Q&A

- BY **K V SINGH**

We are a private company wherein we provide our employees medical reimbursements as part of the salary component. The employees are registered under the Employees State Insurance Act, 1948 ('ESI Act'). Please clarify if we are still liable to pay for accidents, etc under the Workmen Compensation Act? What is the liability/compensation under the Workmen Compensation Act?

Please note that the Employees State Insurance Act, 1948 ('ESI Act'), provides for the establishment of a fund for worker's medical relief, sickness cash benefits, maternity benefits to women workers, pension to the dependants of the deceased workers, and compensation for fatal and other employment injuries, including occupational diseases.

All employees (including casual and temporary employees), whether employed directly or through a contractor, who are in receipt of wages upto Rs. 15,000/- per month, are entitled to be insured under the ESI Act. Part-time employees having a contract of service with the employer are also covered by the ESI Act.

However, a person entitled to any of the benefits under the Employees' State Insurance Act, 1948 is not entitled to receive any similar benefit under any other enactment. Therefore, you are not liable to pay any compensation under the Workmen Compensation Act as the employees are registered under the ESI Act.

One of our employees is absent from work without giving information or taking permission of leave. He was absent from work since the last two months. We want to terminate his services for his continuous absence without information or permission of leave. Can his services be terminated? Please advise what is required to be done by us in this regard, and the procedure to be followed for the termination of his services.

Please note that continuous absence from work without intimation is a misconduct for which the services of an employee are liable to be terminated. However, before proceeding with the termination, the employer is required to conduct a domestic enquiry, and afford an opportunity to the employee to present his case. You may adopt the following procedure for conducting the domestic enquiry:

(i) Issue a charge sheet to the delinquent employee, clearly setting forth the charge and ask him to submit his explanation within a reasonable time. The charge sheet should mention the misconduct committed, and ask the employee to submit his comments on the same within a specific period of time;

(ii) On receipt of delinquent employee's comments or after expiry of specific period of time given to the delinquent employee to submit his comments, the Disciplinary Authority may hold a personal hearing if the employee has seriously contested the charges. On the contrary, if the employee does not submit any response to the charge sheet or admits/fails to deny the material allegation, the Disciplinary Authority may decide whether the employee is guilty of alleged misconduct.

If the Disciplinary Authority comes to the conclusion that the employee is guilty of misconduct, it may issue a notice to the employee asking him to show cause why the proposed punishment (such as termination, demotion, etc.) should not be awarded to him. If the delinquent employee does not respond to the show cause notice or if the response is not satisfactory, the Disciplinary Authority may award the proposed punishment. HC

Krishna Vijay Singh is a senior partner at Kochhar & Co., one of the leading and largest law firms in India with offices at New Delhi, Gurgaon, Bengaluru, Chennai, Hyderabad, Mumbai, Dubai, Riyadh, Jeddah, Singapore, Tokyo and Atlanta (USA). The firm represents some of the largest multinational corporations from North America, Europe, Japan and India (many of which are Fortune 500 companies) in diverse areas of corporate and commercial laws.

Personal Injury And Accident: Arising 'Out Of' & 'In' The Course Of Employment

The Employees' Compensation Act, 1923 ("Act"), is a welfare legislation which aims to provide employees and their dependents, social security in case of accidents arising out of and in the course of their employment. The purpose behind enacting such a legislation was to protect the employee and his/her dependents from possible hardships that may be caused as a result of occupational accidents. However, an employer is not liable to pay compensation under the Act, if the accident does not result in death or permanent total disablement of the employee, and the accident is a result of wilful disobedience of the employee in complying with the directions or orders given by the employer.

Section 3 of The Employee's Compensation Act 1923 (the 'Act') talks about the employer's liability to pay compensation. Sub-sections (1) & (3) of Section 3 of the Act lay down the following four conditions on which the employer's liability to pay compensation depends:

(i) Personal injury must have been caused to an employee;

(ii) Such injury must have been caused by an accident;

(iii) The accident must have arisen out of and in the course of the employment; and

(iv) The injury must have resulted either in death of the employee or in his total or partial disablement for a period exceeding three days.

In Bai Shakri V. New Manekchow Mills Company Ltd. , the Hon'ble Gujarat High Court threw some light upon the employer's liability to pay compensation to an employee suffering any physical injury, such as an accident, in the course of employment while laying down the following principles for making the employer liable to pay compensation to the employee when the injury to the employee occurred in the course of employment:

(i) there must be a causal connection between the injury and the accident and the act done in the course of employment.

(ii) the onus is upon the claimant to show that it was the work and the resulting strain that contributed to or aggravated the injury.

(iii) it is not necessary that the employee must be actually working at the time of death or that death must occur while he is working, or has just ceased to work.

(iv) where the evidence is balanced, if the evidence shows a great probability, which satisfies a reasonable man that the work contributed to the causing of personal injury, it would be enough for the employee to succeed.

With the increase of industries and increase in the distances, there was a need to expand the area of or the scope of area for the protection of the

employees. Paying attention to the distance travelled by an employee, or where the nature of employment involved travelling, there was a need to expand the area of protection provided to the employee. In this regard, the Indian courts have adopted the doctrine of notional extension while holding that the employer shall be liable to pay compensation in the event of accident of an employee while going to workplace from his residence or returning from workplace to residence as such accident will be said to have occurred during the course of employment.

In this regard, the Supreme Court while recognising the theory of notional extension of time and place in the case of Saurashtra Salt Manufacturing Co. v. Bai Valu Raja observed that "as a rule, the employment of a workman does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual places of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all times this theory of notional extension."

Therefore, it is clear that the applicability of the doctrine of notional extension of time and place depends on the circumstances of each case.

This Act has gone long way to protect workmen for accidental loss of life or limb and to provide social security to poverty stricken workmen. Though its main objective is to compensate the workers for injury, it has also prompted the employers to implement processes that reduce risk to the workers. HC

1 (1961) GLR 23
2 AIR 1958 SC 881