
IMPACT OF THE
INDUSTRIAL DISPUTES
(AMENDMENT ACT), 2010 ON
STAFFING, BUSINESS AND
ORGANISATIONS

Prepared by S.Hemanth;
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For suggestion and information
please e-mail
hemanth@hemanthassociates.com

HEMANTH & ASSOCIATES

ADVOCATES AND LEGAL CONSULTANTS

We protect your interests

www.hemanthassociates.com; M: +91 9844085056; T: +91 080-23191210

In India, the Industrial Disputes Act, 1947 is the main legislation for investigation and settlement of all industrial disputes.

The Industrial Disputes (Amendment Act), 2010 have brought few significant changes to the Industrial Disputes Act, which are produced under the following headings:

Dismissal, Discharge, Termination and retrench of a workman/employee

By the Amendment Act, 2010, by inserting sub-section (2) to the section 2-A, a provision has been made for the workman/employee to make an application direct to the Labour Court or Tribunal for adjudication of the disputes relating to or arising out of discharge, dismissal, retrenchment or termination, after the expiry of the forty-five days from the date he has made the application to the conciliation officer of the appropriate Government for conciliation of the dispute.

On receipt of the application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of the I.D Act (in short for, Industrial Disputes Act, 1947) and all the provisions of the Act shall apply in relation to such adjudication.

A new sub-section (3) has been inserted to section 2-A, which clearly provides that the applications referred above shall be made to the Labour Court or Tribunal before expiry of three years from the date of discharge, dismissal, retrenchment or termination as the case may be.

Effect

The amendment is a good relief for employees to sue employers directly against indiscriminate and illegal termination, discharge and dismissal.

Will increase number of litigations from employees against the employers.

It is important to mention here that few states had made such provisions even before the aforesaid amendments, by making amendments to section 10 of the I.D Act. For Instance Karnataka has a similar provision by inserting sub section 4-A after section 10 sub (4), which provides that the disputes related to discharge, dismissal, retrenchment or termination, the individual workman may, within six months for the date of communication to him the order of discharge, dismissal, retrenchment or termination, apply in prescribed manner, to the Labour Court for adjudication of the dispute. Even Delhi state had similar amendments.

The employers in order to protect and defend the unwanted litigations must have strong internal dispute redressal mechanism, should have a good approach while recruiting and pro-employee policies and strong Labour/H.R compliances.

Enhancement of wage ceiling

The Industrial Disputes (Amendment Act), 2010, brought amendment to section 2 sub-sections (s) by enhancing the wage ceiling from rupees one thousand six hundred to ten thousand.

The exclusion is where the workmen employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Effect

Shall have the effect of amending definition of workman, which means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, but for the purpose of proceedings related to dismiss, discharge, or retrench, but does not include the following person:

A. Persons subject to Air force, Army and Navy Act.

- B. Employed in police service or of a prison.
- C. Employed mainly in a managerial or administrative capacity.
- D. Employed in a supervisory capacity and draws wages exceeding ten thousand rupees.

The amendment has the effect of including more employees/workmen under the definition of “workman” of the I.D Act.

Grievance Redressal Machinery

The Industrial Disputes (Amendment Act), 2010 had substituted a new chapter for chapter II-B.

The Amendment provides that every industrial establishment employing twenty or more workmen shall have one or more grievance redressal committed for the resolution of disputes arising out of individual grievances.

2. The Grievance Redressal Committee shall consist of equal number of members from the employer and the workmen.
3. The chairperson of the Grievance Redressal Committee shall be selected from the employer and from among the workmen alternatively on rotation basis every year.
4. The total number of members of the Grievance Redressal Committee shall not exceed more than six.

Provided that there shall be, as far as practicable, one woman member if the Grievance Redressal Committee has two members and in case the numbers of members are more than two, the number of women members may be increased proportionately.

5. Notwithstanding anything contained in this section, the setting up of Grievance Redressal Committee shall not affect the right of the workman to arise industrial dispute on the same matter under the provisions of this Act.

6. The Grievance Redressal Committee may complete its proceedings within thirty days on receipt of a written application by or on behalf of the aggrieved party.

7. The workman who is aggrieved of the decision of the Grievance Redressal Committee may prefer an appeal to the employer against the decision of Grievance Redressal Committee and the employer shall, within one month from the date of receipt of such appeal, dispose of the same and send a copy of his decision to the workman concerned.

8. Nothing contained in this section shall apply to the workmen for whom there is an established Grievance Redressal Mechanism in the establishment concerned.

Effect

Grievance Redressal Committee or the Grievance Redressal Mechanism is a great support in systematic resolution of disputes.

To ensure a strong and legally complied Grievance Redressal Committee or Mechanism is formed in the organization or Company.

There is an appeal provision to the employer, the employer decision, compliance, reasoning skill and dispute resolution skill will be a great help for the Company in resolving disputes and preventing litigations.

The Grievance Redressal Committee or Mechanism can also be an effective tool or system to resolve the workman/employee disputes.

The Grievance Redressal Committee or Mechanism cannot prevent or affect the right of the workman to arise industrial dispute on the same matter under the provisions of this I. D Act.

Execution of the award, decree or settlement

The Industrial Disputes (Amendment Act), 2010, has inserted two new sub-sections (9) and (10) after sub-section (8) of the Principal Act, which provides the following:

Every order, award or settlement arrived before Labour Court or Tribunal or National Tribunal, as the case may be, shall be executed by Civil Court having jurisdiction in accordance with the procedure laid down for execution of orders and decree of a civil Court under order 21 of the Code of Civil Procedure, 1908.

The Labour Court or Tribunal or National Tribunal, as the case may be shall transmit any award, order or settlement to a Civil Court having jurisdiction and the Civil Court shall execute the award, order or settlement as if it were a decree passed by it.

Effect

The amendment as brought a clear and fast mechanism for execution of the award, order or settlement made before Labour Court or Tribunal or National Tribunal.

Failing to comply with the award, order or settlement will lead to attachment of property, sale, warrants and other mode of execution from Civil Courts.

“Industry” and “Industrial Dispute” as per the Industrial Disputes Act, 1947

It is important here to mention the industry and industrial disputes the Act covers, namely:

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen. As defined in section 2 (j) of the I.D Act.

“Industrial disputes” means any dispute or difference between:

Employers and employers, 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 with the conditions of labour, of any person, as defined in section 2 (k) of the I.D Act.

● **Hemanth.S**