



Closure of Establishment

NALSAR University of Law



Meaning of Closure

- Under the Industrial Disputes Act, 1947, Closure refers to the complete or partial shutdown of an industrial Establishment or Undertaking by the employer
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Position Prior to Supreme Court Judgement

- ▶ The Industrial Disputes Act, 1947 has no separate provision for closure. Later, the meaning and explanation of closure were expressly defined in a landmark Supreme Court Judgement **Hariprasad Shiv Shankar Shukla v. A.D. Diwelker**. The permanent closing down of a place of employment is closure defined under Section 2(cc) which was inserted by an amendment in 1982. The employer shuts down the establishment permanently



Provisions of Closure of an Undertaking under Section 25(O)

provides for the closure of an undertaking or establishment, without prior permission from the appropriate government authority, if certain conditions are met. The following are the provisions of Section 25(O):

1. Conditions for closure: An employer can close down an undertaking or establishment without seeking prior permission from the appropriate government authority, if it has less than 50 workmen, and the employer pays compensation to the workmen equivalent to 15 days' average pay for every completed year of continuous service.
2. Notice to the appropriate government authority: The employer is required to give notice of the closure to the appropriate government authority at least 60 days in advance, in the prescribed manner.



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1. Notice to workmen: The employer is required to give notice of the closure to the workmen at least 60 days in advance, or pay wages in lieu of such notice.
2. Procedure for payment of compensation: The compensation payable to the workmen must be paid at the time of closure, or within 15 days from the date of notice of closure, whichever is earlier.
3. Penalty for non-compliance: If the employer fails to comply with the provisions of Section 25(O), it shall be punishable with imprisonment for a term of up to six months, or with a fine of up to Rs. 5,000, or both.



Procedure for Closure of an Undertaking

Closure of an undertaking with less than 50 workmen under Section 25(O)

- If an undertaking has less than 50 workmen, the employer can close down the establishment without seeking prior permission from the appropriate government authority
 - The employer pays compensation to the workmen equivalent to 15 days' average pay for every completed year of continuous service.
 - The employer must give notice of the closure to the appropriate government authority and the workmen at least 60 days in advance.
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Closure of an undertaking with 50 or more workmen

- If an undertaking has 50 or more workmen, the employer must seek prior permission from the appropriate government authority before closing down the establishment.
 - The employer must give notice of the closure to the appropriate government authority and the workmen at least 60 days in advance.
 - The government authority may grant or refuse permission for the closure after considering the reasons given by the employer and the interests of the workmen.
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Voluntary retirement scheme (VRS)

- An employer may also opt for a voluntary retirement scheme (VRS) to facilitate the closure of the establishment.
- Under a VRS, the employer offers a voluntary retirement package to the workmen
- which typically includes compensation, pension, and other benefits.
- The scheme must be mutually agreed upon by the employer and the workmen, and the terms and conditions of the scheme must be specified in a formal agreement

Conciliation process

The Act provides a conciliation process to resolve the disputes in case of disputes

The appropriate government authority may appoint a conciliation officer to mediate and bring about a settlement between the parties.



25FFA. Sixty days' notice to be given of intention to close down any undertaking.

1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

an undertaking in which less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

—

(i) (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

25FFF. Compensation to workmen in case of closing down of undertakings.

Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F, shall not exceed his average pay for three months.

[*Explanation.*—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which operations are carried on,

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.]



Grant and Refusal of Permission

- **Grant of permission:** If the government authority is satisfied with the reasons given by the employer for closure, and if the employer has complied with all the requirements of the Industrial Disputes Act, the authority may grant permission for the closure. The employer must give notice of the closure to the government authority and the workmen at least 60 days in advance.



Grant and Refusal of Permission

- **Refusal of permission:** If the government authority is not satisfied with the reasons given by the employer for closure, or if the employer has not complied with the requirements of the Industrial Disputes Act, the authority may refuse permission for the closure. In such cases, the employer may approach the Labor Court or the Industrial Tribunal for adjudication. The Labor Court or the Industrial Tribunal may then examine the reasons for closure and the interests of the workmen, and may either uphold the decision of the government authority or order the employer to reinstate the workmen with back wages.



Deemed Approval

- Where an application has been made under the Act and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

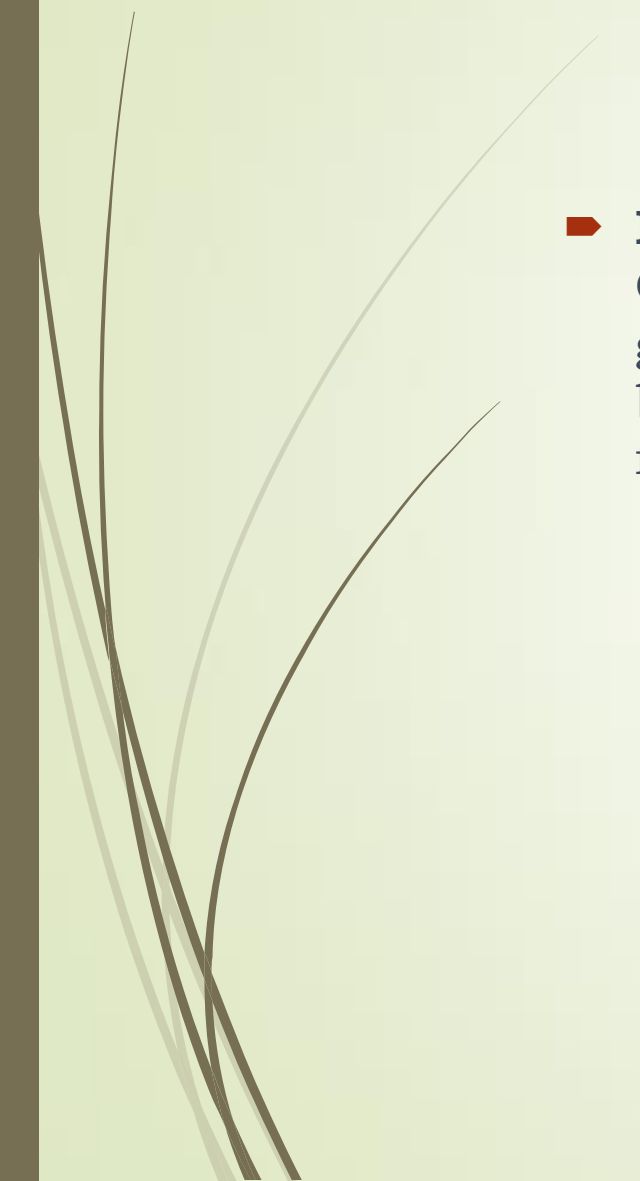


Appeals

- 1. Filing of appeal:** The employer must file an appeal with the Labor Court or the Industrial Tribunal within 60 days from the date of the receipt of the order of the government authority. The appeal must be filed in the prescribed format and must be accompanied by the necessary documents.
- 2. Notice to the other party:** The employer must serve a notice of appeal on the other party, i.e., the workmen or their representatives, within 7 days of the filing of the appeal.
- 3. Hearing of the appeal:** The Labor Court or the Industrial Tribunal must hear the appeal within 45 days of the filing of the appeal. The employer and the workmen or their representatives must be given an opportunity to present their case and produce evidence.



Appeals

- **Decision of the Labor Court or the Industrial Tribunal:** The Labor Court or the Industrial Tribunal may either uphold the decision of the government authority or order the employer to reinstate the workmen with back wages. The decision of the Labor Court or the Industrial Tribunal is final and binding on both the parties.
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Forms for Closure of Establishment

- FORM-Q- A
 - FORM-Q- B
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Illegal Closure

where an employer closes down an establishment without following the procedures and requirements specified in the Industrial Disputes Act, 1947.

- 1. Reinstatement with back wages:** If an illegal closure has taken place, the workmen are entitled to reinstatement with back wages. The Labor Court or the Industrial Tribunal may order the employer to reinstate the workmen with full back wages.
- 2. Penalty for illegal closure:** If the employer is found guilty of an illegal closure, he may be liable to pay a penalty. The penalty may be up to three months' wages of the workmen.
- 3. Criminal prosecution:** In some cases, the employer may also be liable to criminal prosecution for an illegal closure. The punishment for such an offense may include imprisonment and/or a fine.



Restarting a Closed Undertaking (Section 25P)

- Any industrial establishment which comes under the purview of Chapter VB and was closed down before the announcement of the Amendment Act in 1976 can be restarted with the order from the respective government.
- If the closure of the establishment is due to unavoidable situations that are outside the powers of the employer then there is an opportunity of restarting again. This not only improves the well being of the society but also makes sure workmen get employed. Before passing an order of restarting an establishment the government should allow the employer and the employees to voice out their opinions on this matter. This order, which will be published in the Official Gazette, will state that the undertaking shall be restarted under a period of time



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Thank You

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