



# Certified HR Compliance Professional

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on

HR Compliance

The purpose of the course is to bring about an understanding of workforce related compliances in India. This document is for beginners and intermediaries.

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## 1. COMPLIANCE BASICS

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This chapter details with basics of compliance.

### 1.1. What is Compliance

In general, compliance means conforming to a rule, such as a specification, policy, standard or law. Software, for example, may be developed in compliance with specifications created by a standards body, and then deployed by user organizations in compliance with a vendor's licensing agreement. The definition of compliance can also encompass efforts to ensure that organizations are abiding by both industry regulations and government legislation.

Due to the increasing number of regulations and need for operational transparency, organizations are increasingly adopting the use of consolidated and harmonized sets of compliance controls. This approach is used to ensure that all necessary governance requirements can be met without the unnecessary duplication of effort and activity from resources.

The term compliance describes the ability to act according to an order, set of rules or request.

### 1.2. Compliance Types

Businesses compliance operates at two levels.

- ✓ Level 1 - compliance with the external rules that are imposed upon an organisation as a whole
- ✓ Level 2 - compliance with internal systems of control that are imposed to achieve compliance with the externally imposed rules.

Compliance regulations can be divided into two categories: internal and external.

- ✓ Internal compliance measures are typically required by state governments for business entities. They are formed and enforced internally by a company's managerial staff.
- ✓ External compliance refers to those requirements imposed and enforced by a state or federal authority.

#### **Internal Compliance**

Corporations have strict internal requirements, which consist of forming a board of directors, conducting initial and annual director meetings, creating and updating bylaws, providing stock to shareholders and transcribing all stock transfers.

Internal requirements are largely meant to ensure that a corporation is being run with integrity and free of corruption or other corrupting elements. Some parts of the business, such as stock sales, will be governed by external compliance requirements as well.

#### **External Compliance**

External requirements for corporations are sanctioned by the state in which you are incorporated and those in which you conduct business.

### **1.3. Compliance Need**

Statutory compliance in HR refers to the legal framework which organizations must abide by with respect to the treatment of their employees. Most of your company's time and money goes into ensuring compliance to these laws. Everything to being compliant to the payment of minimum wages to provident fund or maternity benefits needs not just whole lot of time but also experts who can guide on all of these statutory compliance measures.

Therefore, dealing with statutory compliance requires for companies to be well-versed with the various labour regulations in India.

### **Importance of Compliance in Business**

Understanding the reasons for the various rules, laws and regulations that govern business will help take advantage of any benefits they offer while ensuring you stay in compliance at all times.

Reduced Legal Problems - The most obvious consequence of compliance is that it decreases your risk of fines, penalties, work stoppages, lawsuits or a shutdown of your business. When you don't meet some compliance requirements, you might get a warning and a chance to correct the problem. In other situations, you might face costly sanctions. Failing to meet your legal obligations, such as in manufacturing procedures or advertising methods, can also help someone suing.

Improved Operations and Safety - Many regulations can help more than harm. For example, regulations regarding discrimination and harassment help to create a better working environment for employees, which can lead to more worker productivity. Following safety and security rules helps prevent injuries, fires or building evacuations that hurt your profitability. In addition to learning the bare minimum you need to do to meet legal obligations.

Better Public Relations - When you meet legal obligations, the company can tout these on website and in other marketing materials. For example, in job advertisements, include the fact that you are an equal opportunity employer. If you post your mission statement on your website, state that you do not discriminate based on race, sex, creed or sexual orientation.

Higher Employee Retention - Many business compliance issues deal with protecting employees. The more employees feel they work in a fair, professional and safe environment, the more likely they will be to stay with you. Even if you don't harass or discriminate against any employees, if you don't take steps to ensure none of your employees do, you can lose valuable workers.

Avoid Future Compliance Violation Costs - Compliance will help your company avoid legal risks. Lawsuits and settlements can easily cost you millions of rupees. Fines and other compensatory payments can also add up.

Even if you are able to pay these costs, you might see your sales drop dramatically. If you failed to protect customer credit card information and fraudulent purchases were made, you will probably lose customers who no longer trust your brand.

Damage to your company's reputation can take years to repair. It's impossible to estimate just how much monetary damage it can do. It's better to practice good data security and avoid a breach altogether.

Build Trust with Your Customer Base - Complying with laws will show your customers that you care about keeping them safe. While lawsuits or fines will damage your reputation, a record of compliance will show you are running a trustworthy operation.

### 1.4. Human Resources Compliance

Adhering to statutory compliances is necessary for all big and small companies in the world to keep their businesses safe from the legal trouble. A deep knowledge of statutory compliances is required to minimize the risk associated with the noncompliance of statutory requirements.

In today's competitive and legal business world, it is very challenging for employers to manage statutory compliances without good payroll management software. Each country has various kinds of compliance requirements. This blog discusses the statutory requirements for Indian payroll system.

There are a number of statutory requirements for Indian companies and companies have to spend a significant amount of time in their payroll management to ensure that they are compliant with the legal regulations. If companies fail to adhere to statutory compliances, they may have to face heavy penalties which are several times more than complying with legal guidelines.

The Statutory Compliances Required for Indian Payroll

The common statutory requirements that companies have to follow for their payroll management in India are:

Statutory requirements for Minimum wages - This act provides for fixing minimum rates of wages for skilled and unskilled laborers. It not only guarantees money for bare minimum survival requirements of workers but also takes care of education, medical requirements, and some level of comfort of workers.

The Minimum Wages Act being a state subject, the statutory compliance requires the payment of minimum wages to an organization's workers spread out across different states.

Payment of 'Overtime' wages to workers is also a statutory requirement as per the Factory Act & Payment of Wages Act. It affects sectors like manufacturing & construction.

TDS Deduction - Every employer who is paying salary to employees has to deduct TDS under section 192 of the Income tax Act, 1961, if the salary is more than maximum amount exempt from tax. The employers also need to generate Form 24Q and Form 16 in time. Some of the salary components that impact TDS deduction are: HRA, Special allowance, Leave travel allowance, Children education allowance, Medical allowance, Investments.

ESI fund and PF deduction - ESI fund, maintained by ESIC provide the cash and medical benefits to employees and their families.

PF is a compulsory contributory fund for the future of employees after their retirement or for their dependents in case of their early death.

Professional taxes - Professional tax or employment tax is a state-based tax. It is one of the statutory deductions from the gross income before computing the tax.

Gratuity - Gratuity is the amount given to employees by employer when they leave the job after completing five years in service. Gratuity is calculated as  $\text{Basic} + \text{DA}$  divided by  $26 * \text{No of years of service} * 15$ .

EDLI - The EDLI (Employees' Deposit Linked Insurance Scheme) provides assurance benefit (death insurance cover) to employees along with PF benefit. The employees do not contribute anything towards EDLI. The employers contribute 0.5% of the total wages of employees subject to a maximum of Rs 6500/-. EDLI applies to all the organizations where EPF Scheme applies.

A quick compilation of the various statutory compliances in HR, are as

- ✓ The Apprentices Act, 1961
- ✓ The Contract Labour (Regulation & Abolition) Act, 1970
- ✓ The Child Labour (Prohibition & Regulation Act), 1986
- ✓ The Industrial Disputes Act, 1946
- ✓ The Minimum Wages Act, 1948
- ✓ The Payment Of Gratuity Act, 1972
- ✓ The Industrial Employment Standing Orders Act, 1946
- ✓ The Employees Provident Fund & Miscellaneous Provisions Act, 1952
- ✓ The Equal Remuneration Act, 1976
- ✓ The Employees' State Insurance Act, 1948
- ✓ The Payment Of Bonus Act, 1965
- ✓ The Payment Of Wages Act, 1936
- ✓ The Factories Act, 1948
- ✓ The Employment Exchanges(Compulsory Notification Of Vacancies) Act, 1959
- ✓ The Trade Unions Act, 1926
- ✓ The Workmen's Compensation Act, 1923
- ✓ Inter State Migrant Workmen (Regulation of Employment & conditions of service) Act, 1979.

### 1.5. Implementing HR Compliance

Clearly, human resources (HR) compliance is essential for any organization to be successful in today's legal environment. But achieving and maintaining compliance can be elusive goals for organizations that do not recognize the challenges and develop an effective strategy to meet them.

HR compliance should be treated as a process of defining both individual and group behaviors to ensure the organization's applicable laws and policies are followed. The HR function must hire and retain individuals that are knowledgeable about HR specific laws and can create policies and procedures in relation to these laws. Just writing policies and procedures and placing them in a repository is not enough. Once established, they must be effectively communicated throughout the organization.



This is most likely to happen in cases where HR compliance has been integrated with the organization's overall business strategy, and the organization's leadership has taken steps to ensure all employees understand the importance of HR compliance. Here are five basic principles organizations should follow to help achieve these goals:

- ✓ **Hiring the Right Talent** - Hiring the right talent within the HR function's area of responsibilities (compensation, employee benefits, legal requirements, talent management) is one of the most important issues for organizations today. The HR function must have the knowledge, skills and experience, or be able to access it through third-party relationships.
- ✓ **Proper Education and Training** - The talent in the HR function must be well versed in employment law and the regulatory/legal requirements that can affect an organization at anytime. These laws and requirements are changing all the time and its imperative for the HR function to stay apprised of the latest information available.
- ✓ **Create an Employee Handbook and Update it regularly** - An organization's Employee Handbook is one of its most important documents. The Employee Handbook is a communications tool that should clearly articulate the organization's policies and procedures and how business should be conducted. It is a best practice to have legal counsel review the handbook and any new policies and procedures before distribution.
- ✓ **Conducting Scheduled HR Compliance Audits** - Many HR functions are typically understaffed and overworked. As noted, non-compliance can be the basis for financial and reputational risks for organizations. Conducting scheduled HR compliance audits should be a part of an organization's overall strategy to avoid any legal liabilities.
- ✓ **Communicate, Communicate and Communicate** - The HR function is a critical component of an organization. Whether there are compliance issues or not, it is critical for the HR function leaders (CHRO, VP of HR, etc) to keep other executives up to speed on potential HR compliance risks and recommended remediation.

These steps will help the HR function take a large step to achieving its goal of maintaining HR compliance for the overall organization.

### **1.6. Labour Welfare**

The concept of labour welfare originated in the desire for a humanitarian approach to ameliorate the sufferings of the workers and their families on account of the baneful effects of large-scale industrialization like undesirable social consequences and the labour problems which have evolved in the process of transition from tradition to modernity. Later it became a utilitarian philosophy which worked as a motivating force for labour and for those who were interested in it. Lastly, labour welfare received inspiration from the evolution of the social thought in regard to democracy and welfare state. With such a varied background and changing values, labour welfare and its contents have acquired a kaleidoscopic nature.

#### **The Concept of Labour Welfare**

The I.L.O. (SEA) session held at New Delhi in 1947 defined Labour Welfare as "such services, facilities and amenities, which may be established in or in the vicinity of, undertakings to enable persons employed therein to perform their work in healthy, congenial surroundings and to provide them with amenities conducive to good health and good morale.

N.M. Joshi felt that labour welfare “covers all the efforts which employers make for the benefit or their employees over and above the minimum standard of working conditions fixed by Factories Act and over and above the provision of social legislation providing against accident, old age, unemployment and sickness”.

The Committee on Labour Welfare (1969) defined labour welfare to “include such services, facilities and amenities as adequate canteens, rest and recreational facilities, sanitary and medical facilities, arrangements for travel to and from work and for the accommodation of workers employed at a distance from their homes and such other services, amenities, and facilities including social security measures as contribute to improve the conditions under which workers are employed”.

### Scope of Labour Welfare

Scope of Labour Welfare: Labour welfare is a dynamic concept which acquire as new dimensions with the changes in the environment of industry. It was as early as 1931 that „Whitley Commission observed, “Labour welfare is one which must necessarily be elastic, bearing a somewhat different interpretation in one country from another, according to the different social customs, the degree of industrialization and the educational development of the workers”.

The Study Team, appointed by the Government of India in 1959 to examine labour welfare activities then existing, divided the entire range of these activities into three groups, viz.,

- ✓ Welfare within the precincts of an establishment: medical aid, crèches, canteens, supply of drinking water, etc.,
- ✓ Welfare outside the establishment: provision for indoor and outdoor recreation, housing, adult education, visual instructions, etc.
- ✓ Social security.

### Welfare Services

Types of Welfare Services: The Committee of Experts on Welfare Facilities for Industrial Workers set up by the ILO in 1963 divided welfare services into two groups -

- ✓ Within the precincts of the establishment and
- ✓ Outside the establishment.
- ✓ Intramural: Welfare amenities within the precincts of the establishment (intramural) such as latrines and urinals; washing and bathing facilities; crèches, rest shelters and canteens, arrangements for drinking water, arrangements for prevention of fatigue, health services including occupation safety, administrative arrangements to look after uniform and protective clothing and shift allowances.
- ✓ Extramural: Welfare amenities outside the establishment such as maternity benefits, social insurance measures including gratuity, pension, provident fund and rehabilitation, benevolent funds; medical facilities including programmes for physical fitness and efficiency; family planning and child welfare; education facilities including adult education; housing facilities; recreational facilities including sports, cultural activities, library and reading room, holiday homes and leave travel facilities; workers cooperative stores, fair price shops and cooperative thrift and credit societies; vocational training for dependants of workers; welfare programmes for welfare of women, youth and children; and transport to and from the place of work.

## Importance of Labour Welfare

The basic objective of labour welfare is to enable workers to live a richer and more satisfactory life. Labour welfare is in the interest of the labour, the employer and the society as a whole. The main benefits of the employee welfare services have been discussed hereunder.

- ✓ **Benefits to the Workers:** The usefulness of welfare need not be overemphasized. For instance, the provision of welfare measures such as good housing, canteens medical facilities etc, makes the workers realize that they have some stake in the undertaking in which they are employed and so they think thrice before taking any reckless action, which might prejudice the interest of the undertaking.
- ✓ **Benefits to employers:** The provision of welfare facilities is not only beneficial to workers but also to employers in several ways. For instance, the provision of welfare facilities helps in increasing the employee productivity by improving their physical and psychological health. Besides this, it helps in improving the goodwill and public image of the enterprise. It also helps in improving good industrial relations and industrial peace
- ✓ **Benefits to the Society Labour / Employee:** welfare is also in the interest of larger society because the health, efficiency, and happiness of each individual represent the general well-being of all. Well-housed, well-fed and well-looked after labour is not only an asset to the employer but also serves to raise the standards of industry.

## Labour Welfare Theories

The theories of labour welfare reflect the evolution of the concept of welfare. Earlier, the Government had to compel the industrial organizations to provide basic amenities to their employees. Such compulsion was necessary because the employers used to exploit the labour and treated them in an unfair manner. With the passage of time, the concept of welfare has undergone changes. Progressive managements today provide welfare facilities voluntarily and with enlightened willingness and enthusiasm. In fact, welfare facilities are no longer restricted to workers alone but also extended to social welfare also. In this regard, a brief description of the various theories of employee welfare has been outlined hereunder.

**The Police Theory:** The police theory is based on the contention that a minimum standard of welfare is necessary for labourers. Apparently, this theory assumes that man is selfish and self-centered, and always tries to achieve his own ends, even at the cost of the welfare of others. If wealth or authority or both help him to be in an advantageous position, he uses it for his own advantage, exploiting those who are under him. According to this theory, owners and managers of industrial undertakings get many opportunities for this kind of exploitation. The welfare state has to prevent this kind of exploitation and coerce the industrialists to offer a minimum standard of welfare to their workers.

**The Religious Theory:** This theory is based on the concept that man is essentially “a religious animal”. Even today, many acts of men are related to religious sentiments and beliefs. These religious feelings, sometimes, prompt an employer to take up welfare activities in the expectation of future benefit, either in this life or in some future life. According to this theory, any good work is considered as “Investment”. In this case, both benefactor and the beneficiary are rewarded. Many trusts and charitable institutions in India function on the basis of this belief.

Another aspect of the religious theory is the atonement aspect. Some people take up welfare work in a spirit of atonement for their sins. Thus, the benevolent acts of welfare are treated either as an investment or atonement. According to this theory, man is primarily concerned with his own welfare and only secondarily with the welfare of others. The religious basis of welfare however cannot be rational.

The Philanthropic Theory: This theory is based on man's love for mankind. In Greek, philo means love of and anthropes means man. So philanthropic means loving mankind. Man is believed to have an instinctive urge by which he strives to remove the sufferings of others and promote their well-being. This drive may be a rather powerful one and may impel him to perform noble sacrifices. When some employers have compassion for their fellowmen, they may undertake labour welfare measures for the benefit of their workers.

Trusteeship Theory: This is also called the paternalistic theory of labour welfare, according to which "the industrialist or employer holds the total industrial estate, properties and profits". These properties and profits, he uses for himself, for the benefit of his workers and also for society. Workers are like minors. They are ignorant because of lack of education and are not able to look after their own interests.

The Placating Theory: This theory is based on the fact that labour groups are becoming more militant and are conscious of their rights and privileges than ever before. Their demand for higher wages and better standards cannot be ignored. According to this theory, timely and periodical acts of labour welfare can appease the workers. They are some kind of pacifiers by way of friendly gestures. Sincerity may be lacking in these programs. Psychologically this theory is unsound, though it has often been acted upon to secure the workers cooperation.

The Public Relations Theory: This theory provides the basis for an atmosphere of goodwill between labour and management and also between management and the public. Labour welfare programs, under this theory work as a sort of an advertisement and help an industrialist to build up good and healthy public relations. This theory is based on the assumption that the labour welfare movement may be utilized to improve relations between management and labour.

The Functional Theory: This is also called Efficiency Theory. Here, welfare work is used as a means to secure, preserve and develop the efficiency and productivity of labour. It is obvious that if an employer takes good care of his workers, they will tend to become more efficient and thereby they step up production. But all this will depend on a healthy collaboration between union and management and their mutual concern for the growth and development of the organization.

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