The Uttrakhand Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017

[Uttarakhand Act no 03 of 2018]

An Act

to regulate, amend and consolidate the law relating to the regulations of conditions of work and employment in the shops and establishments and for matters connected therewith or incidental thereto,

Be it enacted by the State Legislature of the Uttarakhand State in the Sixty-eighth Year of the Republic of India as follows:-

Chapter 1
Preliminary

Short title, extent and Commencement

1 (1) This Act may be called the Uttarakhand Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017.

(2) It shall come into force to the shops and establishments employed to the ten or more employees .

(3) It shall come into force on such date, as the Government may, by notification inthe Official Gazetteappoint.

Definitions

2 In this Act, unless the context requires otherwise,-

(a)"Chief Facilitator" means the Chief Facilitator appointed as such under sub-section (1) of section 17 of the Act;

(b)"day" means the period of twenty-four hours beginning at midnight;

(c) "employer" means a person owning or having ultimate control over the affairs of shop or an establishment, and includes,—

(d)(i) in the case of a firm or association of individuals, a partner or members of the firm or association;

(ii) in the case of a company, a director of the company;

(iii) in the case of shop and an establishment owned or controlled by the Central Government or a State Government or any local authority, the person or persons appointed to manage the affairs of such shop or establishment by the Central Government or the State Government or the local authority, as the case may be;

(e)“establishment” means such campus who is not campus of such any factory or any shop -

(i) to whom the work is done of any trade business, construction or concerning to them or their incidental or any assistant work of them or any work of journalism or publication or banking, insurance, stock, share, commission of a broker or work of produce; or

(ii)to whom the work is done for any theatre, cinema or public entertainment of any other work, to whom provisions of the Factories Act, 1948 does not apply.

(g)“prescribed” means prescribed by rules made under this Act;

(h)“shop” means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns, sale-depots or ware-houses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948;

(i)"State” means the state of Uttarakhand;

(j)"wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

(i) any remuneration payable under any award or settlement between the parties or order of a Court;

(ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period; (iii) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name); (iv) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be

made;

(v) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

(vi) house rent allowance.

but does not include—

(a) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(b) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;

(c) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(d) any travelling allowance or the value of any travelling concession;

(e) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(f) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

(j) "week" means the period of seven days beginning at midnight of Saturday;

(k) "worker" means any person (except an apprentice under the Apprentices Act, 1961) employed to do any manual, unskilled, skilled technical, operational or clerical work for hire or reward, whether the terms of employment be express or implied.

Act not to apply to certain establishments and persons

3. (1) The provisions of this Act shall not apply to,—

(a) Any employee holding the post of secret, management or supervisory nature in any shop or any establishment;

(b) such any employee which work is inter connection internal;

(c) office of the Government or any local authority;

(d) offices of Reserve Bank of India;

(e) any shop or establishment used for patient, handicapped, without shelter or treatment of mental patient; and

(f) any member of the family of any employer.

(2) A list of the employees referred to in clause (a) of sub-section (1) shall be displayed at a conspicuous place in the shop or establishment and a copy thereof shall be sent to the Facilitator concerned.

4. Nothing contained in this Act shall adversely affect any right or privilege to which any employee may be entitled, on the date on which this Act begins to apply to him, under any law, award, agreement, contract, custom or usage, in force on that date.

Chapter -2

Registration and issue of labour identification number

Registration of shops and establishment and issue of labour identification number

5. (1) On the commencement of this Act every shop or establishment employed ten and more employees on such date of commencement or that date to whom such shop or establishment is in affect within the period of six months shall apply for the registration and shall get labour identification number.

(2) Every shop and establishment employed ten or more employees certain persons and campus to non application of the Act shall apply for registration in such form and procedure as may be prescribed.

(3) The authority nominated in sub-section (2) on the receipt of application under sub section (2) shall registered to the shop or establishment and labour identification number shall issued in such form as may be prescribed.

(4) Notwithstanding anything in this section the registered shops and establishments shall be deemed registered for the purposes of this Act under the Employees State Insurance Act, 1948 or under the rules, regulations and scheme made thereunder;

Provided that such shops and establishment within the period of six months from the commencement of this Act shall get labour identification number in such procedure as may be prescribed.

Chapter-3

- 4 -

Duties of the employer

Prohibition of discrimination against woman worker

6. (1) No woman worker shall be discriminated in the matter of recruitment, training, transfers or promotion or wages.

shops

(2) No woman worker shall be required or allowed to work in or establishment except between the hours of 6 a.m. and 9-00 p.m. :

Provided that, the woman worker with her consent, shall be allowed to work during 9-00 p.m. and 6-00 a.m. in shops or any establishment in which adequate protection of their dignity, honour and safety, protection from sexual harassment and their transportation from the shop or establishment to the doorstep of their residence as may be prescribed are provided by the employer or his authorised representative or manager or supervisor.

Health and safety of workers

7. (1) Every employer shall take such measures relating to the health and safety of the workers including cleanliness, lighting, ventilation and prevention of fire as may be prescribed.

(2) Every employer shall be responsible for providing constant adequate supervision of the workers employed in the shop or establishment and to ensure the compliance with the rules relating to health and safety made under subsection (1) and for taking steps necessary to prevent accidents.

Decide and extension to be hours of work

8 (1) Subject to the other provisions of this Act, no adult worker shall be required or allowed to work in shop or an establishment for more than nine hours in any day and forty-eight hours in any week. No adult worker shall be asked to work continuously for more than five hours unless he has been given a break of not less than half an hour:

Provided that, the working hours or weekly holiday may be relaxed in case of work of urgent nature with the previous permission of the Facilitator.

(2) The spread-over of a worker in shop or an establishment shall not exceed ten and half hours in any day, and in case a worker entrusted with intermittent nature of work or urgent work, the spread over shall not exceed twelve hours.

(3) Where a worker in shop or an establishment is required to work beyond nine hours a day or forty-eight hours a week, he shall be entitled, in respect of the overtime work, wages at the rate of twice his ordinary rate of wages. The total number of overtime hours shall not exceed one hundred and twenty five hours in a period of three - 5 - months.

(4) The State Government shall made following rules-

(a) to fix number of that hours of work subject to sub section (1) in which for the employed employee in the shop or establishment with the specified one or more periods shall be constitute of general working day;

(b) to provide of such day of rest in every duration of seven days who shall be get all employed employee to the shop or establishment and to made provisions of payment of remuneration for such days of rest.

(5) The provisions of sub section (1) and sub section (2) shall be applicable subject to the only that extension and such conditions in relation of following categories of employed employees in such shop or establishment as may be prescribed, namely-

(a) the working employees in most urgent work or any emergency which prior guess is not possible or cannot be prevent;

(b) the working employees in the initial nature or supplementary work in which to be made necessarily before or after the general hours of mentioned work in the rules;

(c) the working employees in such work who is made complete before the ending of days for technical causes;

(d) the working employees shall not be made except the time depend on uncontrolled proceedings for the natural powers; and

(e) most competent employees who is working in the shop or establishment of any information technology, bio-technology and research and development section.

Wages for overtime.

9 Where a worker in shop or an establishment is required to work beyond nine hours a day or forty-eight hours a week, he shall be entitled, in respect of the overtime work, wages at the rate of twice his ordinary rate of wages, as may be prescribed.

Changes in the period of work and rest

10. (1) A department or any section of a department of the shop or establishment may work in more than one shift at the discretion of the employer and if more than one shift is worked, the worker may be required to work in any shift at the discretion of the employer.

(2) Shop or an establishment may be kept open for business on all days in a week subject to the condition that every worker shall be allowed weekly holiday of at least twenty-four consecutive hours

of rest.

(3) If a worker is denied weekly holiday, the compensatory leave in lieu thereof shall be given within two months of such weekly holiday.

(4) The period and hours of work in a week for all classes of workers in such shift shall be informed well in advance to all workers in writing and shall be sent to the Facilitator electronically or otherwise.

(5) Where a worker is required to work on a day of his rest, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

Chapter -4

Holiday and leave

Annual leave, Casual leave and leave on medical and other leave as a

11. (1) Every worker shall be allowed a weekly holiday with wages;

Provided that the State Government may appoint different days for different rates or areas of the shops and establishments weekly vacation by the notification.

(2) Every worker shall be entitled to eight days casual leave with wages in every calendar year which shall be credited into the account of the worker on a quarterly basis.

(3) Every worker who has worked for a period of two hundred and forty days or more in shop or an establishment during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of one day for every twenty days of work performed by him during the previous calendar year.

(4) Every worker shall be permitted to accumulate earned leave upto a maximum of forty-five days.

(5) Where the employer refuses to sanction the leave due when applied fifteen days in advance, then the worker shall have a right to encash leave in excess of forty-five days:

Provided that, if a worker is entitled to leave other than causal and festival leave discharged by his employer before he has been allowed the leave, or if, having applied for and having been refused the leave, he quits his employment on account of retirement, resignation, death or permanent disability, the employer shall pay him full wages for the period of leave due to him.

(6) A worker shall be entitled to 8 paid festival holidays in a calendar

year, namely, 26th January, 1st May, 15th August and 2nd October and 5 such other festival holidays as may be agreed to between the employer.

(7) For the purpose of sub-section (3),—

(a) any days of lay-off, by agreement or contract or as permissible under the model standing orders or standing order certified under Industrial Employment (Standing Orders) Act, 1946;

(b) in the case of a woman worker, maternity leave as provided for in the Maternity Benefits Act, 1961;

(c) the leave earned in the year prior to that in which the leave is availed; or

(d) the worker has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, shall be deemed to be days on which the worker has worked in anyshop or establishment for the purpose of computation of the period of two hundred and forty days or more, but shall not earn leave for these days.

(8) The leave admissible under sub-section (3) shall be exclusive of all holidays whether occurring during or either at the end of the period of leave.

Chapter-5

Welfare Provisions

Drinking water

12. The employer shall make effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed in the shop or establishment, a sufficient supply of wholesome drinking water.

Latrines and urinals

13. The employer shall provide sufficient latrine and urinal for men and women as may be prescribed and these shall be so conveniently situated as may be accessible for the workers employed in the shop or establishment :

Provided that, several employers may provide common facilities of latrines and urinals, in case it is not possible, in shop or establishment due to constraint in space or otherwise.

Children's home or facility

14. In every shop or establishment wherein fifty or more workers are employed, there shall be provided and maintained a suitable room rooms as children's home for the use of children of such workers :

Provided that, if a group of shop or establishments, so

decide to provide a common children's home within a radius of one kilometer, then, the same shall be permitted by the Chief Facilitator, subject to such conditions as may be specified in the order.

First-aid facilities as

15 Every employer shall provide at the place of work first-aid may be prescribed.

Cafeteria

16. The State Government shall require the employer to provide and maintain in the establishment, wherein not less than one hundred workers are employed or ordinarily employed to maintain a canteen for the use of its workers :

Provided that, if a group of establishments, so decide to provide a common canteen, then the same shall be permitted by the Chief Facilitator by an order, subject to such conditions as may be specified in the order.

Chapter -6

Facilitator and their powers and duties

Appointment of Chief Facilitator and Facilitators and their powers

17. (1) The State Government may, by notification in the Official Gazette, appoint such persons who possess such qualification as may be prescribed, to be the Facilitator or Facilitators, for the purposes of this Act, and may assign to them such local limits as it may think fit;

Provided that the State Government may, by notification in the Official Gazette, appoint a Chief Facilitator who shall, in addition to the powers conferred on a Chief Facilitator under this Act, exercise the powers of a Facilitator throughout the State.

(2) The State Government may prescribe a scheme for randomize inspection of shop and establishments which shall provide for generation of a web based inspection schedule.

(3)Every Chief Facilitator and Facilitators appointed under sub-sections (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code and shall be subordinate of such authority as a Government as may be specified for this purpose by the State Government.

(4) Subject to such conditions as may be prescribed, a Facilitator may, within the local limits for which he is appointed—

(i) advice the employers and workers and provide them such information as may be considered necessary for complying with the provisions of this Act effectively;

(ii) inspect the establishment in accordance with the scheme for inspection referred to in sub-section (2), and may—

(a) examine any person who is found in any premises of the establishment and whom, the Facilitator has reasonable cause to believe, is a worker of the establishment;

(b) require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;

(c) search, seize or take copies of such register, record of wages or notices or portions thereof as the Facilitator may consider relevant in respect of an offence under this Act and which the Facilitator has reason to believe has been committed by the employer;

(d) ring to the notice of the State Government defects or abuses not covered by the law for the time being in force; and

(e) exercise such other powers, as may be prescribed :

Provided that, no person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

(5) Any person required to produce any document or to give any information required by Facilitator appointed under sub-sections (4) shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

(6) The provisions of the Code of Criminal Procedure, 1973 shall, so far as may be, apply to the search or seizure under sub-clause (c) of clause (ii) of sub-section (4) as they apply to the search or seizure made under the authority of a warrant issued under section 94 of the said Code.

Chapter 7
Records and Return

Maintenance of registers and records

18 (1) Every employer shall maintain such registers and records, as may be prescribed.

records

(2) The records may be maintained electronically or manually :

Provided that, at the time of inspection by a Facilitator, a hard copy of such records if demanded, shall be submitted duly signed by the employer or his representative.

Annual Return

19 The employer of Shop and establishment shall furnish an annual return, in such a form and in such manner (including electronic form), to such authority as may be prescribed.

Chapter 8

Offences and Penalties

Penalty for contravention of provisions of this Act

20 (1) Whoever, contravenes the provisions of this Act or the rules made thereunder shall be punishable with fine which may extend to two lakh rupees and in the case of a continuing contravention, with an additional fine which may extend to two thousand rupees for every day during which such contravention continues :

Provided that, the total amount of fine shall not exceed two thousand rupees per workers employed.

(2) If any person who has been convicted of any offence punishable under sub-section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punished on a subsequent conviction with fine of rupees not less than one lack and which may extend to five lack rupees .

[1]{Penalty for employer in an accident

21 Save as otherwise expressly provided in this Act, where an employer on being held guilty of contravention of any of the provisions of this Act or any rules made thereunder which has resulted in an accident causing serious bodily injury or death of a worker, he shall, on conviction, be punished with fine which shall not be less than two lakh rupees and which may be extended upto tem lakh rupees.}

Penalty for obstructions or refusal to facility investigation etc.

22. (1) Whoever, wilfully obstructs the Facilitator in exercise of any powers conferred on him by or under this Act or refuses or wilfully neglects to afford a Facilitator any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to an establishments, shall, on conviction, be punished with fine which may extend to two lakh rupees.

(2) Whoever, wilfully refuses to produce on the demand of a Facilitator any register or other document kept in pursuance of this Act or the rules made thereunder or prevents or attempts to prevent or does anything which he has reason to believe to prevent any person from appearing before, or

being examined by, a Facilitator acting in pursuance of his duties under this Act, shall, on conviction, be punished with fine which may extend to two lakh rupees :

Provided that, total amount of fine shall not exceed two thousand rupees per worker employed.

1- Subs. by section 2 of Uttarakhand Act no 12 of 2022.

Cognizance of offences under this Act

23 (1) No Court shall take cognizance of any offence punishable under this Act and the rules made there under unless a complaint in respect thereof is made by the Facilitator within three months of the date on which the alleged commission of the offence came to the knowledge of the Facilitator :

Provided that, where the offence consists of disobeying a written order made by a Facilitator, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act or the rules made there under.

Compounding of offences

24. (1) Any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, on an application of the accused person, either before or after the institution of any prosecution, be compounded by a Gazetted Officer, as the State Government may, by notification, specify, with fine provided for such offence, in the manner as may be prescribed.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a person for the second time or thereafter within a period of five years from the date—

(a) of commission of a similar offence which was earlier compounded;

(b) of commission of similar offence for which such person was earlier convicted.

(3) Every officer referred to in sub-section (1) shall exercise the powers to compound an offence, subject to the direction, control and supervision of the State Government.

(4) Every application for the compounding of an offence shall be made in such form and manner as may be prescribed.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(6) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the officer referred to in sub-section (1) in writing, to the

notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the person against whom the offence is so compounded shall be discharged.

(7) Any person who fails to comply with an order made by the officer referred to in sub-section (1), shall be liable to pay a sum equivalent to twenty per cent. of the maximum fine provided for the offence, in addition to such fine.

(8) No offence punishable under the provisions of this Act shall be compounded except under and in accordance with the provisions of this section.

Chapter 9
Miscellaneous

Protection of action taken in good faith

25. No suit, prosecution or legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Power to exempt

26. The State Government may, by notification in the Official Gazette, exempt from the operation of all or any of the provisions of this Act or rules, shop or establishment or class thereof or any employer or worker or person or class of employers or workers or persons to whom this Act applies for any period on such terms and conditions, as it may thinks fit.

Not in derogation of other laws

27 The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force of this Act.

Power to make rules

28 (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, the State Government may make rules regarding all or any of the following matters; namely-

(a) Authority, form and procedure in which application shall be made under sub section (2) of section 5, labour identification number under sub section (3) and the procedure of getting labour identification number under sub-section (4);

(b) Measurement to be made by the employer in relation to health and safety (in which sanitary, light, air and prevention of fire is also include) of the employees under sub section (1) section 7;

(c) Matters provided by the rules under sub section (4) of section 8;

(d) The conditions under sub section (5) of section 8, in which certain categories of employees the sub section (1) and (2) of that section shall be applicable;

(e) The rate of highest amount of wages under section 9;

(f) The provisions of sufficient toilet and urinal under section 13 and provisions of elementary treatment facility under section 15;

(g) The qualification of Facilitator under sub section (1) of section 17, such conditions in which the Facilitator shall be exercised his powers under sub section (4) and perform duties under sub clause (e) of clause (u) of sub section (4);

(h) The register and records maintained by employer under sub section (1) section 18.

(i) The form and procedure given in annual report (in which as electronic is also include) and that authority such details shall be given;

(j) The procedure of compounding under sub section (1) of section 24 and the forms and procedure of application for such compounding under sub section (4);

(k) any other matters which is or may be prescribed;

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature

Power to remove difficulties

29 (1)If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purposes of removing the difficulty :

Provided that, no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

Repeal and Savings

30 (1) The Uttar Pradesh Uttar Pradesh Dookan aur Vanijya Adhiniyam, 1962 (as applicable to the State of Uttarakhand and to the context of the State of Uttarakhand), is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken

under the said Act shall be deemed to have been done or taken under this Act is not in consistent of the provision of this Act.

(3) The details of special matters in this section for the purpose of affect of this repeal shall not be determined contradictory of general use or affected to him of the provision of section 6 of the General Clauses Act, 1897.