



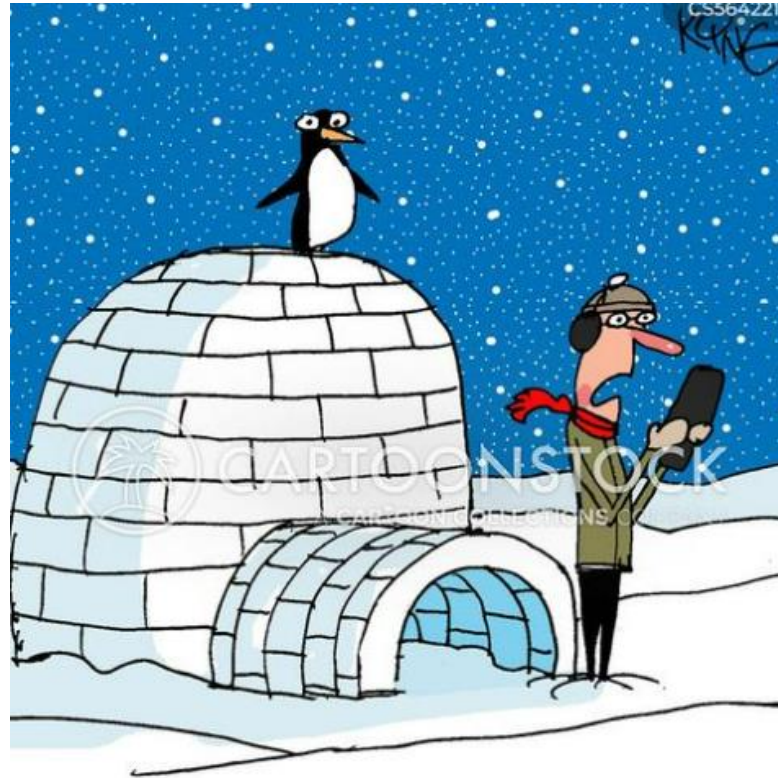
NALSAR: ADVANCED DIPLOMA IN LABOUR LAWS AND EMPLOYEE MANAGEMENT -2023-2024

Session by: Sayantani Saha
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Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

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Notice for Change in Conditions of Service on the transfer of employee



"Judging by where I've been transferred to, I think my boss is still unhappy with me for opening that attachment and infecting all the computers with a virus."

Transfer in service

- Office / factory location
- Team / department
- City / state / country
- Group company
- Customer / vendor



Notice of change in service conditions: Section 9A

■ Industrial Disputes Act, 1947: Section 9A

- Notice of change.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—
 - (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
 - (b) within **twenty-one days** of giving such notice:
- Provided that no notice shall be required for effecting any such change—
 - (a) where the change is effected in pursuance of any settlement or award; or
 - (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.



Change Management — Illustration

Protected service conditions

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

- 1. Wages, including the period and mode of payment;
- 2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
- 3. Compensatory and other allowances;
- 4. Hours of work and rest intervals;
- 5. Leave with wages and holidays;
- 6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
- 7. Classification by grades;
- 8. Withdrawal of any customary concession or privilege or change in usage;
- 9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;
- 10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;
- 11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control



Other conditions of Service

- Employer's standing orders
- Employment contract
- Service rules
- HR policies & handbook
- Code of conduct



Transfer to another employer

- Compensation to workmen in case of transfer of undertakings.—Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if—

- (a) the service of the workman has not been interrupted by such transfer;
- (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and
- (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.



Unfair Labour Practices

- To transfer a workman mala fide from one place to another, under the guise of following management policy.
- Transfer – a penalty?
- Transfer refusal – job abandonment?



CS451050

"I told you I'd *deal* with your transfer request, Jenkins. Cut the deck!"

Sample contract language

- Depending on business needs, the Company may, at its sole discretion, change your designation or transfer you to any other team, department or offices of the Company or of its affiliates.
- The Company has a right to assign, second or depute you to any affiliates, departments, subsidiaries or associate companies of the Company or to any group companies in which the Company may have an interest whether existing or which may be set up or established or acquired in future in any other location in India or to any third parties. The Company does not guarantee the continuation of any benefits or perquisite at the new location. In all such cases of transfer, you will be governed by the relocation policies and policies of the Company existing at that time.

Q&A

Managing Strikes & Lockouts – Rights of Employee to Wages during Strikes and Lockouts



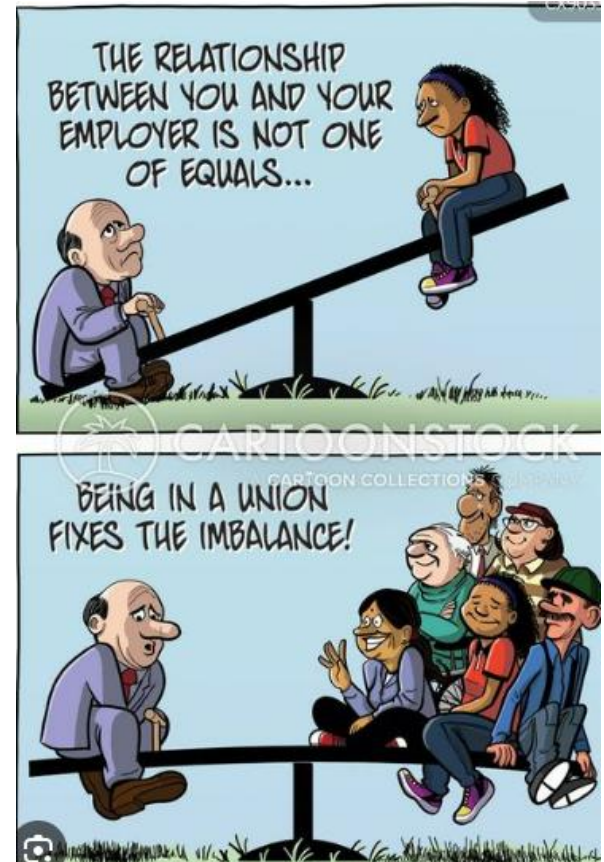
Strikes

- “strike” means a cessation of work by a body of persons employed in any industry acting in combination or a concerned refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment



Lockout

- “lock-out” means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;



Types of employers

- “public utility service” means— (i) any railway service or any transport service for the carriage of passengers or goods by air; (ia) any service in, or in connection with the working of, any major port 9[or dock or any industrial establishment or unit engaged in essential defence services];] (ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends; (iii) any postal, telegraph or telephone service; (iv) any industry which supplies power, light or water to the public; (v) any system of public conservancy or sanitation; (vi) **any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification**
- Others

Prohibition on strikes and lock-outs

- No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out:
 - (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
 - (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
 - (bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or]
 - (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.



Strike : prohibitions

- Justified / unjustified
- Legal strike
- Illegal strike

(1) A strike or a lock-out shall be illegal if—

- (i) it is commenced or declared in contravention of section 22 or section 23; or
- (ii) it is continued in contravention of an order made under sub-section (3) of section 10 or sub-section (4A) of section 10A.

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 4[or sub-section (4A) of section 10A.

(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.



PUS: Conditions for strike / lockout

- No person employed in a public utility service shall go on strike in breach of contract—
- (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

- No employer carrying on any public utility service shall lock-out any of his workmen—
- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out; or
- (b) within fourteen days of giving such notice; or
- (c) before the expiry the date of lock-out specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

- The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service – **but notice to labour authorities necessary in a prescribed manner.**



When are wages payable

- **Management of Churakulam Tea Estate (P) vs Workmen And Anr.**
- **Bank of India v T.S. Kelawala**



“Wages”?

- Different under different laws.
- As per Payment of Wages Act, 1936:

“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—

- (a) any remuneration payable under any award or settlement between the parties or order of a Court;
- (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
- (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
- (d) 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;
- (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

but does not include— (1) 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; (2) 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 2[appropriate Government]; (3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon; (4) any travelling allowance or the value of any travelling concession; (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).



Unfair Labour Practices

- To encourage or discourage membership in any trade union by discriminating against any workman, that is to say:—
 - discharging or dismissing a workman for taking part in any strike (not being as trike which is deemed to be an illegal strike under this Act)
- To insist upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work.
- To recruit workmen during a strike which is not an illegal strike.
- Proposing or continuing a lock-out deemed to be illegal under this Act.



Unfair labour practices

- On the part of workmen and trade unions of workmen:
 - To advise or actively support or instigate any strike deemed to be illegal under this Act.
 - to indulge in acts of force or violence or to hold out threats of intimidation in connection with a strike against non-striking workmen or against managerial staff.
- To stage, encourage or instigate such forms of corrective actions as willful “go slow”, squatting on the work premises after working hours or “gherao” of any of the members of the managerial or other staff.
- To stage demonstrations at the residence of the employers or the managerial staff members.
- To incite or indulge in willful damage to employer's property connected with the industry.
- To indulge in acts of force or violence or to hold out threats of intimidation against any workman with a view to prevent him from attending work.



Q&A

DISCLAIMER

This presentation is merely an overview and interpretation of Indian law pertaining to prevention, prohibition and redressal of sexual harassment of women at workplace and does not purport to be exhaustive or conclusive. It does not constitute a legal advice or opinion, and it should not be relied upon by any person for any purpose, nor is it to be quoted or referred to in any public document or shown to, or filed with any government authority, agency or other official body without our consent. We are relying upon relevant provisions of the Indian laws, and the regulations thereunder, and the judicial and administrative interpretations thereof, which are subject to change or modification by subsequent legislative, regulatory, administrative, or judicial action or decisions. We disavow any obligation to update this presentation in the event of changes in applicable laws, or if additional or newly discovered information is brought to our attention.

Thank You!

sayantani.saha@nishithdesai.com

nda@nishithdesai.com

Nishith Desai Associates
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Mumbai | Silicon Valley | Bangalore | Singapore | Mumbai-BKC | New Delhi | Munich