

**HIMACHAL PRADESH SHOPS AND COMMERCIAL
ESTABLISHMENTS ACT, 1969**

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HIMACHAL PRADESH SHOPS AND COMMERCIAL ESTABLISHMENT ACT, 1969

An Act to provide for the regulation of conditions of works and employment in shops and commercial establishments. Be it enacted by the legislative Assembly of Himachal Pradesh in the Twentieth Year of the Republic of India as follows

1. Short title extent commencement and application

- (1) This Act may be called the Himachal Pradesh Shops and Commercial establishment Act, 1969.
- (2) It extends to the whole of the Union territory of Himachal Pradesh
- (3) It shall come into force at once.
- (4) It shall apply in the first instance to the limits of the Shimla Municipal Corporation and to the Municipal areas and cantonment limits; but the Government may by notification in the Official Gazette, direct that it shall come into force in any other local area or shall apply to such establishments or of class of establishments in such other areas as may be specified in the notification.

2. Definition

- (1) In this Act unless the context otherwise requires:
 - (i) "closed" means not open for the service of any customer or for any other purpose whatsoever relating to business;
 - (ii) "closed-day" means the day of the week on which a shop or commercial establishment remains closed;
 - (iii) "Closing-hour" means the hour at which a shop or commercial establishment closes;
 - (iv) "commercial establishment" means any premises wherein any business, trade or profession is carried on for profit, and includes journalistic or printing establishment and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on or which is used as hotel, restaurant, boarding or eating house, theatre, cinema or other place of public entertainment or any other place which the Government may declare by notification, to be a commercial establishment for the purpose of this Act;
 - (v) "day" means a period of twenty-four hours beginning at midnight;
Provided that in the case of any employee whose hours of work extend beyond midnight, "day" means the period of twenty-four hours beginning from the time when such employment commences;
 - (vi) "Employee" means any person employed, whether directly or otherwise about the business of an establishment for the owner or occupier thereof even though he receives no reward for his labour and includes, for the purpose of any matter regulated by this Act, a person discharged or dismissed whose claims have not been settled in accordance with this Act,

and persons employed in any factory but not governed by the Factories Act, 1948;

- (vii) "Employer" means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes members of the family of an employer a manager, agent or other person acting in the general management or control of the establishment;
- (viii) "Establishment" means a shop or commercial establishment;
- (ix) "Factory" has the meaning assigned to it in the Factories Act, 1948;
- (x) "Family" in relation to an employer, means,-
 - (i) Spouse,
 - (ii) Children and step-children; and
 - (iii) Parents, sisters and brothers if residing with and wholly dependent upon him;
- (xi) "Festival" means any festival which the Government may, by notification declare to be a festival for the purpose of this Act;
- (xii) "Government" means Administrator of the Union territory of Himachal Pradesh appointed by the President under article 23 9 of the Constitution of India;
- (xiii) "Hours of work" or "working hours" means the time during which the persons employed are at the disposal of the employer exclusive of any interval allowed for rest and meals;
- (xiv) "Inspector" means an inspector appointed under this Act;
- (xv) "Leave" means leave as provided for in section 14;
- (xvi) "Manager" in relation to an establishment where five or more persons are employed or an establishment whose owner does not ordinarily carry on the business personally, means a person declared as such by the employer in the prescribed manner;
- (xvii) "Night" means a period of twelve consecutive hours which shall include the interval between 8.P.M. to 6.A.M.;
- (xviii) "Notification" means a notification published under proper authority in the Official Gazette;
- (xix) "Official Gazette" means Rajpatra, Himachal Pradesh;
- (xx) "Opened" means opened for the service of any customer or for any business connected with the establishment;
- (xxi) "Opening hour" means the hour at which an establishment opens;
- (xxii) "Prescribed" means prescribed by rules made under this Act;
- (xxiii) "Quarter" means a period of three months commencing on the first day of January, first day of April, first day of July or first day of October, every year;

- (xxiv) "Retail trade or business" includes the business of a barber or hair dresser, the sale of refreshments or intoxicating liquors, and retail sales by auction;
- (xxv) "Register of establishments" means a register maintained for the registration of establishments under this Act;
- (xxvi) "Registration certificate" means a certificate showing the registration of an establishment;
- (xxvii) "Shop" means any premises where any trade or business is carried on or where services are rendered to customers and includes officers, store-rooms, godowns, sales depots or water houses, 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.
- (xxviii) "Spread-over" means the period between the commencement and the termination of work of an employee on any day;
- (xxix) "Wages" shall have the meaning assigned to it in the Payment of Wages Act, 1936.
- (xxx) "Wage period" means the period after which the wages of an employed person shall be paid;
- (xxxi) "Week" means the period between midnight on Saturday and midnight on the following Saturday;
- (xxxii) "Young person" means a person who has attained the age of fourteen years but has not attained the age of eighteen years and;
- (xxxiii) "Year" means a year reckoned according to the British Calendar".
- (2) For the purposes of this Act, any employment in the service of the employer of an establishment whether within the establishment or outside it, which relates to or is connected with or is ancillary to the business carried on at the establishment, shall be deemed to be employment about the business of the establishment.

3. Act not Applicable to certain establishment and persons

Nothing in this Act shall apply to

- (a) Offices of or under the Central government or any State Government or the government of Himachal Pradesh(except commercial undertakings), the Reserve Bank of India, any railway administration or any local authority;
- (b) Any railway service, air service, water transport service, tramway, postal, telegraph or telephone service, any system of public conservancy or sanitation or any industry, business or undertaking which supplies, power, light or water to the public;
- (c) Railway dining cars;
- (d) Offices of lawyers;

- (e) Any person employed about the business of any establishment maintained in clauses (a) to (d);
- (f) Any person whose hours of employment are regulated by or under the Factories Act, 1948, except the provision of sub-section (3),(4) and (5) of section 7 of this Act in so far as they relate to employment in a factory;
- (g) Any person whose work is inherently intermittent;
- (h) Establishments of stamp vendors and petition writers;

4. Provisions of Section 9 and Sub-Section (1) of section 10 not applies to certain establishments

- (1) Nothing in section 9 and sub-section (1) of Section 10 shall apply to;
 - (a) Clubs, hotels, restaurants, boarding houses, stalls and refreshment rooms at railway stations;
 - (b) Shops of barbers and hair dressers;
 - (c) Establishments dealing exclusively in meat, fish, confectionery, poultry, eggs, dairy produce (except ghee), bread, sweets, chocolates, ice, ice-cream,cooked food, fresh fruit, flowers or vegetables;
 - (d) Shops dealing exclusively in medicines or medical or surgical requisites or appliances and establishments for the treatment or care of the sick, infirm, destitute or mentally unfit;
 - (e) Shops dealing in articles required for funerals, burials or cremations;
 - (f) Shops dealing exclusively in pans (betel leaves), bidis or cigarettes, or liquidrefreshments sold retail for consumption on the premises;
 - (g) Shops dealing exclusively in newspapers or periodicals, editing and dispatching sections of newspaper offices and offices of news agencies;
 - (h) Places of public entertainment except cinema houses;
 - (i) Establishments for the retail sale of petrol and petroleum products, used for Transport;
 - (j) Shops in regimental institutes garrison shops and troop canteens in cantonments;
 - (k) Tanneries;
 - (l) Establishments engaged in retail trade carried on at an exhibition or show, if such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show;
 - (m) Oil mills not registered under the Factories Act, 1948;
 - (n) Brick and lime kilns;
 - (o) Commercial establishments engaged in the manufacture of bronze and brass utensils so far as it is confined to the process of melting in furnaces;
 - (p) Saltpetre refineries;

- (q) Establishments of commercial colleges of short-hand or typewriting and other educational academies;
 - (r) Booking offices of passenger and goods transport companies;
 - (s) Establishments dealing exclusively in green and dry fodder and chaff cutting; and
 - (t) Cycle stands, and cycle repair shops.
- (2) Nothing in sub-section (1) of Section 10 shall apply to,
- (i) Establishment of cinema houses;
 - (ii) Establishment dealing in hides and skins;
 - (iii) Ice factories
 - (iv) Establishments engaged exclusively in repairs of cycles or motor vehicles or the service of the motor vehicles (not being an establishment dealing in cycles or motor vehicles or exclusively in spare parts thereof);
 - (v) Establishments dealing exclusively in providing on hire tents chhauldaries and other articles such as crockery, furniture, loudspeakers, gas-lights, and fans required for ceremonial purposes, and
 - (vi) Establishment dealing exclusively in the retail sale of phullian, murmara, sugar coated gram, reories or other similar commodities.

5. Power of Government to extend provisions of the Act

- (1) Notwithstanding anything contained in section 3 or section 4, the Government may, if it considers it necessary in the public interest so to do, by notification, declare that any class of establishments or persons specified therein shall not be exempted from the operation of such provisions of this Act as may be specified in the notification and that the provisions of this Act, specified in such notification shall apply to such class of establishment or persons, as the case may be.
- (2) Every notification issued under sub-section (1) shall, as soon as possible after it is issued, be laid before the Legislative Assembly.

6. Conditions of employment for young persons

- (1) The total number of hours worked by a young person employed about the business of an establishment, exclusive of interval for meals and rest shall not exceed thirty hours in any one week or five hours in any one day.
- (2) A young person employed about the business of an establishment shall not be employed continuously for more than three hours without an interval of at least half an hour for meals or rest;
- (3) Government may prescribe further conditions in respect of the employment of young persons employed about the business of establishment or any class of them, including if it thinks fit conditions with respect to the daily period of employment of those persons, and no such person shall be employed otherwise than in accordance with those conditions.

- (4) In the case of any contravention of, or failure to comply with the provisions of this section, the employer shall be liable, on conviction to a fine which shall not be less than ¹["four thousand rupees" but which may extend to "six thousand rupees".]
- (5) Where in proceedings for an offence under this section, the person in respect of whom the offence was committed was a young person and he appears to the Court to have been at the date of the commission of the offence a young person, he shall, for the purposes of this Act be presumed at that date to have been a young person unless the contrary is proved.

7. Hours of employment

- (1) Subject to the provisions of this Act no person shall be employed about the business of an establishment for more than forty-eight hours in any one week and nine hours in any one day.
- (2) On occasion of seasonal or exceptional pressure of work, a person employed in an establishment may be employed about the business of the establishment in excess of the working hours specified in sub-section (1):

Provided that,

- (a) The total number of overtime hours worked by an employee does not exceed fifty within a period of any one quarter; and
- (b) The persons employed overtime shall be paid remuneration at twice the rate of his normal wages calculated by the hour.

Explanation - For the purpose of clause (b) of the provision to this sub-section and section 10 and 12 "normal wages" means basic wages plus such allowances including the cash equivalent of the advantages accruing through the confessional sale to workers of food grains and other articles as any worker is for the time being entitled to but does not include bonus.

- (3) No employer shall on any day or in any week, employ about the business of the establishment any person who has been previously employed on that day or in that week in another establishment or a factory for a longer period which together with the time during which he has been previously employed on that day, or in that week in such establishment or factory, exceeds the number of hours permitted by this Act.
- (4) In any proceedings against the employer of an establishment for a contravention of the provisions of sub-section (3), it shall be a defence to prove that the employer did not know and could not with reasonable diligence ascertain that the person was previously employed by the employer of the other establishment or factory.
- (5) No person shall work about the business of an establishment or two or more establishments or an establishment and a factory in excess of the period during which he may be lawfully employed under this Act.

8. Intervals for meals or rest

- (1) Subject to the provisions of section 6, no employee except a chowkidar, watchman or guard, shall be allowed to work in an establishment for more than five hours before he has had an interval for rest of at least half an hour;

Provided that the Government may by notification, fix such interval for rest in respect of any class of establishments for the whole of the Himachal Pradesh or any part thereof as it may consider necessary.

- (2) The period of work of an employee in an establishment shall be so fixed that, inclusive, of his interval for rest, the spread-over shall not be more than ten hours in a day.

9. Opening and Closing hours

The Government shall by notification, fix the opening and closing hours of all classes of establishments and different opening and closing hours may be fixed for different classes of establishments and for different areas;

Provided that the government may allow an establishment attached to a factory to observe such opening and closing hours as the government may direct.

10. Close day

- (1) Save as otherwise provided by this Act, every establishment shall remain close on such day in a week as may be prescribed;

Provided that in the case of an establishment attached to a factory, the employer may substitute the close-day of such establishment so as to correspond to the substituted close-day of the factory in the same manner and subject to the same conditions as are laid down in this behalf in the Factories Act, 1948.

(2)

- (i) The employer of an establishment shall in the prescribed form intimate to the prescribed authority the working hours, the day in a week referred to in clause (b) of section 11 and the period of interval of the employed person, within fifteen days of the date of registration of the establishment.
 - (ii) The employer of an establishment may change the working hours and the period of interval once in a quarter by giving intimation in the prescribed form to the prescribed authority at least fifteen days before the change is to take place;
- (3) Notwithstanding anything contained in sub-section (1), the employer of an establishment may open his establishment on the close -day if
 - (a) Such day happens to coincide with a festival, and
 - (b) Employees required to work on that day are paid remuneration at double the rate of their normal wages calculated by the hour.

11. Employees off day in a week

No employee shall be allowed or required to work,

- (a) On a close-day, in any establishment which is required to observe a close-day.

- (b) On one day in a week, in any other establishment; and
- (c) Before the opening hour of the establishment and after the closing hour of the establishment;

Provided that a watchman may be allowed or required to work on an off day under this section, if he is allowed another off day in the week.

12. Holidays

Every employee in an establishment shall be allowed:

- (a) A holiday with wages on the Independence Day, Republic Day and Mahatma Gandhi's birthday; and
- (b) Three other holidays with wages in a year in connection with such festivals as the Government may declare from time to time by notification;

Provided that an employee required to work on any such holiday shall be entitled to remuneration at twice the rate of his normal wages calculated by the hour.

13. Registration of establishments

- (1) Within the period specified in sub-section (3), the employer of every establishment shall send to the prescribed authority a statement in the prescribed form accompanied by such fees as may be prescribed and 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) Number of persons employed in the establishment; and
 - (e) Such other particulars as may be prescribed.
- (2)
 - (i) On receipt of the statement and the prescribed fee, the prescribed authority 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 the prescribed form a registration certificate to the employer. The registration certificate shall, on demand by the Inspector, be shown to him by the employer.
 - (ii) The registration certificate shall on payment of prescribed fee, be renewed for a period of five years"
- (3) Within thirty days from the date mentioned in column 2 of the table below in respect of an establishment mentioned in column 1 thereof, the statement together with the prescribed fee shall be sent to the prescribed authority under sub-section (1),

Establishment	Date from which the period of 30 days is to commence
(i) Establishments existing in areas to which this Act applies or to which it is made applicable subsequently	The date on which this Act comes into force or the date on which this Act is made applicable subsequently as the case may be
(ii) New establishments in such areas	The date on which the establishment commences its work.

- (4) It shall be the duty of the employer to notify to the prescribed authority in the prescribed form any change in respect of any information contained in his statement under this section within seven days after the change has taken place and the prescribed authority 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, if necessary.
- (5) The employer shall, within ten days of his closing the establishment, notify to the prescribed authority in writing accordingly and the prescribed authority shall, on receiving the information and on being satisfied about its correctness, remove the name of such establishment from the register of establishment and cancel the registration certificate.

14. Leave

(1)

- (a) Every employee who has been in employment for not less than twenty days in an year shall be entitled to one days earned leave for every such twenty days;
- Provided that a young person shall be entitled to one day's earned leave for every fifteen days of employment.
- (b) If an employee is discharged or dismissed from or leaves service, he shall be entitled to wages in lieu of the unavailed leave at the rates laid down in clause (a).
- (c) In calculating leave under this section fraction of half a day or more shall be treated as one day's leave, and fraction of less than half a day shall be ignored.
- (d) If an employee does not in any one year take the whole of the leave allowed to him under clause (a), any leave not taken by him shall be carries forward and added to the leave to be allowed to him in the succeeding year;
- Provided that,
- (i) Subject to any specific agreement between the employer and the employee, the total number of days of leave that may be carried forward to a succeeding year shall not exceed forty in the case of a young person or thirty in any other case;

- (ii) The provisions of this section shall not operate to the prejudice of any rights to which an employee may be entitled under any other law or under the terms of any award, agreement or contract of service;
 - (iii) Where such award, agreement or contract of service provides for a longer leave with wages or weekly holidays than those provided under this section, the employee shall be entitled to such longer leave or weekly holiday as the case may be;
- (2) Leave provided in clause (a) of sub-section (1) shall not when applied for be refused except for a valid reason to be communicated in writing by the employer to the employee within fifteen days of the application;
- Provided that the leave so refused shall, if applied for again, be granted within thirty days of the date of the application.
- (3)
- (a) For the purpose of computing the period during which an employee has been in employment within the meaning of clause(a) of sub-section (1), the period during which he was on leave under this section and the off days in a week referred to in section 11, shall be included;
 - (b) 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, removal or dismissal;
- (4) Notwithstanding anything contained in the foregoing sub-sections every employee in an establishment shall be allowed with wages seven days casual leave and seven days sick leave in a year.

15. Wages for close days and during leave period

- (1) Any person employed in or about an establishment for a period of fifteen days or more shall receive, for every off day in a week referred to in section 11, wages at the rate of not less than the average daily wages earned by him for the days on which he worked during the week immediately preceding every such off day.
- (2) For the leave allowed to him under section 14, an employee shall be paid at the 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 food grains and other articles.
- (3) An employee who has been allowed leave for not less than five days in the case of a young person and four days in any other case shall, on demand, before his leave begins, be paid the wages due for the period of leave allowed.

16. Wage period

- (1) Every person responsible for the payment of wages to an employee shall fix a period in respect of which such wages shall be payable.
- (2) No wage period shall exceed one month.

- (3) The wages of every person employed shall be paid before the expiry of the seventh day from the date on which the wages became due.
- (4) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him and the remuneration in lieu of unavailed period of due leave shall be paid before the expiry of the second working day after such termination and where an employee quits his employment on or before the next pay day;

Provided that no claim under this section shall be entertained unless it is preferred within six months from the date of it's accruing except under special circumstances at the discretion of the chief Inspector of shops and Commercial Establishments, Himachal Pradesh.

17. Deduction from wages

The wages of an employee shall be paid to him without deductions of any kind except those authorised by or under the Payment of Wages Act, 1936, in so far as such deductions are applicable to the employee, and in such manner, to such extent and subject to such conditions, as are specified in that Act.

18. Realisation of compensation

- (1) In case of contravention of the provisions of section 16, if a Magistrate is satisfied that the employee has not been paid his due wages, he shall direct the employer to pay the wages along with compensation not exceeding eight times the amount of wages withheld.
- (2) The amount of wages withheld and compensation payable under this section shall, for the purposes of its recovery, be deemed to be a fine imposed under this Act in addition to the penalty imposed under section 25 and shall be realised as such.

19. Enforcement and inspection

- (1) The government may, by notification appoint such persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them.
- (2) ²[The government may, by notification, appoint any person to be the Chief Inspector, Additional Chief Inspector, Deputy Chief Inspector, or Assistant Chief Inspector of Shops and Commercial Establishments, who shall, in addition to the powers conferred on them under this Act, exercise the powers of inspector within their respective jurisdiction.]
- (3) Subject to any rules made by the 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 Government or of any local authority, as he thinks fit, any place which is or which he has reason to believe to be, 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 person shall be compelled under this section to answer any question or give any evidence tending to incriminate himself.

- (4) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal code.

20. Records

- (1) The employer of every establishment shall, in the prescribed form and manner, keep exhibited in the establishment a notice setting forth the close-day, the working hours and the period of interval of employed persons, if any, and such other particulars as may be prescribed;
- (2) The employer of any establishment about the business of which persons are employed, shall in the prescribed form and manner, keep a record of the working hours, rest intervals and the amount of leave taken by every person employed about the business of an establishment, and particulars of all overtime employment shall be separately entered in the record.
- (3) The employer of every establishment, about the business of which persons are employed, shall mark the attendance of every employee in the register maintained for the purpose within one hour of the start of duty and in the case of overtime every entry regarding the commencement or closure of overtime shall respectively be made before or after such commencement or closure;
- (4) The employer of every establishment shall keep a photograph of each employee who has completed three months' continuous service in the establishment;

Provided that where such employee fails to supply such photograph of the employer within fifteen days of the completion of such service, his failure so to do shall be recorded by the employer under the signature of the employee.

- (5) The employer of every establishment shall for the purpose of this Act maintain such other records and registers and display such other notices as may be prescribed.
- (6) In case of any contravention of the foregoing provisions of this section, the employer of an establishment shall be liable, on conviction, to a fine not exceeding ³["two hundred rupees"] for every day on which the contravention occurs or continues;
- (7) If any person, with intent to deceive, makes, or causes or allows to be made, in any such record, register or notice as aforesaid an entry which is to his knowledge false in any material particular, or wilfully omits or causes or allows to be omitted from any such records, register or notice an entry required to be made therein, he shall be liable, on conviction, to imprisonment for a term not exceeding three months or to a fine which shall not be less than ⁴["four thousand rupees" but which may extend to "six thousand rupees"], or to both.

21. Inspection of registers and calling for information

- (1) It shall be the duty of every employer of an establishment to make available for inspection of such officer, as may be prescribed, all accounts or other records required to be kept for the purposes of this Act, and to give to such officer any other information in connection therewith as may be required.
- (2) Whoever contravenes the provisions of sub-section (1) or wilfully obstructs the inspecting authority in the exercise of the powers under this Act or conceals or prevents any employee in an establishment from appearing before or being examined by the authority, shall be liable, on conviction to a fine which shall not be less than ⁵["four thousand rupees" and may extend to "seven thousand rupees"]

22. Notice of removal

- (1) No employee shall be removed from service unless and until one month's previous notice or wages in lieu thereof has been given to him;
Provided that,
 - (a) No employee shall be entitled to such notice or wages in lieu thereof if he is removed on account of misconduct, after giving him an opportunity to explain the charge or charges against him in writing;
 - (b) No employee shall be entitled to one month's notice or wages in lieu thereof unless and until he has been in the service of the employer continuously for a period of three months;
- (2) In any case instituted for a contravention of the provisions of sub-section (1), if a Magistrate is satisfied that an employee has been removed without reasonable cause, the Magistrate shall, for reasons to be recorded in writing, award compensation to the employee equivalent to two month's wages;
Provided that no such claim shall be entertained unless it is preferred by the employee within six months from the date of his removal.
- (3) The amount payable as compensation under this section shall be in addition to, and recoverable as, fine payable under section 25.
- (4) No person who has been awarded compensation under this section shall be entitled to institute a civil suit in respect of the same claim.

23. Notice by employee

- (1) No employee, who has been in the service of the employer continuously for a period of three months shall terminate his employment unless he has given to his employer ten days previous notice or wages in lieu thereof.
- (2) Where an employee contravenes the provisions of sub-section (1) his employer may forfeit his unpaid wages for a period not exceeding ten days.

24. Provisions as to trading elsewhere than in establishments

Save as otherwise provided by any law for the time being in force, it shall not be lawful in any locality to carry on in any place not being an establishment, retail trade or business of any class at any time if it is unlawful in that locality to keep an establishment open for the purpose of such retail trade or business, and if any person carries on any trade or business in contravention of this section, this Act shall apply as if he were the employer of the establishment which was being kept open in contravention of this Act.

25. Penalties

⁶[Subject to the other provisions of this Act, whoever contravenes any of the provisions of this Act, or the rules made thereunder and no penalty has been provided for such contravention in this Act, shall be liable, on conviction, to a fine shall not be less than one thousand rupees but which may extent to five thousand rupees for the first offence, and not less than three thousand rupees but which may extend to eight thousand rupees for every subsequent offence.]

25-A. Insertion of Section 25A

Composition of certain offences,

- (1) ⁷[Save as provided in sub-section (7) of section 20, any offence, may either before or after the institution of the prosecution, be compounded by any officer not below the rank of Assistant Chief Inspector of Shops and Commercial Establishment, authorised by the Government, by notification, for an amount which shall not be less than five hundred rupees but shall not exceed five thousand rupees.]
- (2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence:

Provided that if a person commits similar offence again within the period of one year from the date of composition of first offence, the same shall not be compounded".

26. Protection of officers and their agents from personal liability

No suit, prosecution or other legal proceeding shall lie against any public servant or any other person in the service of the central or State Government, or the Government of Himachal Pradesh, acting under direction of any such public servant, for anything in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder.

27. Power to grant exemptions

The Government may, if it considers necessary in the public interest so to do, by notification, exempt for any period it considers desirable any establishment or class of establishments from the operation of all or any of the provisions of this Act.

28. Prohibition of employment of children

No child who has not completed the age of fourteen years shall be employed in any establishment.

29. Condition of employment of women

- (1) No woman shall be required or allowed to work whether as an employee or otherwise in any establishment during night;

Provided that nothing in this sub-section shall apply to an establishment which is engaged in the treatment or care of the sick, the infirm, the destitute or the mentally unfit.

- (2) No employer of any establishment shall knowingly employ a woman and no woman shall engage in employment in any establishment during six weeks following the day of her confinement or miscarriage;
- (3) The Government may prescribe further conditions in respect of employment of women employed about the business of establishments or any class of them, including, if it thinks fit, conditions with respect to the daily period of employment, leave and other matters, and no woman shall be employed otherwise than in accordance with these conditions.

30. Maternity benefit

- (1) Every woman employed in an establishment who has been continuously employed in that establishment or in establishments belonging to the employer of that 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 maternity benefit which shall be prescribed by the government for every day during the six weeks immediately preceding and including the day of her delivery and for each day of six weeks following her delivery;

Provided that no such payment shall be made of any day on which she attends work and receives payments therefore during the six weeks preceding her delivery.

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

31. Bar of legal practitioners in certain proceedings

Notwithstanding anything contained in the law relating to legal practitioners for the time being in force, no legal practitioner shall be permitted to appear, plead or act for the employer or the employee in any proceedings before a court, between an employer and employee arising out of the contravention of any of the provisions of this Act.

32. Saving of certain rights and privileges

Nothing in this Act shall affect any rights or privileges to which an employee in any establishment is entitled 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.

33. Cognizance of offence

No court shall take cognizance of any offence punishable under this Act, or any rules made thereunder save on a complaint made by the employee concerned or ⁸[by an officer not below the rank of Assistant Chief Inspector] appointed under this Act or by an Inspector having jurisdiction over the area in which the establishment is situated.

34. Power to make rules

- (1) The Government may, by notification, make rules for the purpose of giving effect to the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely
 - (a) The manner and form in which the registers and notices shall be kept;
 - (b) The officers who may be empowered to inspect registers and call for information as required by this Act;
 - (c) The agency by which and the manner in which prosecutions under this Act shall be instituted;
 - (d) The form of the statement under sub-section (1) of section 13, the particulars to be contained in such statement, the manner in which registration is to be made under sub-section (2) of that section, the form of registration certificate, the form for notifying a change under sub-section (4) of that section and the fees payable for such registration and renewal thereof;
 - (e) The authority to and the manner in which any notice required by this Act shall be given;
 - (f) The conditions subject to which any exemption under this Act may be granted;
 - (g) The manner in which the employer of an establishment shall keep exhibited in the premises notices setting forth the close-day, closing and opening hours and other prescribed particulars;
 - (h) To safeguard health, safety and welfare of the employees while on duty; and
 - (i) Any other matter which has to be, or may be, prescribed.
- (3) All rules made under this Act, shall be subject to the condition of previous publication.
- (4) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule, or decides that the rule shall not be made, the rule shall thereafter have effect only

in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice of validity of anything previously done under that rule.

35. Repeal and savings

The Punjab Trade Employees Act, 1940(as extended to the Union territory of Himachal Pradesh by Government of India late Ministry of States notification No: 11-J, dated 18-1-1951) and the Punjab shops and Commercial Establishments Act, 1958 as in force in the territories added to Himachal Pradesh under section 5 of the; Punjab Reorganisation Act, 1966 are hereby repealed:

Provided that:

- (a) Every appointment, order, rule, bye-law, regulation, notification or notice made, issued or given under the provisions of any of the said Acts 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 provision of this Act, unless and until superseded by any appointment, order, rules, bye-laws, regulation, notification or notice made, issued or given under Act;
- (b) Any proceeding relating to the trial of any offence Punishable under the provisions of any of the said Act, shall be continued and completed as if that Act has not been repealed, but has continued in operation, and any penalty imposed in such proceeding, shall be recovered under that Act.

¹Substituted by Himachal Pradesh (Amendment) Bill, 2012.

² Substituted by Himachal Pradesh (Amendment) Bill, 2012.

³ Substituted by Himachal Pradesh (Amendment) Bill, 2012.

⁴ Substituted by Himachal Pradesh (Amendment) Bill, 2012.

⁵ Substituted by Himachal Pradesh (Amendment) Bill, 2012.

⁶ Substituted by Himachal Pradesh (Amendment) Bill, 2012.

⁷ Substituted by Himachal Pradesh (Amendment) Bill, 2012.

⁸ Substituted by Himachal Pradesh (Amendment) Bill, 2012.