of such information, as the Institution may, from time to time, require.
- iii. Copies of pay rolls or contribution schedules referred to above are required to be submitted to the Institution within fifteen days of the end of each month or such extended period no exceeding forty five days, as the Institution may allow on good cause being shown for the extension, and at the same time shall pay, the total amount of contribution shown thereon as due.

5.2.5 Procedure for Registration under PESS

- Within ten (10) days of the Notification, the employer of an establishment is required to complete an application for registration at the nearest local office of the institution on the prescribed Form R-1 indicating there in the approximate number of his employees liable to become secured persons.
- Within fifteen (15) days of the acceptance of application for registration, the employer files with the Institution, a Secured Person's Registration Form (Form R-2), in respect of each employee liable to become a secured person along with a summary (Form R-3).
- On receipt of the Secured Person's Registration Form, the Institution issues the Secured Person's Registration Card (Form R-5) to the employer who shall distribute them to each of the employees named there on, ensuring that the signature or thumbprint of the secured person is clearly impressed on the appropriate space on page 01 of the Card.

5.2.6 Penalties

Failure to pay on time can result in punishment with imprisonment for a term, which may extend to three months, or with fine, which may extend to Rs. 1,000/- or with both (section 66)

5.3 Workers Welfare Fund Ordinance, 1971 (WWFO)

5.3.1 Applicability

WWFO is applicable to all industrial establishments whose total income is more than Rs. 500,000/-annually (section 4).

5.3.2 Purpose of the Law

To provide for

- Residential accommodation and other facilities for workers
- Matters connected therewith or incidental thereto
- Establishment of housing estates or construction of houses for workers
- Other welfare measures, including education, training, re-skilling and apprenticeship for the welfare of the workers.

5.3.3 Payment of Contribution

The rate of contribution under WWFO is two (2) percent annually of the total income of the establishment as is assessed under the Income Tax Ordinance, 2001. The establishment shall deposit the amount with the income tax officer having jurisdiction over the establishment, while submitting a return of total income.

5.3.4 Penalties

The industrial establishment is liable to pay an additional amount as per the provisions of the Ordinance, relating to the mode and time of recovery of the income tax.

5.4 West Pakistan Maternity Benefits Ordinance, 1958[along with Rules (1921)]

5.4.1 Applicability

The law is applicable to women workers employed in an establishment i.e. an organization whether industrial, commercial or otherwise.

5.4.2 Purpose of the Law

To require an establishment to grant maternity benefits to women workers.

5.4.3 Payment of Contribution

Every employer is liable for payment of maternity benefits to a female worker at the rate of her wages last paid during the period of six weeks immediately preceding and including the day on which she delivers a child and for each day of six weeks succeeding the day, provided she has been employed at the establishment for a period of not less than four months immediately preceding the day on which she delivers the child. (section 4)

Furthermore, the employer shall pay maternity benefit for twelve weeks to a woman entitled thereto.

5.4.4 Method of Payment

All payments against claims for maternity benefit shall be made in cash against receipt.

5.4.5 Maintenance of Record

The employer of a factory where women are employed is required to maintain in English or Urdu a Muster Roll in Form A stating particulars in respect of women workers from whom notice of confinement is received.

5.4.6 Penalty

The penalty for non-compliance of Ordinance is Rs.500/- and of Rules is Rs. 250/-

5.5 Workers Children (Education) Ordinance, 1972[along with Rules (1994)]

5.5.1 Applicability

This law is applicable to establishments employing ten or more workers. The definition of “worker” for applicability of this law is limited to a worker whose monthly wages do not exceed Rs. 3,000/-.

5.5.2 Purpose of the Law

The purpose of the Ordinance is to raise funds for the education of the children of the workers. The fund is required to provide educational facilities to the workers' children and assist with the improvement of schools located in or attached to the industrial undertakings.

5.5.3 Payment of Contribution

Rs. 100/- per worker per annum by every employer of an establishment (section 3). The Social Security Institution or such agency as the provincial government may nominate shall collect and administer the cess collected (section 5-A)

5.5.4 Procedure for Submission of Returns

Employers have to submit returns on Form EC-1 (available from Bureau of Labour Publications, Karachi) before the close of each quarter indicating the highest number of workers employed by the employer in his establishment during the preceding quarter.

The cess shall be due annually and be payable as such by the date or dates as specified in the bill of assessment issued to each individual employer, provided that the employer may assess and pay the cess at the rate of Rs. 25/- per quarter per worker and such return shall be accompanied by a pay order or cheque in favour of Director of the Institution.

5.5.5 Penalty

Recovery of Cess as arrears of Land Revenue

5.6 Companies Profit (Worker's Participation) Act, 1968 Applicability

This Act applies to all companies engaged in industrial undertaking, if they fall within any of the following categories:

- 50 or more workers employed at any time during a year
- Paid up capital of not less than Rs. 2 million
- Value of fixed assets of the company Rs. 4 million or more

5.6.1 Purpose of the Law

The purpose of the law is to provide for participation of workers in the profits of companies.

5.6.2 Procedure

Every company to which this Act applies is required to establish a fund and pay five percent of its profits during a year to the fund. Audited accounts have to be furnished to the Federal Government and the Board created under the Act, not later than nine months of the closing year. (section 3)

If a company utilizes the amount of Fund for its business operations upon approval by the Board, it shall pay to Fund for its business operations, interest at the rate of 2.5% above the bank rate or 75% of the rate at which dividend is declared on its ordinary shares, whichever is higher.

5.6.3 Penalty

In case of failure to comply with any provisions of the Act, every director, manager or other officer responsible for the management of the affairs of the company shall if the Federal Government orders to direct, be liable to pay a penalty which may extend to Rs. 5000/- and in case of continuous failure, a further sum which may extend to Rs. 1000/- per day. (section 5)

5.7 Workman's Compensation Act, 1923*[along with Rules (1961)]*

5.7.1 Applicability

The law is applicable to persons employed as workmen (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business)

5.7.2 Purpose of the Law

This Act provides for the payment by certain classes of employers to their workmen of compensation for injury by accident, disease or death arising out of and in the course of his employment.

5.7.3 Amount of Compensation under the Act

There are four categories defined under the Act for payment of compensation, namely;

- Death resulting from injury to a workman - Rs.200,000/-.
- Permanent total disablement resulting from injury to workman - Rs.200,000/-
- Permanent partial disablement resulting from injury to workman (as specified in Schedule I of the Act and in case of an injury not specified such percentage as proportionate to loss of earning capacity)
- Temporary disablement resulting from injury to workman -a half-monthly payment is payable for the period of disablement or during a period of fiveyears, whichever period is shorter.

5.7.4 Submission of Returns

Every person employing workmen to the Chief Inspector of Factories shall furnish a return in the Form S. The return shall relate to a calendar year and shall be furnished on or before 1st February following the year to which return relates.

The Return shall be signed by:

- The employer, or where there is more than one employer by any employer;or
- By any person directly responsible to the employer or employers for the management of the establishment to which it relates.

5.7.5 Penalty

Upon contravention of certain sections of the Act, a fine, which may extend to Rs. 100/-.