

Q&A

I work in an MNC in Bangalore. A colleague of mine looks at me in an inappropriate manner every time I pass by him. Does such a behaviour fall under the category of sexual harassment?

The definition of sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 includes unwelcome acts or behaviour (directly or by implication) such as physical contact or advances; demand or request for sexual favours; making sexually coloured remarks; showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Further, if any act of sexual harassment is accompanied with circumstances such as implied or express promise of preferential treatment in employment; implied or express threat of detrimental treatment in employment; implied or express threat about her present or future employment status; interference with work or creating an intimidating/offensive work environment and humiliating treatment likely to affect her health and safety, the same may also amount to sexual harassment.

From the query, I understand that you do not consider the manner in which your colleague looks at you as inappropriate. From your perspective, the conduct of your colleague is an unwelcome conduct of a sexual nature and you are entitled to seek a restraint on such unwelcome non-verbal conduct of sexual nature. A wide definition has been given to sexual harassment under the law with a view to enable working women to seek prevention of harassment of sexual nature either through verbal or non-verbal conduct. It is well within your right to make a complaint against your colleague before the Internal Complaints Committee. The Internal Complaints Committee in such cases should warn the employee to behave, and if deemed appropriate, to transfer the employee indulging in harassment to a different department or office.

I have just completed my graduation

from Mumbai University and on the lookout for jobs. I would like to understand the categories of employment under the Labour Laws?

There are different categories of employees in the market which may not be defined in the labour laws. In certain industries, employers are moving away from the traditional office setting and employing people to work from home. Employees can also be part time, contractual, seasonal, etc. However, broadly speaking, employees can be categorised in the following categories based on their skills:

- **Un-skilled:** An un-skilled employee is one who does operations that involve the performance of simple duties which require the exercise of little or no independent judgement or previous experience, although a familiarity with the occupational environment is necessary. His work may thus require in addition to physical exertion, familiarity with a variety of articles or goods.
- **Semi-skilled:** A semi-skilled employee is one who does work generally of a well-defined routine nature, wherein the major requirement is not so much of judgement, skill and dexterity, but of proper discharge of duties assigned to him for a relatively narrow job and where important decisions are made by others. His work is thus limited to the performance of routine operations of limited scope.
- **Skilled:** A skilled employee is one who is capable of working efficiently, of exercising considerable independent judgment and of discharging his duties responsibly. He must possess a thorough and comprehensive knowledge of the trade, craft or industry in which he is employed.
- **Highly skilled:** The term highly skilled or specialist is generally applied to a highly skilled and efficient tradesman capable of turning out work with the highest degree of precision and accuracy, who controls and directs skilled operatives in their work. Such a worker is capable of also making dimensional sketches, reading drawings and estimating quantities. The specialist is



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generally a highly skilled tradesman who has special knowledge and experience in a particular branch of work.

I work in a hotel in Delhi. I am made to work for approximately 13 hours in a day. Is there any minimum number of hours that I am required to work?

There is no law regarding minimum working hours if the arrangement between you and your employer is such, say, you will work for 2 hours every day. However, I understand that you actually wanted to know if there is a maximum limit on the working hours. As per the Delhi Shops and Establishment Act, no employee is to be allowed to work at an establishment for more than 9 hours in a day or 48 hours in a week and the employer is required to fix the daily periods of work accordingly. However, in certain circumstances, an employee may be made to work for more than 9 hours in a day or 48 hours in a week, provided the number of working hours should not exceed 54 hours in any week. Further, the aggregate hours so worked over and above the normal working hours should not exceed 150 hours in a year. We are thus of the view that your employer is making you work for more hours than what is specified by the law. **H C**

Paying The Bonus Where Due

BY KRISHNA VIJAY SINGH

The term "Bonus" means a reward that is paid to an employee for his good work towards an organisation. The basic purpose of giving bonus is to share the profit earned by the organisation amongst the employees and the staff members. In India, the law relating to payment of bonus to employees is regulated by The Payment of Bonus Act, 1965 ("Act"). The Act applies to factories and establishments that employ 20 or more people on any given day during the accounting year. Establishments covered under the Act are required to continue to pay bonus even if the number of employees fall below 20 subsequently.

The Payment of Bonus (Amendment) Act, 2015 ("The Amendment Act") has made more employees eligible for bonus and has also raised the ceiling limit on bonus. The Amendment Act provides a statutory right to the employees of an establishment in the share of profits of his/her employer. Pursuant to the Amendment Act, an employee who earns a salary or wages of INR 21,000 per month (as against INR 10,000 per month) will be eligible for payment of statutory bonus. The threshold of ceiling limit has also been increased from INR 3,500 per month to INR 7,000 per month or the minimum wage for the scheduled employment (whichever is higher). A minimum bonus at the rate of 8.33 percent is payable under section 10 of the Act. The maximum bonus including productivity linked bonus that can be paid in any accounting year shall not exceed 20 percent of the salary or wage of an employee under section 31 A of the Principle Act. It is pertinent to note that the bonus at the rate of 8.33 percent is not an absolute right even for an eligible employee, as it can be forfeited on dismissal or discharge of an employee as a punishment for certain misconducts.

In the matter of Managing Director, Chalthan Vibhag Sahakari Khand Udyog, Chalthan ("CVSKUC") vs. Government Labour Officer and Ors before the Hon'ble Supreme Court ("SC"), a question was raised by the Hon'ble bench if whether, for the purpose of calculating the bonus of the workmen during the accounting year employed with CVSKUC, which is a seasonal establishment, retaining allowance paid to workmen should be regarded as remuneration or wages under the Payment of Bonus Act, 1965. Brief facts of the case are that CVSKUC runs a seasonal factory which crushes sugarcane and produces sugar and does not work all through the year. The factory remains closed during the off-season. The workmen suffer forced idleness and they engage themselves in different occupations during this period. The workmen are paid retaining allowance (sort of incentive being offered to the workmen to entice them to return to the factory for work after the expiry of the off-season). The management treated the retaining allowance to be part of wages for purposes of the Employees' Provident Funds Act, 1952, but not for purposes of the Payment of Bonus Act, 1965. The question before the SC was whether retaining allowance should be regarded as remuneration or wages for purposes of computation of bonus. And, the SC held that, "The retaining allowance cannot be construed to be any other allowance which the employee is, for the time being, entitled. The High Court was, therefore, justified in holding that the retaining allowance paid to the seasonal employees was a part of their 'salary or wage' within the meaning of Section 2(21) of the Act and therefore, must be taken into account for the purpose of calculation of bonus payable under the Payment of Bonus Act, 1965". It may be relevant to note that Section 32(v)(c) of the Act exempts from the

applicability of the Act certain classes of employees i.e. employees employed by institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit.

In the matter of Swaraj Ashram Karamchari Sangh (Appellant) Vs. Swarajya Ashram (Respondent), the Appellant raised an industrial dispute with the Respondent for payment of bonus to the extent of 20% of the wages for the years 1965-66 to 1970-71 to its employees. The Industrial Tribunal rejected the claim of the Appellant stating that the respondent was exempted from paying the bonus to its employees under Section 32(v)(c) of the Act being an institution which was not established for the purposes of profit. It is to challenge the said award that the appeal was preferred by the Union of Workmen. The Hon'ble bench of the SC held that, "It is further pointed out there that the object of the institution is also to provide employment, and in fact, there is no superannuation age for the workmen. The employment is for life and many of the workmen are far advanced in age. Besides, the workmen are given benefits such as provident fund on an enhanced scale, education allowance for children etc. whose benefits are not available ordinarily anywhere else. On these facts which are not controverted, we are more than satisfied that the Tribunal was right in its conclusion that the respondent-institution would squarely fall within the exemption of Section 32(v)(c) of the Act." Lastly, there is often a debate on whether bonus can be paid on a monthly basis. The payment of bonus on a monthly basis may practically not be feasible since as per the provision of the Act all amounts payable to an employee by way of bonus is to be paid within eight months from the end of the financial year, thereby leaving the employer with a time period of only eight months to pay the bonus. 