



The Sikkim Shops and Commercial Establishments Act, 1983

Act 6 of 1983

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THE SIKKIM SHOPS AND COMMERCIAL ESTABLISHMENTS ACT, 1983

(ACT NO.6 OF 1983)

AN ACT

[4. 4. 1983]

to provide for the regulation of conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments and for matters connected therewith or incidental thereto.

BE it enacted by the Legislature of Sikkim in the Thirty-fourth year of the Republic of India as follows :

CHAPTER I
PRELIMINARY

1. (1) This Act may be called The Sikkim Shops and Commercial Establishments Act, 1983.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and for different areas or different classes of establishments.
2. In this Act, unless the context otherwise requires,
- (1) "apprentice" means a person aged not less than fourteen years who is employed, whether on payment of wages or not, for the purpose of being trained in any trade, business or employment in any establishment;
- (2) "Chief Inspector" means the Chief Inspector appointed under section 68 (2);
- (3) "child" means a person who has not completed his fourteenth year;
- (4) "closed" means not open for the services of any customer or for any other purpose, whatsoever, relating to business;
- (5) "commercial establishment" means an establishment which carries on any business, trade, profession or any work in connection with, incidental or ancillary to, any business, trade or profession and includes
- (a) a society registered or deemed to have been registered under the Sikkim Co-operative Societies Act, 1978, and a charitable or other trust, whether registered or not, any business, trade, profession or work in connection with or incidental or ancillary to such business, trade or profession;
- (b) an establishment which carries on the business of advertising, commission agency, forwarding or commercial agency or which is a clerical department of a factory or of any industrial or commercial undertaking;
- (c) an insurance company, joint stock company, bank, broker's office and exchange; but does not include a

*Short title, Extent,
Operation and
Application.*

Definitions.

12 of 1978.

factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment

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

Provided that in the case of an employee whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning when such employment commences irrespective of midnight;

(7) "employer" means a person owning or having ultimate control over the affairs of an, establishment and includes the manager, agent or any other. person acting in the general management or control of such establishment;

(8) "establishment" means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment and includes such other establishment as the State Government may, by notification, declare to be an establishment for the purposes of this Act;

(9) "factory" means any premises which is a factory within the meaning of the Factories Act, 1948 or which is deemed to be a factory under section 85 of the said Act;

63 of 1948.

(10) "goods" includes all materials, commodities and articles;

(11) "holiday". means a day on which an establishment shall remain closed or on which an employee shall be given holiday under the provisions of this Act;

(12) "Inspector" means an Inspector appointed under this Act;

(13) "leave" means leave as provided for in Chapter VIII of this Act;

(14) "local area" means any area or combination of areas to which this Act applies;

(15) "local authority" means the Gangtok Municipal Corporation constituted under the Gangtok Municipal Corporation Act, 1975, and includes any other body which the State Government may, by notification, declare to. be local authority for the purposes of this Act;

4 of 1975.

(16) "manager" means a person declared to be a manager under section 6;

(17) "member of the family of an employer" means the husband, wife, son, daughter, father, mother, brother, sister of an employer who lives with and is dependent' on such employer;

notification published in the

(18) "notification:" means a notification published in the Official Gazette;

(19) "opened" means opened for the services of any customer for any business of the establishment, for work, by or with the help of any employee of or connected with the establishment;

(20) "period of work" means the time during which an employee is at the disposal of the employer;

(21) "prescribed" means prescribed by rules made under this Act;

(22) "prescribed authority" means the authority prescribed under the rules made under this Act;

(23) "register of establishment" means a register maintained for the registration of an establishment;

(24) "registration certificate" means a certificate' showing the registration of an establishment;

(25) "residential hotel" means any premises in which a bonafide business is carried on of supplying for payment lodging or board and lodging to travelers and other members of the public -on payment and includes a residential club;

(26) "restaurant and eating house" means any premises in which is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises;

(27) "shop" means' any premises where goods are sold, either by retail or wholesale or where services are rendered to customers, and includes an office, a store room, godown, warehouse or work place whether in the same premises or otherwise used in connection with such trade or business

but does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;

(28) "spread over" means the period between the commencement and the termination of the work of an employee on any day;

(29) "theatre" includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of cinematograph or other suitable apparatus or for dramatic performances or for any other public amusement or entertainment;

(30) "wages" means wages as defined in the Payment of Wages Act, 1936;

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

(32) "year" means a year commencing on the first day of January;

(33) "young person" means a person who is not a child and has not completed his seventeenth year.

8. References to the time of day in this Act are references to the Indian Standard Time.

4. (1) Nothing contained in this Act shall apply to

(a) a person whose work is inherently intermittent such as a traveler, canvasser, watchman or a caretaker;

(b) offices of the Central or State Government or of local authorities, of the State Bank of India, the State Bank of Sikkim and the Life Insurance Corporation;

(c) establishment for treatment or care of the sick, infirm, destitute or mentally unfit persons;

(d) bazaars, fairs or exhibitions for the sale of works for charitable or other purposes from which no profit is derived;

(e) stalls and refreshment rooms at railway stations or railway dining cars;

(f) clubs not being residential clubs ;

(g) any commercial establishment carrying on the business of transport of passengers and goods by motor vehicles and persons exclusively employed in relation to such business;

(h) offices of lawyers; and

(i) any other class of establishments or class of persons which the State Government may, by notification, exemption from the operation of this Act.

5. The State Government, may, if satisfied that the public interest so requires or that the circumstances of any establishment are such that it would be just and proper so to do. by notification, exempt either permanently or for any specified period, any establishment or class of establishments or person or class of persons to which or to whom this Act applies, from all or any of its provisions, subject to such restrictions and conditions as the State Government may specify in the notification.

CHAPTER II

REGISTRATION OF ESTABLISHMENTS

6. (1) Every establishment to which this Act applies shall be registered in accordance with the provisions of this section.
- (2) Within thirty days from the date on which the Act applies to an establishment, the employer shall send to the Chief Inspector, a statement in a prescribed form, together with such fees as may be prescribed containing:
- (a) the name of the employer and the manager. if any;
 - (b) postal address of the establishment;
 - (c) the name, if any, of the establishment;
 - (d) the category of the establishment, i. e. whether it is a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or place of public amusement or entertainment; and
 - (e) such other particulars as may be prescribed.

(3) On the receipt of the statement and the fees, the Chief Inspector on being satisfied about the correctness of the statements made therein, shall register an establishment in the register of establishments and shall issue in the prescribed form, a registration certificate to the employer. The registration certificate shall be displayed at a conspicuous place in the establishment.

(4) Registration certificate granted under sub-section (2), shall be valid upto the end of the year for which it is granted. An application for the renewal of a registration certificate shall be submitted not less than fifteen days before the date of expiry of the registration certificate or of the renewed registration, as the case may be, and shall be accompanied by such fees as may be prescribed and the renewed registration certificate shall be in such form, as may be prescribed.

(5) In the event of any doubt or difference of opinion between an employer and the Inspector as to the category to which an establishment should belong, the Inspector shall refer the matter to the Chief Inspector, who shall, after such inquiry as he thinks proper, decide the category of such establishment and his decision shall be final for the purposes of this Act.

7. (1) The Chief Inspector may suspend or revoke a registration certificate granted under this Act and may for that purpose require the holder of certificate by notice in writing to deliver up such certificate to it or to any other officer within such time as, may be specified in the notice.

(2) The Chief Inspector may, by an order in writing, suspend a licence, for such; period as he thinks fit or revoke a licence,

(a) if he deems it necessary in the interest of public safety to suspend or revoke the licence; or

(b) if the licence was obtained by suppression of material information or on the basis of wrong information provided by the holder of the licence or any other person on his behalf at the time of sending an application for the licence; or

(c) if the holder of licence has failed to comply with notice under sub-section (1) requiring him to deliver up the licence.

(3) The Chief Inspector may also revoke a licence on the application of the holder thereof.

(4) Where the Chief Inspector makes an order suspending or revoking a licence under sub-section (2) he shall record in writing the reasons thereof and furnish to the holder of licence on demand a brief statement of the same.

(5) A Court convicting the holder of licence of any offence under this Act or rules made thereunder may also suspend or revoke a licence:

Provided that if the conviction is set aside in appeal or otherwise, the suspension or revocation shall be final.

(6) On the suspension or revocation of licence under this section, the holder thereof shall without delay surrender the licence to the authority by whom it has been suspended or revoked or to such other authority as may be specified in this behalf in the order of suspension or revocation.

8. (1) Any person aggrieved by an order of the Chief Inspector refusing to grant a licence or by an order of the Chief Inspector suspending or revoking a licence may prefer an appeal against the order to the Secretary in the Department of Labour of the State Government within thirty days from the date of communication of the order of refusal, suspension or revocation, as the case may be:

Provided that an appeal may be admitted after the expiry of the period of thirty days if the appellant satisfies the Secretary that he was prevented by sufficient cause from preferring the appeal within the said period.

(2) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished by the appellant and by such fees as may be prescribed.

(3) No appeal filed under this section shall be disposed of until the appellant is given reasonable opportunity of being heard.

(4) Every order of the Appellate Authority confirming, modifying or reversing the order appealed against shall be final.

CHAPTER III

SHOPS AND COMMERCIAL ESTABLISHMENTS

9. (1) No shop

*Opening hours of
shops.*

(a) dealing wholly in milk, vegetables, fruits, fish, meat, bread or any other goods notified by the State Government shall on any day be opened earlier than 5 a. m,

(b) other than those specified in clause (a), shall on any day be opened earlier than 7 a. m.

(2) Subject to the provisions of sub-section (1) the State Government may fix different opening hours for different classes of shops or for different areas or for different periods of the year.

10. (1) No shop

*Closing hours
of shops.*

(a) other than those specified in clause (b) of this sub-section shall on any day be kept open after 7 p. m.

(9) dealing mainly in the sale of pan, bidis, cigarettes, safety matches and other ancillary articles shall, on any day, be kept open after 9 p m.:

Provided that any customer who was being served or was waiting to be served at such closing hour in any shop may be served in such shop during the quarter of an hour immediately following such hour.

(2) Subject to the provision of sub-section (1), the State Government may fix earlier closing hours for different classes of shops or different areas or for different periods of the year.

11. (1) No person shall carry on in or adjacent to a street or a public place the sale of any goods before the opening and after the closing hours fixed under sections 9 and 10 and for the shop dealing in the same class of goods in the locality in which such street or public place is situated:

Provided that nothing in this section shall apply to the sale of newspapers.

(2) Any person contravening the provisions of sub-section (1) shall be liable to have his goods seized by an Inspector.

(3) The goods seized under sub-section (2) shall be returned to the person- from whom they were seized on his depositing rupees fifty as security for his appearance in the court.

(4) If the person fails to make the deposit, the goods seized shall be produced without delay before a Magistrate who may give such directions as to their temporary custody as he thinks fit.

(5) Where no prosecution is instituted for contravention of the provisions of sub-section (1) within such period as the Magistrate may fix, in this behalf, the Magistrate shall direct their return to the person from whom they were seized.

(6) Subject to the provisions of sub-section (5), the provisions of any law relating to the criminal procedure for the time being in force, shall, so far as they may be applicable, apply to the disposal of the goods seized under this section.

12. (1) No commercial establishment shall on any day be opened earlier than 8.30. a. m. and kept open after 9.30. p. m.

(2) Subject to the provisions of sub-section (1), the State Government may fix different opening or closing hours for different classes of commercial establishments or for different areas or for different periods of the year.

13. (1) Subject to the provisions of this Act, no employee shall be required or allowed to work in any shop or commercial establishment for more than nine hours in any-day and forty - eight hours in any week.

(2) Any employee may be required to work in a shop or commercial establishment for any period in excess of the limit fixed under sub-section (1) if such periods does not exceed three hours in any week.

(3) On not more than six days in a year which the State Government may fix by rules made in this behalf, for purposes of making of accounts, stock taking settlements or other prescribed occasions, any employee may be required or allowed to work in a shop or commercial establishment in excess of the period under sub-section (1) if such period does not exceed twenty - four hours.

14. The period of work of an employee in a shop or commercial establishment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour:

Provided that

- (a) in the case of employee in a commercial establishment engaged in any manufacturing process, interval for rest shall be at least half an hour; and
- (b) in the case of any other employee the State Government may, on an application made in that behalf by the employees concerned, permit the reduction of the interval for rest to half an hour.

15. The spread over of an employee in a shop shall not exceed eleven hours in any day:

Provided that where an employee has worked on any day in accordance with the provisions of sub-section (2) of section 13, the spread over shall not exceed fourteen hours in any such day and where he works on any day in accordance with the provisions of sub-section (3) of the said section, the spread over shall not exceed sixteen hours in any such day.

16. The spread over of an employee in a commercial establishment shall not exceed eleven hours in any day:

Provided that the State Government may, by notification, increase the spread over period subject to such conditions as it may impose either generally or in the case of a particular commercial establishment or a class or classes of commercial establishments.

17. (1) Every shop or establishment shall remain closed on one day of the week. The employer shall choose any day of the week and shall fix such day at the beginning of the year or within thirty days in case an establishment comes into existence at some time during the year other than the beginning of the year, notify it to the Inspector and specify it in a notice prominently displayed at a conspicuous place in the shop or establishment and shall be maintained in a clean and legible condition.

(2) Notwithstanding anything contained in sub-section (1) the Government may, by notification in the Government Gazette fix any day in respect of any area specified in the notification.

(3) If any day notified as a holiday under sub-section (1) happens to be a day of public festival, the employer may keep the shop or commercial establishment open on such day but in that event, he shall keep the shop or commercial establishment closed on some other day within three days before or after the date of such public festival and give notice of the change to the Inspector at least seven clear days before the day of such public festival.

(4) It shall not be lawful for an employer to call an employee at, or for any employee to go to, his shop or commercial establishment or any other place for any work: in

connection with the business of his shop or commercial establishment on a day on which such shop or commercial establishment remains closed.

(5) No deduction shall be made from the wages of any employee of a shop or commercial establishment on account of any day on which it has remained closed under this section. If any employee is employed on a daily wage he shall nonetheless be paid his daily wage for the day on which such shop or commercial establishment remains closed. If any employee is paid a piece rate wage, he shall nonetheless be paid his wage for the day on which the shop or commercial establishment remains closed, at a rate equivalent to the daily average of his wages for the days on which he actually worked during the six days preceeding such closed day exclusive of any earning in respect of overtime:

Provided that nothing in this section shall apply to any person whose total period of continuous employment is less than six days.

CHAPTER IV

RESIDENTIAL HOTELS, RESTAURANTS AND EATING HOUSES

18. (1) Notwithstanding anything contained in any other enactment for the time being in force no restaurant or eating house shall on any day be opened earlier than 5 am and be kept open after 11 p.m. for service:

*Opening and closing
hours of restaurants
and eating houses.*

Provided that an employee in such restaurant or eating house may be required to commence work not earlier than 4.30 a.m. and shall not be required to work later than 11.30 p.m. :

Provided further that any customer who was being served or waiting to be served at the closing hour of such restaurant or eating house may be served in such restaurant or eating house during the quarter of an hour immediately following such hour.

(2) Subject to the provisions of sub-section (1), the State Government may fix different opening or closing hours for different restaurants or eating houses or for different areas or for different periods of the year.

(3) Notwithstanding anything contained in this section or any other enactment for the time being in force, the State Government may, by notification, fix not more than ten days in a year on festive or special occasions such opening and closing hours for different restaurants or eating houses or for different areas, as it thinks proper.

19. Before and after the hours fixed for the opening and closing of shops under sections 9 and 10 no goods of the kind sold in such shops shall be sold in any restaurant or eating house except for consumption on premises.

20. (1) Except on the day that may be notified under subsection (3) of section 18, no employee shall be required or allowed to work in a residential hotel, restaurant and eating house for more than nine hours in a day fixed under sub-section (1) of section 18 if such period does not exceed three hours on any day.

(2) On the days which may be notified under sub-section (3) of section 18, any employee may be required or allowed to work in a residential hotel, restaurant and eating house in excess of the period fixed under sub-section (1) of section 18 if such period does not exceed three hours on any day.

21. The period of work of an employee in a residential hotel, restaurant or eating house each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour.

22. The spread over of an employee in a residential hotel, restaurant or eating house shall not exceed fourteen hours:

Provided that the State Government may, on an application made in that behalf by the employees concerned, permit the reduction of the interval for rest half an hour.

23. The employer shall furnish every employee in a residential hotel, restaurant or eating house an identity card which shall be produced by the employee on demand by an Inspector. Such card shall contain the following and such other particulars as may be prescribed, namely :

- (a) the name of the employer;
- (b) the name, if any, and the postal address, of the establishment;
- (c) the name and age of the employee;
- (d) the hours of work, the interval for rest and holiday, of an employee;
- (e) passport size.. photographs of the employee;
- (f) the signature or thumb impression of the employee;
- (g) the signature with date of the employer or manager.

CHAPTER V

THEATRES OR OTHER PLACES OF PUBLIC AMUSEMENT OR ENTERTAINMENT

24. Notwithstanding anything contained in any other enactment for the time being in force, no theatre or other place of public amusement or entertainment shall, on any day be kept open after 12 midnight.

Closing hour! of theatres or other places of public amusement or entertainment.

25. After the hour fixed for the closing of shops under section 10, no goods of the kind sold in a shop shall be sold in any theatre or other places of public amusement or entertainment except for consumption on premises.

Theatres or other places of public amusement or entertainment not to sell goods of the kind sold in shops after the closing hours of shops.

26. (1) No employee shall be required or allowed to work in any theatre or other places of public amusement or entertainment for more than nine hours in any day.

Daily hours of work in a theatre or other places of public amusement or entertainment.

(2) Any employee may be required or allowed to work in a theatre or other place of public amusement or entertainment for any period in excess of the limit fixed under subsection (1), if such period does not exceed six hours in any week.

27. The period of work of an employee in a theatre or other place of public amusement or entertainment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour:

Provided that the State Government may on an application made in that behalf by the employees, permit the reduction of the interval for rest to half an hour.

28. The spread over of an employee in a theatre or other place of public amusement or entertainment shall not exceed eleven hours in any day:

Provided that the State Government may increase the spread over periods subject to such conditions as it may impose either generally or in the case of a particular theatre or other place of public amusement or entertainment.

29. (1) Every employee in a theatre or other place of public amusement or entertainment shall be given at least one day in a week as a holiday:

Provided that nothing in this sub-section shall apply to an employee whose total period of employment in any week is less than six days.

(2) It shall not be lawful for an employer to call an employee at, or for an employee to go to, his theatre or other place of public amusement or entertainment or any place for any work in connection with the business of his theatre or place of public amusement or entertainment on any day on which such employee has a holiday.

(3) No deduction shall be made from the wages of an employee in a theatre or place of public amusement or entertainment on account of any holiday given to him under sub-section (1). If an employee is employed on a daily wage, he shall nonetheless be paid his wages for the holiday equal to the average of the daily wages earned by him during the preceeding six working days.

30. The employer shall furnish every employee in a theatre, or other place of public amusement or entertainment with an

identity . card which shall be kept by the employee when on duty and shall be produced on demand by an Inspector; such card shall contain the following and such other particulars as may be prescribed, namely;

- (a) the name of the employee;
- (b) the name, if any, and the postal address of the theatre and public place of amusement or entertainment;
- (c) the name and age of the employer;
- (d) the hours of work, interval for rest. if any, and the holidays of the employee;
- (e) passport size photograph of the employee;
- (f) the signature with date of the employer;
- (g) the signature or thumb impression of the employee.

CHAPTER VI

EMPLOYMENT OF CHILDREN YOUNG PERSONS AND WOMEN

31. No child shall be required or allowed to work as an employee or otherwise in any establishment notwithstanding that such child is a member of the family of the employer. *No child to work in any establishment.*
32. No young person and women shall be required or allowed to work whether as an employee or otherwise in .any establishment before 6 a. m. and after 7 p. m. notwithstanding that such young person or woman is a member of the family of the employer. *Young persons and women to work between 6 a. m. and 7 p. m.*
33. (1) Notwithstanding anything contained in this Act, no young person shall' be required or allowed to work whether all an employee or otherwise in any establishment for more than six hours in a day. *Daily hours of work for young persons.*
- (2) No young person shall be required or allowed to work whether as an employee or otherwise in any establishment for more than three hours in any day unless he has had an interval for rest of at least half an hour.

34. No young person or women working in any establishment, whether as an employee or otherwise, shall be required or allowed to perform work as may be declared by the State Government, by notification to be work involving danger to life, health or morals.
35. No woman shall engage herself in employment in any establishment during the six weeks following the day on which she is delivered of a child and ,no owner or manager of an establishment shall knowingly employ such woman.
36. (1) If any woman employed in an establishment is pregnant and gives notice in writing to the employer that she expects to be delivered of a child within six weeks from the date of such notice, the employer shall permit her, if she so desires, to absent herself from work up to the day of her delivery:

Provided that before granting such permission the employer may, at his own cost, require the woman to be examined by a qualified medical practitioner or midwife, and if the woman refuses to submit herself to such examination or is certified on such examination as not pregnant or not likely to be delivered of a child within six weeks, he may refuse such permission.

(2) The examination referred to in the proviso to sub-section

(1) shall, if the woman so desires, be carried out by a midwife.

37. The absence of a woman during the period she is entitled to maternity benefit. under this Act or, due to illness medically certified to arise out of pregnancy or confinement, shall be treated as authorised absence on leave.
38. (1) Every woman employed in an establishment who has been continuously' employed in such establishment or in establishments belonging to the owner of such establishment for a period of not less than six months preceeding the date of her delivery, shall be entitled to receive and the employer shall be liable to make to her, a payment of a maternity benefit at a rate for every day during the six weeks immediately preceeding and including the day of her delivery and for each day of the six weeks following

her delivery as may be prescribed by the State Government:

Provided that, no such payment shall be made for any day on which she attends work and receives payment therefor during the six weeks preceeding her delivery.

(2) The manner in which the maternity benefit shall be payable shall be in such manner as may be notified by the State Government.

39. Any woman employed in an establishment, who is delivered of a child, shall while she is nursing such child, be allowed half-an-hour twice a day during her working hours for purposes of such nursing in addition to regular intervals for rest.

40. (1) When a woman absents herself from work under section 38 it shall not be lawful for the employer to dismiss her during or on account of such absence, or to give notice of dismissal on such a day that the notice will expire during such absence.

(2) The dismissal of a woman at any time within six months before she is delivered of a child, if the woman, but for such dismissal, would have been entitled to maternity benefit under this Act, shall not have the effect of depriving her of such maternity benefit if the Inspector is satisfied that her dismissal was without sufficient cause.

41. Any woman employee who has a miscarriage or has/under-gone operation for medical termination of her pregnancy shall also be entitled to leave for six weeks or such period as may be medically certified and her absence shall be treated as authorised absence on leave.

42. (1) Every employee who undergoes sterilization operation shall be entitled to special casual leave with wages for a period not exceeding

(a) six days in the case of a male employee; or

(0) fourteen days in the case of a female employee, with effect from the day on which he or she undergoes such operation.

(2) If an employee who has undergone sterilization operation is discharged by his or her employer during the period specified in sub-section (1). the employer shall

pay such employee wages payable during leave period in respect of the period of special casual leave which the employee was entitled to at the time of his or her discharge.

43. (1) Notwithstanding anything contained in the Payment of Wages Act, 1936 (hereinafter referred to in this section as "the said act"), the State Government may, by notification, direct that subject to the provisions of subsection (2), the said Act or any of the provisions thereof or of the rules made thereunder shall, apply to all or any class of establishment or to all or any class of employees to which or to whom this Act for the time being applies.

(2) On the application of the provisions of the said Act to any establishment or to any employee under sub-section (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of the provisions of the said Act within the local limits of his jurisdiction.

CHAPTER VII

HEALTH AND SAFETY

44. The premises of every establishment shall be kept clean and free from effluvia arising out from any drain or privy or- other nuisance and shall be cleaned at such times and by such methods as may be prescribed and these methods may include lime-washing, color-washing, painting, varnishing, disinfecting and deodorizing.

45. The premises of every establishment shall be ventilated in accordance with such standards and by such methods as may be prescribed.

46. (1) The premises of every establishment shall be sufficiently lighted during all. working hours.

(2) If it appears to an Inspector that the premises of any establishment within his jurisdiction are not sufficiently kept clean, lighted or ventilated, he may serve on. the employer an order in writing specifying the measures which.

in his opinion, should be adopted and requiring them to be carried out before a specified date.

47. In every establishment such precautions against fire shall be taken as may be prescribed.
48. In every establishment wherein a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948, 'is' carried on, 'there shall be provided and maintained by the employer a first - aid box containing such articles as may be prescribed.

CHAPTER VIII

HOLIDAYS AND WAGES

49. (1) Every person employed in any establishment shall be entitled, after twelve months' continuous service, to holidays with wages for a period of twenty days, in the subsequent period of twelve months. provided that such holidays with wages may be accumulated upto a maximum period of sixty days.

Explanation.-For the purpose of this sub-section any continuous period of service preceeding the date on which this Act applies to any establishment shall also count, subject to a maximum period of twelve months.

(2) 'Every person employed in any establishment shall also be entitled during his first twelve months of continuous service after the commencement of this Act, and during every subsequent twelve months of such service

(a) to leave with wages for a period not exceeding 12 days, on the ground of any sickness incurred or accident sustained by him; and

(b) to casual leave with wages for a period not exceeding 12 days on any reasonable ground.

(3) If a person entitled to any holidays under sub-section (1) is discharged by his employer before he has been allowed the holidays, or if having applied for and been refused the holidays, he quits his employment before he has been allowed the holidays, the employer shall pay

him the amount payable under this Act in respect of the holidays.

(4) If a person entitled to any leave under sub-section (2) is discharged by his employer when he is sick or suffering from the result of an accident, the employer shall pay him the amount payable under this Act in respect of the period of leave to which he was entitled to at the time of his discharge, in addition to the amount, if any, payable to him under sub-section (3) or under any other provision of this Act.

(5) A person employed shall be deemed to have completed a period of twelve months' continuous service within the meaning of this section, notwithstanding any interruption in service during those twelve months brought about

(i) by sickness, accident, or authorised leave (including authorised holidays) not exceeding ninety days in the aggregate for all three;

(ii) by a lock-out; or

(iii) by a strike which is not an illegal strike; or

(iv) by intermittent periods of involuntary unemployment not exceeding thirty days in the aggregate;

and authorised leave shall be deemed not to include any weekly holidays or half-holidays allowed under this Act which occurs at the beginning or the end of an interruption brought by the leave.

(6) A person employed in a hostel attached to a school or college or in an establishment maintained in a boarding school in connection with the boarding and lodging of pupils and resident teachers shall be allowed the privileges referred to in sub-sections (1) to (5), reduced however proportionately to the period for which he was employed continuously in the previous year *or* to the period for which he will be employed continuously in the current year as the case may be; and all references to periods of holidays or of leave in sub-sections (1) and (2) shall be construed accordingly, fractions of less than one day being disregarded.

(7) The State Government shall have power to issue directions as to the manner in which the provisions of sub-section (6) shall be carried into effect in all or any class of cases or in any particular case.

50. Every person employed shall, for the holidays, or the period of the leave allowed under sub-sections (1) or (2) of section 49. be paid at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceeding three months exclusive of any earnings in respect of overtime.
51. Notwithstanding anything contained in section 49, the State Government may, by notification, increase the total number of annual holidays and the maximum number of days upto which such holidays may be accumulated in respect of any establishment or class of establishments.
52. (1) Any sum required to be paid by an employer under this Chapter but not paid by him shall be recovered "delayed wages" under. the provisions of the Payment of Wages Act, 1936.
- (2) Any Inspector may institute proceedings on behalf of any person employed to recover any sum required to be paid under this Chapter by an employer which he has not paid.
53. Every employer shall be responsible for the payment to persons employed by him of all wages and sums required to be paid under this Act.
54. (1) Every employer shall fix periods (in this Act referred to as wage periods) in respect of which such wages shall be payable.
- (2) No wage period shall exceed one month.
55. Where any person employed in any establishment is required to work overtime, he shall be entitled, in respect of such overtime work, to wages at twice the ordinary rate of wages.

Explanation.- For the purpose of this section, the expression "ordinary rate of wages" shall mean such rate of wages as may be calculated in the manner prescribed.

56. An employee who has completed ten or more years of continuous service with full wages shall, on quitting the service or on his death his legal heirs, be entitled to gratuity equivalent to fifteen days' wages last drawn for each year of service.
57. (1) The wages of every person employed shall be paid before the expiry of the fifth day after the last day of the wage period in respect of which the wages are payable.
- (2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by such person shall be paid before the expiry of the second working day from the day on which his employment is terminated.
- (3) The State Government may, by general or special order, exempt an employer from the operation of this section in respect of the wages of any person employed or class of persons employed. to such extent and subject to such conditions as may be specified in the order.
- (4) All payments of wages shall be made on a working day.
58. An employee who has been allowed leave for not less than four days, in the case of an adult, and five days in the case of a child shall, before his leave begins, be paid wages due for the period of leave allowed.
59. All wages shall be paid in current coins or currency notes or in both.
60. (1) The wages of a person employed shall be paid to him without deductions of any kind except those authorised by or under this Act.

Explanation.-Every payment made by a person employed to the employer shall, for the purpose of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of a person shall be made only in accordance with the provisions of this Act. and may be of the following kinds only, namely:

- (a) fines;
- (b) deductions for absence from duty;

(c) deductions for damage to, or loss of, goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(d) deductions for house accommodation, if any, supplied by the employer;

(e) deductions for such amenities and services supplied by the employer as the State Government may, by general or special order, authorize

(f) deductions for recovery of advance or for adjustment of over-payments of wages;

(g) deductions of income tax payable by the employed person;

(h) deductions required to be made by an order of a Court or other authority competent to make such order;

(i) deductions for subscriptions to, and for repayment of advances from, any provident fund to which the Provident Fund Act, 1925 applies or any provident fund approved in this behalf by the State Government during the continuance of such approval;

(j) deductions for payments to co-operative societies approved in this behalf by the State Government or to a scheme of insurance maintained by the Indian Post Office or by any insurance company approved in this behalf by the State Government;

(k) deductions made with the written authorization of the employed person in furtherance of any savings scheme approved by the State Government for the purchase of securities of the Central or State Government.

61 (l) No fine shall be imposed on any person employed save in respect of such acts and omissions on his part as the employer, with the previous approval of the State Government or of the Chief Inspector may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on.

(3) No fine shall be imposed on any person employed until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage period on any person shall not exceed an amount equal to paisa three in a rupee of the wages payable to him in respect of that wage period.

(5) No fine shall be imposed on any person employed who has not completed his fifteenth year of age.

(6) No fine imposed on any person employed shall be recovered from him after the expiry of sixty days from the date on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and realizations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority

Explanation.- When the persons employed are part only of the staff employed under the same management, all such realizations may be credited to a common fund maintained, for the staff as a whole, provided that the fund shall be applied only to such purposes as are approved by the prescribed authority.

62. (1) Deductions may be made under clause (b) of sub-section (2) of section 61 only on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The amount of such deductions shall in no case bear to the wages payable to the employed person in respect of the wage period for which the deduction is made, a larger proportion than the period for which he was absent

bears to the total period, within such wage period during which by the terms of his employment, he was required to work:

Provided that, subject to any rules made in this behalf by the State Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say, without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause such deductions from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation. - For the purpose of this section, an employed person shall be deemed to be absent from the place where he is required to work, if, although present in such place, he refuses, in pursuance of stay-in-strike or for any other cause which is not reasonable in the circumstances, to carry out his work.

63. (1) A deduction under clause (c) of sub-section (2) of section 61 shall not exceed the amount of the damage or loss caused to the employer by the neglect or default of the person employed and shall not be made until the persons employed has been given an opportunity of showing cause, against the deduction, or otherwise than in accordance with such procedure as may be prescribed for the making of such deductions.

(2) All such deductions and all realizations thereof shall be recorded in a register to be kept by the employer in such form as may be prescribed.

64: A deduction under clause (d) or clause (e) of sub-section (2) of section 61 shall not be made from the wages of a person employed unless the house accommodation, amenity or service has been accepted by him, as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and in the case of a deduction under the said clause (e) shall be subject to such conditions as the State Government may impose.

65. Deductions under clause (f) of sub-section (2) of section 61 shall be subject to the following conditions, namely:

(a) recovery of an advance of money given before employment shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advances given for travelling expenses;

(b) .recovery of advances of wages not already earned shall be subject to any rules made by the State Government regulating the extent to which such advances may be given and the instalments by which they may be recovered.

66: Deductions under clauses (j)and (k) of sub-section (2) of section 61 shall be subject to such 'conditions as the State Government may impose.

67. No employer shall dispense with the services of an employee who has been in his continuous employment

(a) for not less than a year, without giving such persons at least thirty days' notice in writing or wages in lieu of such notice;

(b) for less than a year but more than .three months, without giving such persons at least fourteen days' notice in writing or wages in lieu of such notice

Provided that such notice shall not be necessary where the services of such employees are. dispensed with for misconduct.

Explanation.-For the purposes of this section "misconduct" shall include

(a) absence from service without notice 'in writing or without sufficient reasons for seven days or more;

(b) going on or abetting a strike in contravention of any law for the time being in force;

(c) causing damage to the property of his employer.

CHAPTER IX

ENFORCEMENT AND PROSECUTION

68. (1) The State Government may, by notification, appoint as many Inspectors for different areas thereof as may be considered necessary.

*Appointment of
Chief Inspector and
.Inspectors.*

(2) The State Government may, by notification, appoint one of the Inspectors to be the Chief Inspector for the purposes for this Act who may exercise all the powers of an Inspector.

69 (1) Subject to any, rules made by the, State Government . in this behalf an Inspector may. within. the, local limits for which he is appointed

(a) enter, at all the reasonable times and with such assistance as he thinks fit, any place which is or which he has' reason to believe. is an establishment;

(b) make such examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise record statement of any person as he may deem necessary, for carrying' out the purposes of this Act;

(c) exercise such other powers, as may be .prescribed or may ,be ,necessary for carrying out the purposes of this. Act

Provided that no one. shall. be required under this section to answer any question or to give any statement tending to incriminate himself.

(2) For the purpose of investigation of offences under this Act. an Inspector shall have the same powers as an Officer-in-charge of a police station has under the Code of Criminal Procedure 1898 ,for investigation of cognizable offences except that he shall not have the power of arrest.

5 of 1898.

70. Every Inspector appointed under the section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal. Code.

71. 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 or rules made thereunder.
72. Every employee and in his absence the Manager shall, on demand produce for inspection to an Inspector all registers, records and notices required to be kept under and for the purposes of this Act.

CHAPTER X

OFFENCES AND PENALTIES

73. Save as otherwise provided in this Chapter, whoever being an employer or manager of an establishment contravenes any of the provisions of this Act or rules made thereunder shall

(a) on first conviction, be punished with fine which shall not be less than fifty rupees and may extend to five hundred rupees; and

(b) for second and subsequent conviction for contravening the same provision of this Act or rules made thereunder, shall be punished with fine which shall not be less than one hundred rupees and may extend to one thousand rupees

74. If any employer, or manager with intention to deceive, makes, or causes or allows to be made in any register, record or notice prescribed to be maintained under the provisions of this Act or the rules made thereunder, an entry which, to his knowledge is false in any material particular, or willfully omits, or causes or allows to be omitted, from any such register, record or notice, an entry which is required to be made therein under the provisions of this Act or the rules made thereunder or maintains or causes or allows to be maintained, more than one set of any register, record or notice except the office copy of such notice, or sends or causes or allows to be sent, to the Chief Inspector or Inspector any statement, information or notice prescribed to be sent under the provisions of this Act, or the rules made thereunder which to his knowledge is false in any material particular, he shall, on conviction, be punished with imprisonment

not exceeding six months or with fine which may extend. to two thousand rupees, or with both.

75. Whoever wilfully obstructs the Chief Inspector or an Inspector in the exercise of any powers under this Act or rules made thereunder or conceals or prevents any employer in an establishment from appearing before or being examined by the Chief Inspector or an Inspector, shall, on conviction, be punished with fine which shall not be less than one hundred rupees and which may extend to one thousand rupees.

76. (1) Where the owner of an establishment is a firm or other association of individuals, any one of the individuals, partners or members thereof, may be prosecuted and punished under this Act for any offence for which an employer of an establishment is punishable:

Provided that, the firm or association may give notice to the Inspector that it has nominated one of its members who is resident in the State to be the employer for the purposes of this Act and such individual shall, so long as he is so resident, be deemed to be the employer for the purposes of this Act, until the notice canceling nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the owner of an establishment is a company any one of the directors thereof, or in the case of a private company any one of the share holders thereof, may be prosecuted and punished under this Act for any offence for which the employer of the establishment is punishable

Provided that the company may give notice to the Inspector that it has nominated a director, or, in the case of a private company, a shareholder who is resident in the State, to be the employer in the establishment for the purposes of this Act, and such director, or shareholder shall, so long as he is so resident, be deemed, to be the employer of the establishment for the purposes of this Act, until further notice canceling his nomination is received by the, Inspector or. until he ceases to be a director or shareholder.

77. (1) No prosecution under' this, Act or the rules made thereunder shall be instituted except by an Inspector.
- (2) No court inferior to that of a Magistrate of the first class shall try any offence under' this Act or any rule made thereunder
- (3) Notwithstanding anything' contained in any law relating to the criminal procedure for the time being in force, all offences under 'this Act or rules made thereunder; may be tried summarily.
78. No court shall hie cognizance of an offence under' this Act or any rule or order made thereunder unless complaint thereof is made within six months of the date on which the alleged commission of the offence first came to the knowledge of an Inspector.

CHAPTER XI

MISCELLANEOUS AND SUPPLEMENTARY

- 79 Subject to the general ,or special orders of the, State Government every employer shall maintain such registers and records and display on the premises of his establishment such notices as may be prescribed All ,registers and records shall be kept on- the premises of the establishment to which they relate.
80. (1) The State Government may, subject to previous publication, make rules to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing provisions, such rules may be made for all or, any of the following matters, namely:
- (a) the appointment of prescribed authority
- (b) the period for which, the conditions subject to which and the holidays and occasions on which the operation of the provisions of this Act may be suspended
- (c) the form of submitting a statement. the fees and other. particulars, the manner in which ,the registration of establishments is to be made and the form of registration certificate and the form and the period for notifying a change and the fees;

Maintenance of registers or records and display. of the notice.

Power to make rules.

- (d) fixing six days in a year for additional overtime;
 - (e) fixing ten days in a year for overtime;
 - (f) further particulars to be prescribed for an identity card;
 - (g) fixing times, and methods for cleaning the establishments, fixing standards and methods for ventilation, and prescribing such establishments as are to be exempted from the provisions of, and, precautions against fire to be taken in this Act;
 - (h) the articles which a first-aid box maintained shall contain;
 - (i) the qualification of Inspectors appointed under this Act and their powers and duties;
 - (j) the register and records to be maintained and notices to be displayed;
 - (k) any other matter which is to be or may be prescribed.
81. (1) All the notifications, rules, regulations and orders relating to shops and establishments in Sikkim in force immediately before the commencement of this Act are hereby repealed.
- Repeal and savings.*
- (2) Notwithstanding such repeal, anything done or any action taken under, the notifications, rules, regulations, orders, on the subject, shall be deemed to have been done or taken, as far as may be, under the corresponding provisions of this Act.

SIKKIM



GOVERNMENT

GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok

Monday 12th September, 2022

No. 364

GOVERNMENT OF SIKKIM
LAW & PARLIAMENTARY AFFAIRS DEPARTMENT
GANGTOK

No. 11(656)L&PAD/2021/11

Dated: 12.09.2022

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received assent of the Governor on 25th day of August, 2022 is hereby published for general information: -

THE SIKKIM SHOPS AND COMMERCIAL ESTABLISHMENTS (AMENDMENT) ACT, 2022
(Act No. 19 of 2022)

AN

ACT

further to amend the Sikkim Shops and Commercial Establishments Act, 1983.

Be it enacted by the Legislature of Sikkim in the Seventy-third Year of the Republic of India as follows:

- | | |
|-------------------------------------|---|
| Short title and commencement | 1. (1) This Act may be called the Sikkim Shops and Commercial Establishments (Amendment) Act, 2022.
(2) It shall come into force at once. |
| Amendment of Section 73 | 2. (1) In the Sikkim Shops and Commercial Establishments Act 1983, (hereinafter referred to as the "Principal Act") in Section 73 shall, clause (c) shall be omitted. |
| Amendment of Section 74 | 3. (1) In Section 74, of the Principal Act, the words "imprisonment not exceeding six months or with" appearing after the words "punishable with" and before the words "fine" and the word "or with both" appearing after the word "rupees" shall be omitted. |

Suraj Chettri (SSJS),
L.R.-cum-Secretary,
Law & Parliamentary Affairs Department.