Q&A

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I am a permanent worker in a factory in Delhi. My employer since the past month has laid-off several employees in the factory and is not ready to give us compensation by citing the reason that we were not in his continuous service. Kindly advice whether I am entitled to compensation for lay-off or not?

The law governing lay-offs is stipulated in the Industrial Disputes Act, 1947 ("ID Act"). According to Section 25C of the ID Act, a workman who has been laid-off is entitled to compensation if the workman's name is borne on the muster roll of the establishment and who has completed not less than one year of continuous service. A workman meeting the aforesaid criteria is entitled to compensation for all days during which he or she is laid off at a rate equal to fifty percent of the total basic wages and dearness allowance which would have been payable to him or her had he or she not been laid-off.

Whether or not you have been in continuous service is a matter of fact. Section 25B of the ID Act defines continuous service. As per section 25B(1), a workman is said to be in continuous service for a period, if he provides for such period uninterrupted services, which includes interrupted service due to sickness, accident, strikes which are not illegal, lock out or cessation of work not due to the fault of the workman. Therefore, the period during which the workman was unable to work on account of illness, lock outs, etc is considered continuous service.

However, if a workman is not in continuous service within the meaning of section 25(B)(1), then the service will be construed as continuous in terms of section 25(B)(2) for a period of one year if the workman has, in the preceding twelve months, actually worked under the employer for two hundred and forty days. Further, while computing continuous service under section 25(B)(2), number of working days of a workman will include days:

a. on which he has been laid-off under an agreement or as permitted by the standing orders;

b. when he has been on leave with full wages, earned in the previous years;

c. he has been absent due to temporary disablement caused by accident arising out of or in the course of his employment; and

d. on which the female employee was on maternity leave, not exceeding 12 weeks.

Accordingly, if you have worked under the employer for a period of minimum 1 year or have worked in the preceding twelve months for at least 240 days, then you are entitled to get compensation for your lay-off.

Our company is planning to hire a group of 40 contract workers for a period of 6 months, from November onwards. We would like to know what kind of benefits we are supposed to provide to the contract workers under law. What are the terms and conditions that should be mentioned in the contract letter and how should it be drafted? Can the company be made liable for non-payment of wages by the contractor to the contract labour?

We understand that the contract workers would be hired through a contractor or a temping agency. In such a case, the appointment would be made by the contractor / agency and not by your company. The responsibility of providing the statutory benefits to the contract workers therefore would also be that of the contractor / agency.

While it is not possible in this response to provide all the details the agreement between you and the contractors should provide for, the provisions of the agreement should specifically obligate the contractor to comply with PF, ESI and other applicable welfare and/or social security legislations in respect of workers provided by the contractor.

If the contractor fails to pay wages or other statutory benefits to the employees, the principal employer, that is your company in this case, will be liable to pay the same to the contract labour employed by the contractor. However, you can recover the amount so paid from the contractor.

I am a factory owner in Haryana. I recently got standing order certified for my factory. However, there are certain issues arising with some of the certified standing orders, which I want to modify. Kindly tell me some way to get these orders modified.

Please note that Section 10 of the Industrial Employment (Standing Order) Act, 1946 ("IE Act") contains the provision for modification of the standing orders. Under section 10 of the IE Act, standing orders which are certified are not allowed to be modified for six months from the date on which the standing orders came into force or the last modification thereof came into operation. Accordingly, an application for modification of the standing orders can be made thereafter to the certifying authority. Please note that while dealing with such an application certifying authority will follow the same procedure as that prescribed for certification of standing orders. HC

Voluntary Retirement Scheme - Possible To Withdraw From The Scheme?

A voluntary retirement scheme ("VRS") allows an industry to reduce excess workforce by offering an attractive severance package to workers without having to face procedural and legal challenges in retrenchment. VRS is termination of employment through retirement or resignation by the employee instead of discharge by the employer, and therefore involves minimal legal hassles for the employer. Due to the voluntary nature of VRS, it also does not face the threat of opposition from trade unions. While public sector companies are required to take prior permission from the Central Government before offering VRS, employers from the private sector do not require such approval, making it all the more easier for them to implement VRS.

From the employee's perspective, termination through VRS offers an attractive severance package, which would provide a financial cushion to the employee, while he or she looks for another employment. VRS offered to employees generally includes benefits like some months additional salary based on the number of years of employment, and, is thus willingly taken up by employees. VRS is often introduced as a step before or in place of retrenchment, when the employer has no option but to reduce the workforce. Employees are often attracted to the Scheme since they are aware that failure of the Scheme may force the employer to take steps such as retrenchment, which may not provide them as much compensation as the Scheme.

Labour laws in India stipulate strict conditions on the employers in the matter of reduction of its excess staff through retrenchment. In certain cases, the employer is also required to obtain government approval for retrenchment. Moreover, such decisions of retrenchment often face strong opposition by trade unions. VRS offers an answer to both the issues mentioned above. However, there are certain challenges as well for the employer. While VRS provides a hassle free means for the employer to reduce its workforce, it is not necessary that those amongst the workforce who are underperformers alone would take the offer. In fact, underperformers often do not take the offer, as they are not confident of bagging another job while better performers consider the Scheme as a bonanza. A Scheme which is only targeted at certain specific employees carries the risk of being challenged subsequently as an employee may subsequently claim that he or she was forced into resigning and/or accepting the offer as apparent from the fact that the so called Scheme was only meant for certain employees within a class and not all.

There are increasing instances where employees withdraw their application for VRS before or after its acceptance by the employer. In the case of Madhya Pradesh State Road Transport Corporation v. Manoj Kumar and Ors. [2016(8) SCALE292], Madhya Pradesh State Road Transport Corporation had introduced a Scheme called Voluntary Retirement from Service for the employees of the Corporation. The said Scheme came into force from July 01, 2005 and mentioned that the interested employees were required to give their options by August 01, 2005 and not thereafter. It specifically provided that application for option presented after August 01, 2005 shall not be considered and that the option once given by the employee shall not be permitted to be changed or taken back. In the present case while the learned single judge of the Hon'ble High Court of Madhya Pradesh held that the applications for withdrawal of VRS could only be moved within the validity period of the Scheme and in those cases where applications for withdrawal was submitted after August 01, 2005, this could not be done by the concerned employees, the division bench of the said High Court held that it is always permissible for an employee to withdraw the option under VRS before it is accepted on the basis that such a VRS Scheme calling for options of the employees is an invitation to offer. Such applications submitted by employees under the Scheme amounts to an offer and only on the acceptance of such an offer, a deal gets concluded and such an offer can, therefore, always be withdrawn before it is accepted.

Thereafter, the Supreme Court while upholding the conclusion reached by the learned single judge of the said High Court observed that "where VRS is contractual in nature (and not statutory), provisions of the Indian Contract Act would apply. The VRS Scheme floated by the employer would be treated as invitation to offer and the application submitted by the employees pursuant thereto is an offer, which does not amount to resignation in praesenti, and the offer can be withdrawn during the validity period. This would be the position even when there is a Clause in the Scheme that offer once given cannot be withdrawn at all. However, exception to this principle is that in such cases offer is to be withdrawn during the validity period of the scheme and not thereafter even when if it is not accepted during the period of the scheme."