

THE ORISSA SHOPS AND COMMERCIAL ESTABLISHMENTS ACT, 1956

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ORISSA ACT 30 OF 1956
THE ORISSA SHOPS AND COMMERCIAL ESTABLISHMENTS
ACT, 1956

[*Received the assent of the President on the 14th December 1956, first published in an Extraordinary issue of the Orissa Gazette, dated the 28th December 1956*]

AN ACT TO REGULATE THE CONDITIONS OF WORK AND EMPLOYMENT
 IN SHOPS AND COMMERCIAL ESTABLISHMENTS
 IN THE STATE OF ORISSA

WHEREAS it is expedient to regulate the conditions of work and employment in shops and commercial establishments in the State of Orissa ;

It is hereby enacted by the Legislature of the State of Orissa in the Seventh Year of the Republic of India as follows :—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Orissa Shops and Commercial Establishments Act, 1956. *

(2) It extends to the whole of the State of Orissa.

(3) This section shall come into force at once.

(4) The remaining sections shall come into force in the first instance in such areas and on such date as the State Government may specify by notification in this behalf.

(5) The State Government may, after giving ninety days' notice of its intention of so doing, by notification bring into force the remaining provisions of this Act to such other area or areas and on such date or dates as may be appointed in this behalf.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context—

(1) "apprentice" means a person, aged not less than twelve years, who is employed, whether on payment of wages or not for the purpose of being trained in any trade, craft or employment in any establishment ;

* For Statement of Objects and Reasons see *Orissa Gazette* Extraordinary dated the 5th September, 1956 and for S. O. R. see *Orissa Gazette* Extraordinary, dated the 27th September 1956.

(2) "Chief Inspector" means the Chief Inspector appointed to function as the chief executive authority under this Act ;

(3) "closed" means not open for the service of any customer or for any business connected with the establishment ;

(4) "commercial establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in official work, hotel, restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such establishments as the State Government may, by notification, declare to be a commercial establishment for the purposes of this Act ;

(5) "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 from the time when such employment commences irrespective of midnight ;

(6) "employee" means a person wholly or principally employed in, and in connection with, any establishment and includes an apprentice, but does not include a member of the employer's family. It also includes any clerical or other staff of a factory or industrial establishment who falls outside the coverage of the Factories Act, 1948 ;

LXIII of
1948.

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

(8) "establishment" means a shop or a commercial establishment ;

(9) "family" in relation to an employer means the husband or wife, son, daughter, father, mother, brother or sister of such employer who lives with and is dependent on him ;

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

(11) "leave" means leave provided for in Chapter IV of this Act ;

(12) "night" means a period of at least twelve consecutive hours which shall include the interval between 10 P.M. and 6 A.M. ;

(13) "opened" means opened for the service of any customer or for any business connected with the establishment ;

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

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

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

(17) "register of establishment" means a register maintained for the registration of establishments under this Act ;

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

(19) "shop" means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, storerooms, godowns or warehouses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 ;

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1948.

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

(21) "week" means the period of seven days beginning at midnight of Saturday or such other night as may be approved in writing for a particular area by the prescribed authority ;

Exemptions

3. (1) Nothing in this Act shall apply to—

- (a) offices of, or under the Central or State Government or Local authorities ;
- (b) offices under the Reserve Bank of India ;

- (c) establishments run by the owners themselves without employing any employee or establishments in which only members of employer's family are employed ;
- (d) establishments for the treatment or care of the sick, infirm, destitute, mentally unfit persons ;
- (e) persons occupying positions of management or employed in confidential capacity ;
- (f) persons whose work is inherently intermittent such as travellers, or care-takers ;
- (g) persons directly engaged in preparatory or complementary work such as clearing or forwarding clerks responsible for the despatch of goods ;
- (h) fairs or bazaars for the sale of work for charitable or other purposes for which no private profit is derived ; and
- (i) libraries at which the business of lending books or periodicals is not carried on for purposes of gain other than that of making profits for charitable, philanthropic, religious or educational objects.

(2) The State Government may, by notification, exempt either permanently or for any specified period, any establishment or class of establishments or persons or class of persons, to which or to whom this Act applies, from all or any of its provisions, subject to such conditions as they may deem fit.

CHAPTER II

REGISTRATION OF ESTABLISHMENTS

Registration
of establish-
ment.

4. (1) Within the period specified in sub-section (4), the employer of every establishment shall send to the Inspector of the area concerned, a statement in the prescribed form, together with such fees as may be prescribed, containing—

- (a) the name of the employer and the manager, if any ;
- (b) the postal address of the establishment ;
- (c) the name, if any, of the establishment ;
- (d) the category of the establishment, that is, whether it is a shop, commercial establishment, hotel, restaurant, cafe, boarding or eating house, theatre or other place of public amusement or entertainment ; and

(e) such other particulars as may be prescribed

(2) On receipt of the statement and the fees, the Inspector shall, on being satisfied about the correctness of the statement, register the establishment in the register of establishments in such manner as may be prescribed and shall issue, in a prescribed form a registration certificate to the employer. The registration certificate shall be prominently displayed at the establishment.

(3) 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 enquiry as may be prescribed, decide the category of such establishment and his decision shall be final for the purposes of this Act.

(4) Within thirty days from the date mentioned in column 2 below in respect of an establishment mentioned in column 1, the statement together with fees shall be sent to the Inspector under sub-section (1)—

Establishments	Date from which the period of 30 days to commence
(1)	(2)
(i) Establishments existing on the date on which this Act comes into force.	The date on which this Act comes into force.
(ii) New Establishments ..	The date on which the establishment commences its work.

Change in Statement under section 4 to be communicated to Inspector

5. It shall be the duty of an employer to notify to the Inspector, in the prescribed form, any change in respect of any information contained in his statement under section 4 within seven days after the change has taken place. The Inspector shall, on receiving such notice and on being satisfied about its correctness, make the change in the register of establishments in accordance with such notice and shall amend the registration certificate or issue a fresh registration certificate, if necessary.

Closing of establishment to be communicated to Inspector.

6. The employer shall, within ten days of his closing the establishment, notify to the Inspector in writing about the said closure. The Inspector shall, on receiving the information and being satisfied about its correctness, remove such establishment from the register of establishments and cancel the registration certificate.

CHAPTER III
HOURS OF WORK

Daily and
weekly
hours.

7. (1) No employee in any establishment shall be required or allowed to work for more than nine hours in any day and forty-eight hours in any week :

Provided that the total number of hours of work including overtime shall not exceed ten hours in any day except on days of stock-taking and preparation of accounts :

Provided further that the total number of overtime hours worked by an employee does not exceed fifty during a period of three months.

(2) No child between the ages of twelve and fifteen shall be allowed to work in any employment for more than five hours in a day.

Extra wages
for overtime
work.

8. (1) Where an employee works in any establishment for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of such overtime work be entitled to double the ordinary rate of wages.

(2) For the purposes of this section, "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus.

(3) The cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.

Explanation 1—"Standard family" means a family consisting of the employee, his or her spouse and two children below the age of fourteen years requiring in all three adult consumption units.

Explanation 2—"Adult consumption unit" means the consumption unit of a male above the age of fourteen years, and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 0.8 and 0.6 respectively of one adult consumption unit.

(4) The State Government may make rules providing—

(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of food-grains and other articles shall be computed; and

(b) the registers that shall be maintained in an establishment for the purpose of securing compliance with the provisions of this section.

9. The period of work of an employee in an establishment each day shall be so fixed that no period shall exceed five hours and that no such person shall work for more than five hours before he has had an interval for rest of at least half an hour.

10. The spread-over of an employee in an establishment inclusive of the interval for rest shall not exceed twelve hours in any day.

11. (1) No establishment shall, on any day, be opened earlier than and closed later than such hour as may be fixed by a general or special order of the State Government made under sub-section (2).

(2) The State Government may, after making an enquiry in the prescribed manner, by general or special order, fix the time at which any establishment or class of such establishments shall be opened or closed in any local area.

12. (1) Every establishment shall remain closed for one day in the week. The employer shall fix such day at the beginning of the year, notify it to the Inspector and specify it in a notice prominently displayed in a conspicuous place in the shop or commercial establishment. The employer shall not alter such day more often than once in three months, shall notify the alteration to the Inspector and make the necessary change in the notice in the shop or commercial establishment.

(2) Every employee in an establishment shall be given at least one whole day in a week as a holiday for rest. This is without prejudice to the existing practice in establishments which allow one and a half day's rest.

(3) It shall not be lawful for an employer to call an employee at, or for an employee to go to, his establishment or any other place for any work in connection with the business of his establishment on a weekly holiday or on a day on which such establishment remains closed :

Provided that if local custom so requires an establishment may remain open for business on any such holiday or on a day on which such establishment remains closed in which event every employee thereof shall be given equivalent leave in lieu of such holiday or holidays within that year.

(4) Notwithstanding anything contained in sub-section (1) the State Government may allow an establishment to remain open throughout the week if they are satisfied that the establishment employs additional staff for the purpose of working on weekly holidays or on a day on which such establishment remains closed.

(5) No deductions shall be made from the wages of any employee in any establishment on account of the holiday given to him under sub-section (1). If any employee is employed on daily wages he shall nonetheless be paid his wages for the weekly holiday.

CHAPTER IV

ANNUAL LEAVE WITH WAGES

Application of Chapter. 13. The provisions of this Chapter shall not operate to the prejudice of any rights to which an employee may be entitled under any other law for the time being in force or under the terms of any award, agreement or contract of service :

Provided that where such award, agreement or contract of service provides for a longer leave with wages or weekly holidays than provided in this Chapter, the employee shall be entitled to only such longer leave or weekly holidays as the case may be.

14. (1) Every employee who has worked for a period not less than two hundred and forty days in an establishment during a year shall be allowed, during the subsequent year, leave with wages for a number of days calculated at the rate of—

- (i) if an adult, one day for every twenty days of work performed by him during the previous year ;
- (ii) if a child, one day for every fifteen days of work performed by him during the previous year.

Explanation 1—For the purpose of this sub-section—

- (a) any days of lay-off, by agreement or contract or as permissible under the standing orders of an employer ;
- (b) in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks ; and
- (c) the leave earned during the year prior to that in which the leave is enjoyed ;

shall be deemed to be days on which the employee has worked in an establishment for the purpose of computation of the period of not less than two hundred and forty days but he shall not earn leave for these days.

Explanation 2—The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

(2) An employee, whose service commences otherwise than on the first day of January of a year, shall be entitled to leave with wages at the rate laid down in clause (i) or, as the case may be, clause (ii) of sub-section (1) if he worked for two-thirds of the total number of days in the remainder of the year;

(3) In addition to any leave that may be given under sub-section (1) every employee shall be entitled also during any year to sickness leave not exceeding fifteen days ;

Provided that sickness leave shall be admissible only after continuous employment for a period of one year :

Provided further that the granting of sickness leave shall be subject to such condition as may be prescribed.

(4) If an employee is discharged or dismissed from service during the course of a year, he shall be entitled to leave with wages at the rate laid down in sub-section (1) even if he has not worked for the entire period specified in sub-section (1) or sub-section (2) entitling him to earn leave :

Provided that the services of an employee shall not be terminated unless a notice of thirty days for such termination has been given to him or unless in lieu of notice the employer has paid to the employee wages for one month calculated at the rate payable on the date of the notice of termination of service.

(5) In calculating leave under this section, fraction of leave of half a day or more shall be treated as one full day's leave, and fraction of less than half a day shall be omitted.

(6) If an employee does not in any year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding year :

Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of adult or forty in the case of a child :

Provided further that an employee who has applied for leave with wages but has not been allowed such leave in pursuance of any scheme laid down in sub-section (9) or (10) shall be entitled to carry forward the unavailed leave without any such limit.

(7) An employee may at any time apply in writing to the manager of an establishment not less than fifteen days before the date on which he wishes his leave to begin, to take all the leave or any portion thereof allowable to him during a year :

Provided that the number of times leave may be taken during any year shall not exceed three.

(8) If an employee wants to avail himself of the leave with wages due to him to cover a period of illness he shall be granted such leave even if the application for leave is not made within the time specified in sub-section (7), and in such case, wages as admissible under section 16 shall be paid not later than fifteen days from the date the leave is availed of.

(9) For the purpose of ensuring continuity of work in an establishment, the employer in agreement with the representatives of the employees therein chosen in the prescribed manner, may formulate a scheme in writing whereby the leave allowable under this section, may be regulated.

(10) The scheme formulated under sub-section (9) shall be posted in convenient places in the premises of the establishment and shall remain in force for a period of twelve months and may thereafter be renewed, with or without modification, for a further period of twelve months at a time by the employer in agreement with the representatives of the employees as specified in sub-section (9).

(11) An application for leave which does not contravene the provisions of sub-section (7) shall not be refused, unless refusal is in accordance with the scheme for the time being in force under sub-sections (9) and (10).

(12) If the employment of an employee who is entitled to leave under sub-section (1) or sub-section (2), as the case may be, is terminated by the employer before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, the employee quits his employment before he has taken the leave, the employer shall pay him the amount payable under section 15 in respect of the leave not taken, and such payment shall be made, where the employment of the employee is terminated by the employer before the expiry of the second working day after such termination, and where any employee quits his employment, on or before the next pay day.

(13) The unavailed leave of an employee shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

(14) No employee shall be entitled to terminate his employment unless he has given to the employer a notice of not less than thirty days.

(15) Where an employee contravenes the provisions of sub-section (14) he shall be liable to forfeiture of any unpaid wages payable by the employer for a period not exceeding fifteen days.

Wages during leave period,

15. (1) For the leave allowed to him under section 14, an employee shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he worked during the month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the employee of foodgrains and other articles.

(2) The cash equivalent of the advantage accruing through the concessional sale to the employee of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family as hereinbefore referred to in the explanations to sub-section (3) of section 8.

(3) For the purpose of this section the provisions of sub-section (4) of section 8 shall apply *mutatis mutandis*.

Payment of advance in certain cases.

16. 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 the wages due for the period of leave allowed.

Mode of recovery of unpaid wages.

17. Any sum required to be paid by an employer under this Chapter but not paid by him shall be recoverable as 'delayed wages' under the provisions IV of 1936 of the Payment of Wages Act, 1936.

Power to make rules,

18. The State Government may make rules directing employers to keep registers containing such particulars as may be prescribed and requiring the registers to be made available for examination by the Inspector of the area concerned and the Chief Inspector.

Power to exempt establishments.

19. Where the State Government are satisfied that the leave rules applicable to employees in an establishment provide benefits which in their opinion are not less favourable than those for which this Chapter makes provision, they may, by written order exempt the establishment from all or any of the provisions of this Chapter, subject to such conditions as may be specified in the order.

CHAPTER V

WAGES

Application and amendment of the Payment of Wages Act, 1936.

20. (1) Notwithstanding anything contained in the Payment of Wages Act, 1936 (herein referred to as "the said Act"), the State Government may, by notification, direct that subject to the provisions of sub-section (2), the said Act or any of the provisions thereof shall apply to all or any class of employees in any establishment to which this Act applies.

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

Gratuity

21. An employee who has completed ten or more years of continuous service with full wages shall, on quitting the service, for reasons that may be prescribed or on his death his legal heir, be entitled to a gratuity equivalent to fifteen days' wages last drawn for each year of service.

CHAPTER VI

EMPLOYMENT OF CHILDREN AND WOMEN

Prohibition of employment of children.

22. No child who has not completed the age of twelve shall be required or allowed to work in any establishment.

Prohibition of employment of women or children during night.

23. No woman or a child between the ages of twelve and fifteen shall be required or allowed to work whether as an employee or otherwise in any establishment during night.

Prohibition of employment during certain periods.

24. 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.

Notice of
Presence of
Pregnancy

25. (1) If any woman employed in an establishment is pregnant and gives notice in writing in the prescribed form 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.

Maternity
leave.

26. 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.

Maternity
benefit.

27. (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 preceding 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 preceding 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 preceding her delivery.

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

Intervals for
nursing the
child.

28. 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.

Prohibition
of dismissal
during or on
account of
absence
from work
owing to
confinement.

29. (1) When a woman absents herself from work under section 26 it shall be unlawful 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.

CHAPTER VII

APPOINTMENT, POWERS AND DUTIES OF CHIEF INSPECTOR AND INSPECTORS

Appoint-
ment of
Chief Ins-
pectors and
Inspectors.

30. (1) The State Government may by notification appoint a Chief Inspector who shall be the Chief Executive Authority for the purposes of carrying out the provisions of this Act.

(2) The State Government shall by notification appoint such persons or such class of persons as they think fit to be Inspectors for the purposes of this Act, within such local limits as they may assign to them.

(3) In addition to any power conferred on the Chief Inspector by this Act, the Chief Inspector may exercise all the powers of an Inspector.

Powers and
duties of
Inspectors.

31. 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 reasonable times and with such assistants, if any, being persons in the service of the Government or of any Local authority 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 evidence of any persons as he may deem necessary, for carrying out the purposes of this Act ; and
- (c) exercise such other powers as 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 give any evidence tending to criminate himself.

Chief Inspector and Inspectors to be public servants.

32. The Chief Inspector and every Inspector appointed under section 30 shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1900

Employer to produce registers, records, etc., for inspection.

33. Every employer shall, on demand, produce for inspection of an Inspector all registers, records and notices required to be kept under and for the purposes of this Act.

Delegation of power.

34. The State Government may by order direct that any of their functions under any of the provisions of this Act shall, in such circumstances and subject to such condition, if any, as may be specified in the order, be exercised or discharged by Local authorities generally or by any particular Local authority.

CHAPTER VIII

OFFENCES, PENALTIES AND PROCEDURE

Penalties

35. (1) Who ever contravenes any of the provisions of sections 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 24, 25, 26, 27 and 29 shall, on conviction, be punishable with fine, which, for a first offence, may extend to two hundred and fifty rupees and, for a second or subsequent offence, to five hundred rupees.

(2) Whoever contravenes any of the provisions of sections 8, 16, 22, 23, 28, 33 and 38 shall, on conviction, be punishable with fine which may extend to fifty rupees.

Procedure

36. (1) No prosecution under this Act or the rules or orders made thereunder shall be instituted except by the Chief Inspector or an Inspector appointed under section 30 or except with the previous sanction of the State Government or the Local authority as the case may be.

(2) No Court inferior to that of a Magistrate of the Second Class shall try any offence punishable under this Act or any rules or orders made thereunder.

Limitation of prosecution.

37. No Court shall take cognizance of any 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 offence is alleged to have been committed.

CHAPTER IX

MISCELLANEOUS

Maintenance
of registers
and records
and display
of notices.

38. Subject to the general or special orders of the State Government, an employer shall maintain such registers and records and display on the premises of his establishment such notices as may be prescribed. All such registers and records shall be kept on the premises of the establishment to which they relate.

Savings of
certain
right and
privileges

39. Nothing in this Act shall affect any rights or privileges which an employee in any establishment is entitled to on the date this Act comes into force, under any other law, contract, custom or usage applicable to such establishment or any award, settlement or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

Application
of the
Workmen's
Compensa-
tion Act,
1923.

40. The provision of the Workmen's Compensation Act, 1923 and the rules made thereunder shall *mutatis mutandis* apply to every employee of a shop or commercial establishment. VIII of 1923

Protection
of action
taken in
good faith.

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

Power to
make rules.

42. (1) The State Government may make rules for the purposes of carrying into effect the provisions of this Act and also with reference to all matters expressly required or allowed by this Act to be prescribed.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide in respect of the health, safety and welfare of employees.

(3) In making rules under this section, the State Government may provide that a contravention of the rules shall be punishable with fine which may extend to fifty rupees.

(4) The rules made under this section shall be subject to the conditions of previous publication and, when so made, shall be deemed to be part of this Act.

Repeal

43. On and from the date of the commencement of this Act in respect of an establishment the Weekly ^{XVIII} Holidays Act, 1942, shall cease to apply to such establishment :

Provided that—

- (a) every appointment, order, rule, bye-law regulation, notification or notice made, issued or given under the provisions of the Act so ceasing to apply shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, issued or given under the provisions of this Act, unless and until superseded by any appointment, order, rule, bye-law, regulation, notification or notice made, issued or given under this Act
- (b) any proceeding relating to the trial of any offence punishable under the provisions of the Act so ceasing to apply shall be continued and completed as if the said Act had not ceased to apply but had continued in operation and any penalty imposed on such proceedings shall be recovered under the Act so ceasing to apply.

**THE ODISHA SHOPS AND COMMERCIAL ESTABLISHMENTS
RULES, 1958**

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THE ODISHA SHOPS AND COMMERCIAL ESTABLISHMENTS RULES, 1958

1. Short title

These rules may be called the Odisha and Commercial Establishments Rules, 1958.

2. Definitions

- (a) The "Act" means the Odisha Shops and Commercial Establishments Act, 1956;
- (b) "Form" means a form appended to these rules;
- (c) "Government" means the Government of Odisha;
- (d) "Section" means a section of the Act;
- (e) "Schedule" means a schedule appended to these rules;
- (f) Words and expressions used in the Act and not defined in these rules shall have the meanings assigned to them in the Act.

3. ¹[Registration]

The fees prescribed for registration and renewal of registration of an establishment shall be as in the schedule below

SCHEDULE

²[* * * * *]

Sl. No.	Category of Establishment	Fees for registration	Fees for renewal of registration for five year
1	2	3	4
		Rs. P.	Rs. P.
1.	Shops and commercial establishments other than items 3 and 5 employing five or more employees	5.00	10.00
2.	Shops and commercial establishments other than items, 3, 4 and 5 employing less than five employees	2.50	5.00
3.	Residential hotels	5.00	10.00
4.	Hotels other than residential, restaurants, cafe, boarding and eating houses	2.50	³ [**]

5.	Theatres and other places 5.00 of public amusement and entertainment	5.00	10.00
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4. ⁴[Application for registration]

Within the period specified in Sub-section (4) of Section 4 of the Act, the employer of every establishment shall submit to the inspector of the area concerned an application in Form No.1 together with the treasury challan in token of payment of the prescribed fee, for registration ⁵[**] of the establishment:

⁶[**]

5. ⁷[Issue of Registration Certificate]

(a) The fees prescribed for registration ⁸[**] of a Commercial establishment Shop shall be as specified in the Schedule below:

SCHEDULE

⁹[Fees prescribed for registration and renewal of registration of shop/commercial establishments]

Number of workers employed in Shop/Commercial Establishment	Fees for registration and renewal of registration per year
(1)	(2)
1 to 9	Rs. 50.00
10 to 19	Rs. 100.00
20 or more	Rs. 200.00]

(b) ¹⁰[The registration certificate granted under rule 5 (a) may be amended by the Inspector on being satisfied about the correctness of the statement in the application and register the amendment on the registration certificate.

(c) An employer who desires to have his registration certificate amended shall submit to the Inspector an application in Form 1 in duplicate duly filled in stating the nature of amendment required and reasons therefore, along with the registration certificate for necessary amendment therein.

(d) The fees for the amendment of a registration certificate shall be amounting rupees twenty plus the amount, if any, which the fees that would have been payable if the certificate has been originally issued in the amended form exceeds the fees originally paid for the certificate].

(e) ¹¹[A fee on fifty percent in excess of the fees ordinarily payable for registration and renewal a registration as specified in clause (a) of Rule (5) shall be payable after gap of every five year]

6. Validity of the Registration Certificate

Every certificate granted under Rule 5 shall remain in force ¹²[till it is revoked, or closed by furnishing an undertaking in Form 16 to the Inspector of the area.]

7. Refund of the fees paid on application under Rule 4, if rejected

- (a) All fees to be paid under these rules shall be paid into the local treasury under the provincial receipt head¹³ [087-Labour and Employment (a) Receipts under labour laws-(B). Fees realised under the Odisha Shops and Commercial Establishments Act, 1956] and the receipt obtained, shall be submitted to the Inspector along with the application for grant, ¹⁴[**], amendment, transfer or issue of a duplicate registration certificate.
- (b) If an application for grant, ¹⁵[**], amendment, transfer or issue of a duplicate registration certificate is rejected, the fees paid shall be refunded to the applicant.

8. Procedure when duplicate registration certificate is to be issued

If a registration Certificate issued under Rule 5 is lost, destroyed or defaced the employer of the establishment shall forthwith report the matter to the Inspector, who issued the certificate, and shall apply with a fee of ¹⁶[twenty per cent of the fees of registration paid in the manner (1) specified in Rule, 5] for the issue of a duplicate registration certificate. Upon receipt of such application and the fee, the Inspector shall furnish the employer with a duplicate copy of the certificate bearing the stamp 'Duplicate'.

9. Display of Registration certificate

The employer shall display the certificate of registration in a conspicuous place of the establishment.

10. ¹⁷[Notice of change in establishment]

- (a) An employer holding a registration certificate may, at any time before the expiration of its period of validity apply for permission to transfer the certificate to another person in Form No.4.
- (b) Such application shall be made to the Inspector who shall if he approved of the transfer, enter up to the registration certificate under his signature an endorsement to the effect that the registration Certificate has been transferred to the person named.
- (c) The fees chargeable for transfer of registration certificate shall be ¹⁸[fifty per cent of the amount in the manner as specified in Rule 5].
- (d) If an employer holding a Registration certificate dies or becomes insolvent the person carrying on the business of the, establishment/shop shall not be liable to any penalty under the Act of exercising the powers granted to the employer by the registration certificate during such time as may reasonably be required to allow him to make an application in Form 4 for transferring the registration certificate in his own name.

11. Hours of work

The employer shall exhibit in his, establishment a notice specifying the daily periods of work of each employee. The notice shall be in Form No. 5 and shall continue to be exhibited so long as the hours of work specified in it remain in force.

12. Manner of calculating ordinary rate of wages

- (1) For the purpose of Sub-sections (1) and (2) of Section 8, ordinary rate of wages per hour shall be calculated by dividing the total wages payable to a person employed during the wage period by number of hours actually worked by him:

Provided that the hours worked by a person employed in excess of the normal daily hours during the wage period shall be excluded in calculating the number of hours actually worked by him.

- (2) Monthly average market rate of foodgrains and other articles shall be computed at the end of every month.
- (3) The cash equivalent of the advantage through the concessional sale of foodgrains and, other articles payable to the worker doing overtime work shall be the difference between the value at the average rate in the nearest market prevailing during the month immediately preceding the overtime work and the value at the concessional rates allowed of foodgrains and other articles, he is entitled.
- (4) Every employer shall maintain combined Register of overtime working & payment in Form 12.

13. Enquiry before fixing of opening and closing hours of establishments

- (1) The Government shall make an enquiry under Sub-section (2) of Section 11 before fixing the opening and closing hours of the establishments in the manner specified in Sub-rule (2).
- (2) The Government shall give notice of their intention to pass an order fixing the opening and closing hours of establishments in Form No.6. Such notice shall specify the area and the establishment or establishments or Class or classes of establishments to which the order shall apply the hours of Opening or the hours of closing or both, which are proposed to be fixed and the day in respect of which such hours are so proposed to be fixed. The notice shall also state that objections and suggestions if any, with respect to such as maybe Sent to the Chief Inspector within One month from the date of issue of such notice.
- (3) The notice shall be published in the Odisha Gazette and one or two of the leading daily newspapers of the State.
- (4) The Government shall consider all objections and suggestions received under Sub-rule (2) before passing any order under Sub-section (1) of Section 11.

14. Weekly holidays

The notice of weekly holidays shall be in Form No.7.

15. Registers to be maintained by every employer

Every employer shall maintain the following registers in respect of the employees of his establishment namely:

- (1) ¹⁹[***]
- (2) Service and Leave Account in Form No.²⁰[8] retainable for one year after termination of the service the employee.

- (3) ²¹[A Combined Muster Roll-cum-Register of Wages in Form 10 retainable for three years.]

16. Holiday, how treated for purpose of Section 14

A holiday shall be treated as a day of work for purpose of computing the number of days worked by an employee for purposes of Section 14.

17. Sickness leave

- (1) If a worker absents himself from work on ground of illness, he shall, if so required by his employer by a notice in writing, submit a medical certificate signed by a registered medical practitioner or by a registered or recognised Vaidya or Hakim stating the cause of absence and the period for which the Worker is in the opinion of such medical practitioner, Vaidya and Hakim, unable to attend to his work.
- (2) Every application from an employee, for sickness leave, under Subsection (3) of Section 14 shall be submitted in writing. The employer shall record his orders on the application and retain them till the end of the succeeding calendar year.

18. Wages

The Payment of Wages Act, 1936 (Act IV of 1936), shall apply mutatis mutandis, to all employees referred to in the Act.

19. Gratuity

An employee shall be entitled to a gratuity under Section 21 on,

- (i) being incapacitated to work due to an accident or otherwise rendered medically unfit;
- (ii) completion of the 60th year of age.

20. Age of a child employee

The Inspector may require the employer to produce an authentic extract from the records of any School, Panchayat or Municipality or, in absence of such extract a certificate from a Registered Medical Practitioner stating the age of any person employed by such employer.

21. Maternity benefit

The rates of maternity benefit payable to a woman employee and the manner of its payment shall be regulated by the Odisha Maternity Benefits Act, 1953.

22. ²²[Rubbish not to be allowed to accumulate

No rubbish, filth or debris shall be allowed to accumulate or to remain on any premises in an establishment in such position that effluvia therefrom can arise within the establishment.]

23. ²³[Precautions against fire

No person shall smoke or use a naked light or cause or permit any such light to be used, in the immediate vicinity of any inflammable material in any establishment]

24. ²⁴[Qualifications of Inspectors

- (1) No person shall be appointed to be an Inspector under the Act unless (i) he is a graduate of a recognised University, (ii) obtained a diploma or degree in social work of a recognised University and (iii) able to speak, read and write in Oriya :

Provided that in special circumstances the State Government may relax any of the above conditions.

- (2) No person shall be appointed to be an Inspector under the Act, or having been so appointed, shall continue to hold office in the area for which he is to be or has been appointed if he has or acquires directly or indirectly by himself or by any partner, any share or interest in any establishment in such area to which the Act applies.]

MISCELLANEOUS

25. ²⁵[Annual Returns

²⁶[Every employer shall send to the Inspector the combined Annual return in Form 13 for the calendar year so as to reach him not later than the 31st March of the year next following the year to which such return relates.]]

26. ²⁷[Penalty

Any person who contravenes any of the provisions of, these rules shall on conviction if no other penalty is already provided in the Act for such contravention, be punishable with fine which may extend to fifty rupees.]

27. Submission of Self Certification Undertaking

- (1) The Employer/Owner authorized executives prescribed authority, within the ambit of Section 2(4), (7), (8), (16) and (19) of the Act, shall submit a Self Certification Undertaking for the ensuing calendar, year, in respect of their Shops and Commercial Establishments in Form 15 to the specified Authority of the area incorporating therein, the required details-cum-Self Certification Undertaking in duplicate before 31st December of each calendar year.
- (2) In the event of any subsequent charge of variation of the facts and factums incorporated in the annual self-certification undertaking referred to above, it shall be mandatory/obligatory on the part of the concerned person(s) to communicate the same by way of submission of modified self-certification undertaking afresh, within a month's period from the date of occurrence of such change and variation to the concerned specified authority:

Provided in course of subsequent verification/check-up inspection by the concerned specified Authority, if the information-cum-self certification undertaking including modified undertaking so furnished subsequently as the case may be, found to be incorrect, erroneous and distortive, the concerned persons shall inevitably be jointly/severally liable for violation of the provision of the Sub-section (3) of the Section 42 of the Act.

¹Substituted by S.R.O. No. 267/2019, Dated 31st July 2019

² Added by OGP III No. 21, P. 149 dt. 12.06.1970

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- ³ Omitted by S.R.O. No. 267/2019, Dated 31st July 2019
⁴ Substituted by S.R.O. No. 267/2019, Dated 31st July 2019
⁵ Deleted by S.R.O. No. 267/2019, Dated 31st July 2019
⁶ Omitted by S.R.O. No. 267/2019, Dated 31st July 2019
7 Substituted by ibid
⁸ Omitted by S.R.O. No. 267/2019, Dated 31st July 2019
9 Substituted by O.G.E. 1082 dt.11 .08.2004
10 Substituted by Notification No. 113536 dt. 13.08.1982
11 Substituted by O.G.E. 1082 dt.11 .08.2004
12 Substituted by S.R.O. No. 267/2019, Dated 31st July 2019
13 Substituted by Notification No. 113536 dt. 13.08.1982
¹⁴ Omitted by S.R.O. No. 267/2019, Dated 31st July 2019
¹⁵ Omitted by S.R.O. No. 267/2019, Dated 31st July 2019
16 Added by Notification No. 6907, dt. 04.08.2004
17 Substituted by O.G.P. III No. 44 dt.08-11-1974
18 Added by Notification No. 6907, dt. 04.08.2004
19 Deleted vide O.G.E. No. 423 dated 23.3.2009
20 Substituted vide OGE No. No. 423 dated 23.3.2009
21 Rule 12 renumbered as sub-rules (1), (2), (3), & (4) inserted O.G.P. Part III No. 32 dated 9.8.1963
22 Rule 22 deleted vide O.G.E. No. 423 dated 23.3.2009 and Rule 23 24 and 25 re-numbered as 22, 23 and 24]
23 Rule 22 deleted vide O.G.E. No. 423 dated 23.3.2009 and Rule 23 24 and 25 re-numbered as 22, 23 and 24]
24 Rule 22 deleted vide O.G.E. No. 423 dated 23.3.2009 and Rule 23 24 and 25 re-numbered as 22, 23 and 24]
25 Rule 26 and 27 Belted vide O.G.E. No. 423 dated 23.3.2009 and Rule 28 re-numbered as 25
26 Substituted vide O.G.E. No. 423 dated 23.3.2009
27 Rule 29 re-numbered vide O.G.E. No. 423; dated 23.3.2009