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## LAY OFF AND RETRENCHMENT UNDER INDUSTRIAL DISPUTE ACT, 1947: AN ANALYSIS

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### **Abstract**

The Industrial Dispute Act came into force in 1947. The key concern of this act is to promote industrial peace by facilitating the investigation and settlement of industrial disputes through negotiations. The purpose of the labour legislation is to safeguard employees from victimization by employers and to uphold social justice to both the parties, that is, employers and the employees. The said Act promotes collective bargaining and regulates the atmosphere or conditions under which the workmen are working. It prevents illegal strikes and lockouts, also has provisions for the regulations of lay-off and retrenchment.

Employers must be cognizant of the various layoff and retrenchment compliance requirements in order to carry out these actions in accordance with the Industrial Dispute Act of 1947. In order to help businesses, avoid any danger of non-compliance with the Industrial Dispute Act, 1947, this article examines employer compliance on layoffs and retrenchments.

*Keywords:* Industrial Dispute Act, settlement, industrial disputes, labor legislation, safeguard, employees, lay off, retrenchment.

### **Introduction**

The settlement of disputes between employers and workers is a crucial component of Indian labour laws, particularly when an employer has to terminate an employment of an employee. The Industrial Dispute Act was therefore enacted by the Central Government in 1947 in order to regulate the same. The Act was passed to make it easier for employers to investigate and resolve labour issues, prevent strikes, and to give workers assistance during layoffs and retrenchments.

Lay off and retrenchment are defined under the Industrial Dispute Act, 1947.

Lay off refers to the removal of employees by the employer for reasons other than the fault of the employee. Lay off is temporary in nature because it suggests the incapability of an employer to continue the employment of the workers for a short period of time. A layoff occurs when an employer is forced to forgo providing employment to workers in a certain sector because they are momentarily unable to carry on with regular business operations. Retrenchment, on the other hand, is similar to downsizing. It is a method of terminating a worker for any reason such as reducing expenses associated with operations. Retrenchment should not, however, be a consequence of a worker's disciplinary action. This does not apply if the workman voluntarily takes retirement or retires on account of age of suspension or any such provision as specified in the Act.

Chapter V – B (Ss. 25-K to 25-S) of the Industrial Dispute Act, 1947 deals with the special provisions relating to lay off and retrenchment in certain establishments.

### **Definition of Lay off**

"Lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.<sup>1</sup>

It can be said that lay off is the inability, refusal, or failure of the employer to hire a worker whose name appears on the muster roll of his industrial establishment and who is not laid off for any other pertinent reason, such as a lack of power, coal, raw materials, stockpiling, broken machinery, or natural disaster.

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<sup>1</sup> The Industrial Dispute Act, 1947 (Act 14 of 1947), S. 2(kkk)

**Essential Conditions for lay-off**

Only businesses that are continuing to operate apply layoffs. Layoffs are futile if the company decides to cease its operations. Layoffs that do not comply with the requirements in Section 2(kkk) of the Industrial Disputes Act, 1947 will not be regarded as legal under the law. The phrase "layoff" refers to the instant removal of employees; nevertheless, this type of unemployment is only temporary, the relationship between the employer and the employee will not be terminated and the terms of employment will have no alterations.

Following are the essential conditions for lay-off:

- i. There must exist an inability, failure, or refusal from the employer's side to provide employment to the workmen.
- ii. Such inability, failure, or refusal must result from a lack of power, coal, raw materials, stockpiling, broken machinery, or any other pertinent cause.
- iii. The name of the employee must appear on the muster roll of the employer's industrial facility.
- iv. The employee must not have been subjected to retrenchment.

A worker is considered to be laid off for the day if his name appears on the muster roll of the employer's industrial establishment, he reports for work within working hours, and he is not hired within two hours of his arrival. A worker is considered to have been laid off for half of the day if he is requested to work during the second half of his shift and gets hired. He is regarded as having been laid off for the whole day if he is not employed despite reporting for work during the second half of the day.

**Provisions relating to Lay off under the Industrial Dispute Act, 1947**

As stated under S. 25 A<sup>2</sup> following are the types of establishments that are exempted from the compensation accrued from the lay-off:

- i. Such industrial establishments where less than 50 workmen worked on an average during each working day in the preceding calendar month.
- ii. An industrial establishment where work is done seasonally or occasionally.

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<sup>2</sup> The Industrial Dispute Act, 1947.

- iii. An industrial establishment that comes under the aegis of chapter V-B as included by the Industrial Disputes Amendment Act of 1976.

According to S. 25 B<sup>3</sup> if a worker has worked continuously for at least a year without any breaks, that worker is considered to have rendered continuous service. He will be qualified for payment if he has worked for at least a year without interruption. Accidents, authorized leaves of absence, illnesses, lawful strikes, locks, and terminations of employment that are not the workers' fault do not impair the continuity of such service.

If the workman was employed for the preceeding 12 months from the date on which such calculation was made or if the workman during the 12 months had rendered his services for 190 days or more in the case of being employed in a mine and 240 days in any other employment, the workman shall be deemed to be in a continuous service even though he is not in continuous service.

Under S. 25C<sup>4</sup> preceding conditions for providing compensation to a laid off workman is embedded. It states that the workman who is laid off is entitled to get compensation that is equivalent to half of the total wages and allowance given for the said period of lay off. Following conditions need to be fulfilled for providing compensation:

- i. The workman is not a badly or a casual worker
- ii. Muster roll of the established industry should contain the name of the workman
- iii. The workman must have rendered at least one year of continuous service under such an employer.

However, under certain circumstances the compensation shall not be entitled to a workman. S. 25 E<sup>5</sup> lays provision for non-applicability of compensation on workmen. The section states that if the workman is absent at least for one hour each week of the mandatory working hours from the establishment or if the workman is laid off for slowing down the efficiency of workmen in another part of the establishment or due to reason of strike or if the workman expresses his refusal towards the alternative employment being given to him, the compensation shall not be provided to such workman, provided that the same company where the workman was laid off gives him employment or he has been employed by the same employer but in any other establishment within 5 miles radius from where the workman worked or the employment is such that the employer

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<sup>3</sup> The Industrial Dispute Act, 1947.

<sup>4</sup> The Industrial Dispute Act, 1947.

<sup>5</sup> The Industrial Dispute Act, 1947.

does not require any previous experience or special skills as compared to the work that he did or the employment is such that it provides the same wages to the workman as his previous employment did.

### **Provision relating to Prohibition of Lay-off**

Section 25M<sup>6</sup> provides for prohibition of lay-off, which was added by the Industrial Dispute Amendment Act, 1976. The restriction applies to such industries which are not seasonal in nature and more than 100 workmen are employed. A worker whose name appears on the muster roll of an industrial facility cannot be dismissed by an employer unless there is a power outage or a natural disaster. Fire, explosion, an overabundance of combustible gas, or a flood can also be the causes of mine-related labour. After receiving approval from the relevant authorities appointed by the government or the government itself, an employer can dismiss employees. In order to accomplish this, the employer must apply outlining the grounds for the layoff and deliver a copy of this application to each affected worker. The responsible body or the government may request information regarding such a layoff after receiving an application. Following such an investigation, the employer and the employees who are being laid off must be informed of the government's or the responsible authority's decision. The order of the government or relevant authority shall be regarded as binding and final for a period of one year from the date of such order. Any layoff that takes place even after authorization, has been denied would be deemed illegal, and the affected workers will be eligible for all legal protections. If the industrial establishment offers a worker other employment, the worker is not perceived as having been laid off.

There are certain reasonable restrictions on the employer's rights to lay-offs under S. 25M of the said Act to prevent hardships and to maintain the tempo of productivity and production. No employee whose name appears on the muster rolls of their employer may be laid off without the prior approval of the authority that may be specified by the relevant government, unless the layoff is caused by a shortage of power or a natural disaster, and in the case of a mine, it is caused by fire, flood, etc.

In the case of **Papnasam Labour union v. Madura Coats Ltd. And Anr**<sup>7</sup> the constitutional validity of S. 25M was challenged. It was challenged on the ground that The Amendment Act of 1976 made amendment to the section, which needed prior approval to implement layoffs,

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<sup>6</sup> The Industrial Dispute Act, 1947.

<sup>7</sup> 1995 AIR 2200, 1995 SCC (1) 501.

imposed excessive limitations and, as a result, was ultra vires and unenforceable.

It was held that the object of the section 25M was to prevent avoidable hardship to the employees resulting from lay off and maintain higher production and productivity by preserving industrial peace and harmony. According to the ruling, Section 25-M's goal is to minimise undue suffering for workers caused by layoffs and to promote greater output and productivity by upholding industrial peace and harmony.

It was further noted that the legislature took care to carefully exclude the requirement for prior permission to lay off employees in Section 25-M if the layoff was necessary due to a power outage or natural disaster because such reasons are serious, sudden, and explicit and no further scrutiny is required. Because of this, the restriction imposed under sub-section (2) of Section 25-M cannot be deemed arbitrary, unreasonable, or substantially in excess of the need for which such restriction has been sought to be imposed. Instead, it must be seen as being in the greater public interest for maintaining industrial peace and harmony and to prevent unemployment without just cause. Criminal cases may not necessarily need to be pursued if the objectives of justice can also be served by other means, such as those provided for under Section 482 of the Criminal Procedure Code or other unique circumstances.

### **Definition of Retrenchment**

Retrenchment is defined under Section 2 (oo) of the Industrial Dispute Act, 1947 as “the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health;”<sup>8</sup>

Retrenchment is the termination of a workman for any reason except for a form of punishment in furtherance of imposing disciplinary action. Retrenchment does not, however, include voluntary

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<sup>8</sup> The Industrial Dispute Act, 1947.



retirement, retirement upon reaching the specified age of superannuation in the employment contract, removal of a worker due to continued illness, or removal due to termination of the employment contract or non-renewal after its expiration.

### **Provisions relating to Retrenchment under the Industrial Dispute Act, 1947**

The conditions precedent to retrenchment are mentioned under section 25F of the said Act. According to the section, The employee must get a one-month written notice from the employer outlining the reasons for the retrenchment, or the employer must pay the employee's salary for the period of notice. For each year of continuously rendered service, the employee shall receive from the employer at the time of retrenchment compensation equivalent to the average wage of 15 days. The proper government must also receive notification of the layoffs.

The procedure of retrenchment of the said Act is mentioned under S. 25G. the section stated that if an employer decides to retrench a workman belonging to a certain class of workmen working in the establishment of such employer, he must ensure to retrench such a workman who was considered as the last candidate to be employed for such work at the time of employment. First it starts with beginners then progress towards the senior workmen. But if a contract exists between the workman and the employer contrary to the rule or if any other grounds of retrenchment are stated by the employer, the retrenchment shall cease to proceed.

In the case of **Byram Pestonji Gariwala v. Union Bank of India and Ors.**<sup>9</sup> The court held that when discharge of excess of labour is done by the employer, only then retrenchment is said to occur.

In the case of **Delhi Cloth and General Mills v. Union of India**<sup>10</sup>, the court held that if the name of any workman is removed from the muster roll of an industrial establishment it would automatically be deemed as the retrenchment of such workman.

### **Lay off and Retrenchment: A Comparative Analysis**

A layoff essentially refers to the temporary termination of a worker at the disposal of an employer. Retrenchment, on the other hand, refers to the removal of surplus workers from an industrial establishment to increase productivity, provided that such removal is carried out for any reason whatsoever other than as a form of punishment in support of enforcing disciplinary

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<sup>9</sup> 1991 AIR 2234, 1991 SCR Supl. (1) 187

<sup>10</sup> 1963 AIR 791, 1963 SCR Supl. (1) 586.

action.

The industrial establishment ceases to operate as an actional step in a Lay off. The workman is re-appointed upon the end of lay off. However, in retrenchment the operations of the industrial establishment continue, the workmen are terminated immediately under business strategy.

Lay off being temporary in nature, it is for a definite period of time and so the employees are reappointed. But retrenchment being permanent in nature, the employees are terminated and fresh batch of employees are hired.

### **Conclusion**

Lay off and retrenchment are two different ways of voluntarily terminating employees. While employees are provided with compensation in both cases, gratuity is paid only in retrenchment. The key difference between lay off and retrenchment is that in lay off employees are reappointed, no fresh employment are made, thus violative in nature. However, retrenchment being non violative in nature implies complete termination of services rendered by the employees.

Employers have the right to terminate an employee's employment for three main reasons: (i) the organization is going through a lean moment; (ii) a hiring decision was made incorrectly; and (iii) an employee exhibits deviant behavior that negatively impacts the workplace as a whole. Both lay off and retrenchment refer to the process of reducing the number of employees within an industrial establishment and in both cases the employees' services are terminated due to financial difficulties or restructuring within the establishment.

Any industry that operates relies on a variety of factors to operate, increase revenues, and decrease losses. Additionally, it must provide its staff with adequate care so that they can contribute effectively to the growth of the business. But in order to remain competitive, these businesses must make judgements swiftly and precisely. Layoffs and retrenchments, which both follow certain procedures to ensure that the workers are not subjected to unjust conditions, may be advantageous to the corporation in terminating the employees or workers.