Q & A

I work in a construction company in Chennai. The company in which I work created such circumstance and imposed such conditions because of which I could not attend come to work for a few days. Now they are also deducting my wages on account of those vacations. Can you tell me if they this deduction on their part is lawful?

Your employer company being an establishment carrying out works relating to construction would be governed by the provisions of the Payment of Wages Act, 1936 ("Act").

Please note as per Section 7(2)(b)of the Act, an employer company has the right to deduct wages of its employees on account of absence from work as long as such deductions are proportional to the wage-period for which the employee was absent. However, where such deductions are on account of conditions imposed by the employer company, the right to deduct wages under Section 9 of the Act would not be available to the employer company.

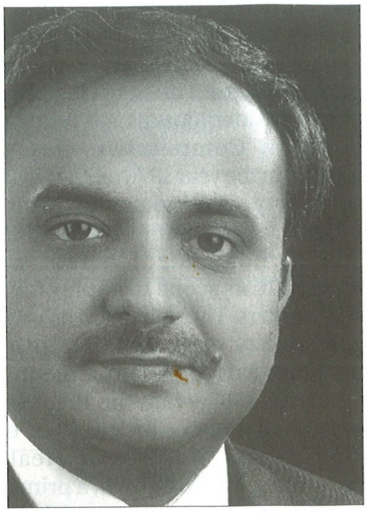
The Hon'ble High Court of Gauhati also took a similar stance in the case of French Motor Car Co. Ltd. Workers Union v. French Motor Car Co. Ltd: (1991)ILLJ107Gau. wherein it was held that "An employer can deduct the wages under section 7(2)(b) of the Act for absence from duty. Absence from duty by an employee must be of his own volition and it cannot cover his absence when he is forced by circumstances created by the employer from carrying out his duty.

Accordingly, in the event your absence from office was not on account of reasons attributable to you but attributable to the employer company, it will not be lawful on their part to deduct your wages for the period during which you were absent from work.

I own a small company which is currently registered with the shops and establishment act of Delhi. I am shifting my office to Mumbai so want to ask you the procedure to register under the shops and establishment act applicable to Mumbai.

The relevant legislation which applies to establishments in Mumbai is the Bombay Shops and Establishments Act, 1948 ("Act"). You may note that you would be in a position to register under the Act only after you have a physical office in Mumbai. Nevertheless, the process for registration of an establishment under the Act is described below:

- Within thirty (30) days of commencing your business from the office in Mumbai, you would be required to send to the labor inspector of the local area concerned a statement in Form A (attached) together with the prescribed fee;
- The statement under Form A must contain the details as required under Section 7 of the Act, namely, (i) name of the employer, (ii) postal address of the establishment, (iii) name of the establishment, if any, (iv) category of establishment i.e. commercial establishment, (v) such other prescribed particulars.
- On receipt of the application and fee, the labor inspector on being satisfied about the correctness of the particulars contained in the application, would register the establishment in the appropriate part of the register of establishment in Form C and would issue a registration certificate in Form C.
- You would be required to get the registration certificate renewed every year by applying to the labor inspector in the prescribed form (Form B) accompanied by the prescribed fee. HC



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Should there be a right to refuse unsafe work?

The Right to Refuse Unsafe Work (the "Right") as a part of rights governing occupational health and safety has long been a subject matter of debate. However, it has garnered more support in recent times in light of the growing awareness amongst workers and rising worker fatalities. The Right first came up for consideration in the report of the Royal Commission, Ontario (Canada) in the year 1976 on the Health and Safety of Workers in Mines. However, as the name suggests the Right contemplated therein was restricted in its scope to apply only to mine workers. The debate on its wider applicability to include other workplaces as well gained momentum in the year 1983 when the Right was also included under Article 13 of the Occupational Safety and Health Convention, 1981 (No. 155), a primary convention of International Labor Organisation. The said Article reads as under:

"A worker who has removed himself from a work situation which he has reasonable justification to believe presents an imminent and serious danger to his life or health shall be protected from undue consequences in accordance with national conditions and practice."

In theory the aforesaid provision appears to be absolutely fair and reasonable. In fact, many would argue that the Right is an integral part of the widely accepted principle that it is a must to ensure that the life and health of employees comes before the work of employers. In the Indian context, right to life and health have been guaranteed to every Indian citizen under the Constitution of India. The Supreme Court in Consumer Education & Research Centre and others v. Union of India and others; (1995) 3 SCC 42, held that the right to health and medical care to protect one's health and vigour, while in service or post-retirement, is a fundamental right of a worker under Article 21 read with Articles 39(e), 41, 43, 48-A (of the Constitution of India) and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. The Supreme Court further held that the compelling necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependents should not be at the cost of health and vigour of the workman.

In India, for instance, the applicability of such a provision could include a right of women employees to leave their employer's organization before it gets dark or unsafe for them to travel back to home, even if, the same comes at the cost of the employer's work. Undoubtedly, the same would put a check on the increasing number of women harassment cases in the country but wouldn't it simultaneously leave scope for a major abuse of the said provision in their hands? After all, who wouldn't want to leave for home early, whether safe or unsafe.

The nature of the Right carries within itself an inherent scope of abuse by workers/employees. The right to refuse work on such a ground can be grossly misused to refrain from doing many kinds of works that a worker/employee may not wish to carry out for reasons other than safety hazards. The subjectivity of 'safety' or 'dangerous works' leaves scope for multiple interpretations which can vary between different individuals and which would always vary between an employer and an employee. The recent stalemate, as reported in Indian Express, between the management and the permanent workers (Union members) of the automobile major Toyota Kirloskar Motors in Bangalore offers an example to the said subjectivity where in view of the workers the working conditions of the company were unsafe and the harsh practices of the company were deteriorating the health conditions of workers but not according to the management of the company. However, this was a case of collective bargaining where the view regarding unsafe conditions was taken by a union of workers.

Perhaps on account of the above reason Indian legislators decided to leave the question of determining the safety with respect to any unsafe work on a third person, i.e., the Inspector under the Factories Act, 1948 ("Act"). Section 40(2) of Act empowers the Inspector to issue an order, to the occupier or manager of a factory, prohibiting the use of any building or part thereof, machinery or plant which in his view involves imminent danger to human life or safety. Similarly, under Section 87A of the Act, the Inspector is empowered to prohibit the occupier of the factory to employ any person in the factory or part thereof that in his view has conditions that may cause serious hazard by way of injury or death to the persons employed therein or the general public in the vicinity.

Apart from the aforesaid, India also boasts of other legislations related to health and safety of workmen such as Mines Act, 1952; Dock Workers (Safety, Health and Welfare) Act, 1986; Plantation Labour Act, 1951; Explosives Act, 1884; Petroleum Act, 1934; and Dangerous Machines (Regulations) Act, 1983 amongst others that have been drafted to cover the various aspects of occupational safety in different fields. Further, there are two key legislations in this regard, namely, the Employee's Compensation Act, 1923 and the Employees' State Insurance Act, 1948.

However, none of these legislations postulate a right that may allow a workmen/employee to himself refuse work on the ground of safety. Even if such a right existed, it cannot be ascertained whether workers/employees would, if at all, dare to exercise it. The widespread poverty and level of competition in India makes, having a job more important than the quality of job itself and hence a possible theory of the opponents of the Right that 'every employee is free to quit an unsafe job and take a safer job' may not hold much ground in India. Nevertheless, the debate continues. HC

[1] http://www.newindianexpress.com/business/news/Toyota-Employees-Stay-Away-Refuse-to-Sign-Undertaking/2014/03/25/article2128453.ece