

CMA Inter Business Laws and Ethics June 24 – Marathon Schedule

Starting from 1st May 2024

Schedule & Details of Marathon – **Free Live Stream on YouTube**

Date	Time	Lecture	YouTube Link
1 st May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 1 to 3)	https://youtube.com/live/3MlfFu91Yjs?feature=share
2 nd May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 4 to 6)	https://youtube.com/live/rRjcxmnZwU?feature=share
3 rd May 2024	04: 00 PM	The Indian Contract Act, 1872 (Unit 7 to 9)	https://youtube.com/live/usY6ysQNHK8?feature=share
4 th May 2024	04: 00 PM	The Sale of Goods Act, 1930	https://youtube.com/live/zuRe8kwuRFs?feature=share
5 th May 2024	04: 00 PM	The Indian Partnership Act, 1932	https://youtube.com/live/6Kh1pYymTFY?feature=share
6 th May 2024	04: 00 PM	The Companies Act, 2013 and LLP Act, 2008	https://youtube.com/live/qa_U8l7g5fs?feature=share
7 th May 2024	04: 00 PM	The Negotiable Instruments Act, 1881 and Indian Regulatory Framework	https://youtube.com/live/O3Zpm5xy2vc?feature=share
16 th May 2024	04: 00 PM	Director	https://youtube.com/live/SXCLiE-73Ls?feature=share
17 th May 2024	04: 00 PM	Industrial Law	https://youtube.com/live/Y2MZ6ta7ogl?feature=share
		Corporate Law Playlist	https://youtube.com/playlist?list=PLaUTqfiLWYKTMR9hC-

CS LLM Arjun Chhabra
(Law Maven)
Mo: 62 62 62 143 8 / 9552 52 143 8

			hp81TZNAejhRlnq&si=IOWqmG8ZB_t8QfkB
		Ethics	https://youtube.com/playlist?list=PLaUTqfiLWyKTmJvbS2JMSrfcZhaUIEkLb&si=i22S1zZSv0DhqjYN
<p>Notes of Corporate Law: Telegram Channel name: ACT-Arjun Chhabra Tutorial Telegram Channel Link : https://t.me/ACTArjunChhabraTutorial</p>			
Arjun Chhabra Tutorial's Gallery			
<p>1. FULL VLOG CA INTER MAY 24 BATCH CONCLUSION DAY CELEBRATION DINNER MOVIE WITH STUDENTS: https://youtu.be/47BxbHL_qc0?si=Impo7hsjuOcZERBY</p> <p>2. FULL VLOG WET & JOY WATER PARK ARJUN CHHABRA TUTORIAL CA INTER MAY 2024: https://youtu.be/l45jh_hHVvY?si=Anyrn3AYFQX-jqvT</p> <p>3. CMA FINAL playlist: https://youtube.com/playlist?list=PLaUTqfiLWyKTc1gAgbNMCbL_LpDDpzRB6&si=ILgSQVh0jjs-hqmP</p>			

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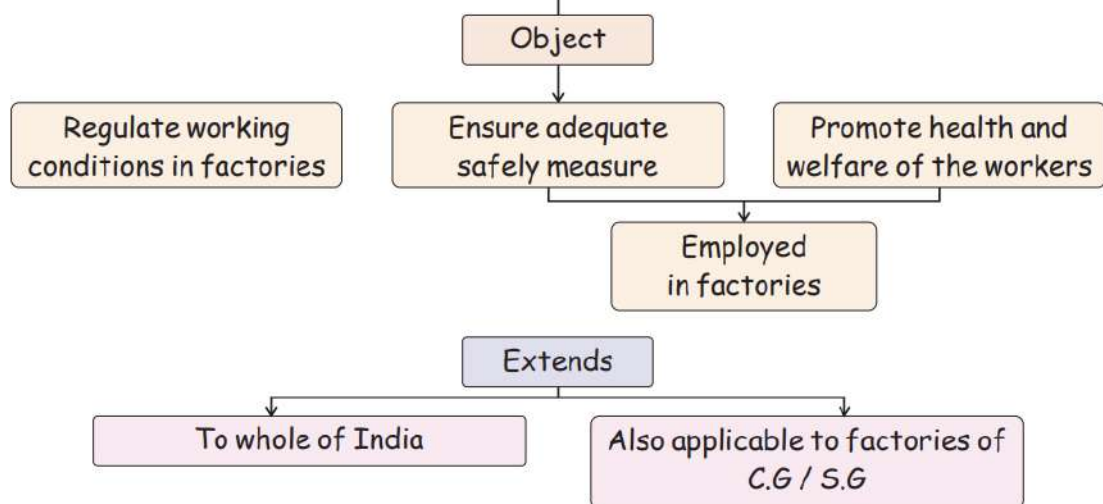
CMA INTER INDUSTRIAL LAW REVISION NOTES

Most Important Topics/Questions

Factories Act, 1948

Factories Act, 1948

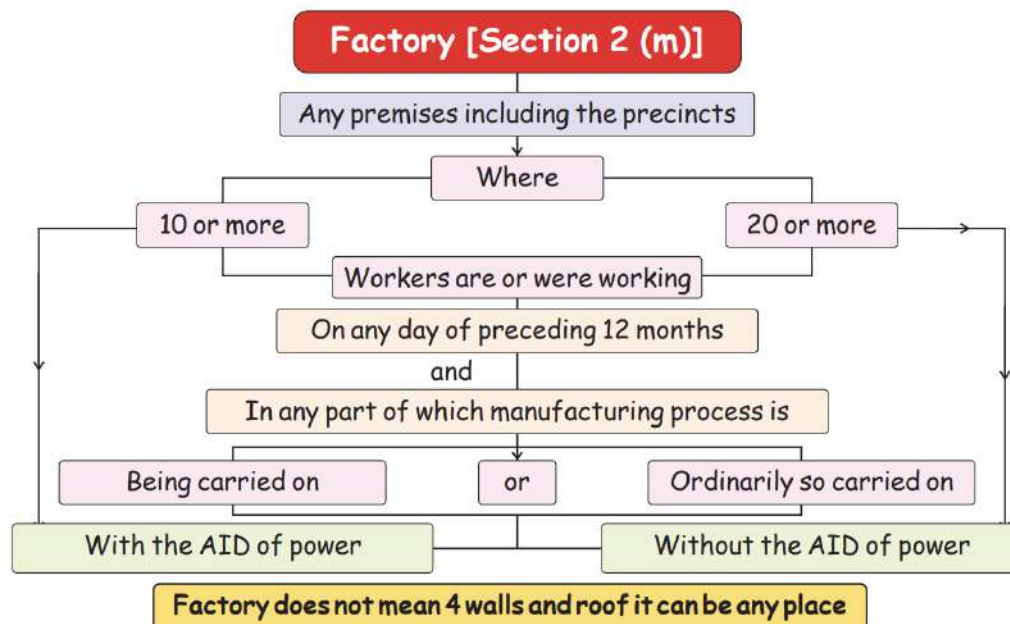
Effect 01/04/1949



Question1:

ABC Ltd. carrying manufacturing activities with aid of power and with eight workers for last two years ending on 31.03.2014. Three more workers were appointed on 01.04.2014, two workmen left the company on 30.04.2014. Thereafter no workman was employed nor any workmen left. Mr. Basant, one of the workmen demanded that Factories Act, 1948 shall be applicable to this company but the management denied. Give your opinion. [RTP Dec 18]

Answer:



In the given case, during the period 01.04.2014 to 30.04.2014, there were 11 workers carrying manufacturing activities with aid of power. So, the Factories Act, 1948 is applicable on ABC Ltd. Mr. Basant is correct.

Test Your Self

Test 1:

20 or more workers with the aid of power carrying manufacturing process during last 6 months. But from last 1 month no manufacturing process. Factory?

Ans: Yes

Test 2:

A premises where 10 or more workers with aid of power is working i.e., loading/unloading of goods. Factory?

Ans: No

Test 3:

A premises where 10 or more workers with the aid of power is manufacturing. Whether the entrance area of that premises will be considered as factory?

Ans: No

Mandatory Points for factory:

Manufacturing Process is carried on or ordinarily so carried on in any premises or precinct:

- (a) with the aid of power - 10 or more workers,
- (b) without the aid of power - 20 or more workers.

K.V.V.Sharma A place solely used for some purpose other than the manufacturing process carried on in a factory or a workshop does not constitute a factory."

Conclusion

"In order that any premises may be held as a factory, the following conditions must be fulfilled: -

- (a) a manufacturing process must be carried on in any part of the premise of the establishment and ,
- (b) where a manufacturing process is carried on with the aid of power, ten or more workers must be

working and where manufacturing process is carried on without the aid of power, twenty or more workers must be working in that establishment.

But, the mere fact that the power is used in the premises is not sufficient, but power must be used in the aid of manufacturing process.

Question2:

Write short notes on Manufacturing process under the Factories Act, 1948 [5 Marks – June 18]

Answer:

Manufacturing process

Under Section 2(k) of Factories Act 1948 define 'manufacturing process' as under any process for-

- making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- pumping oil, water, sewage or any other substance; or
- generating, transforming or transmitting power; or
- composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- preserving or storing any article in cold storage.

In 'M/s Qazi Noorul Hasan Hamid Hussain Petrol Pump V. Deputy Director, Employees State Insurance Corporation'

- It was held that the definition 'manufacturing process' does not depend upon and is not correlated with any end product being manufactured out of a manufacturing process.
- It includes even repair, finishing, oiling or cleaning process with view to its use, sale, transport, delivery or disposal.
- It cannot be restricted an activity which may result into manufacturing something or production of a commercially different article.
- The 'manufacturing process' cannot be interpreted in a narrow sense in respect of an act which is meant for the purpose connected with the social welfare.

Question 3:

Who is Occupier under the Factories Act, 1948? [9 Marks – Dec 17]

Discuss the general duties of an „occupier“ under the Factories Act, 1948 [RTP Dec 18]

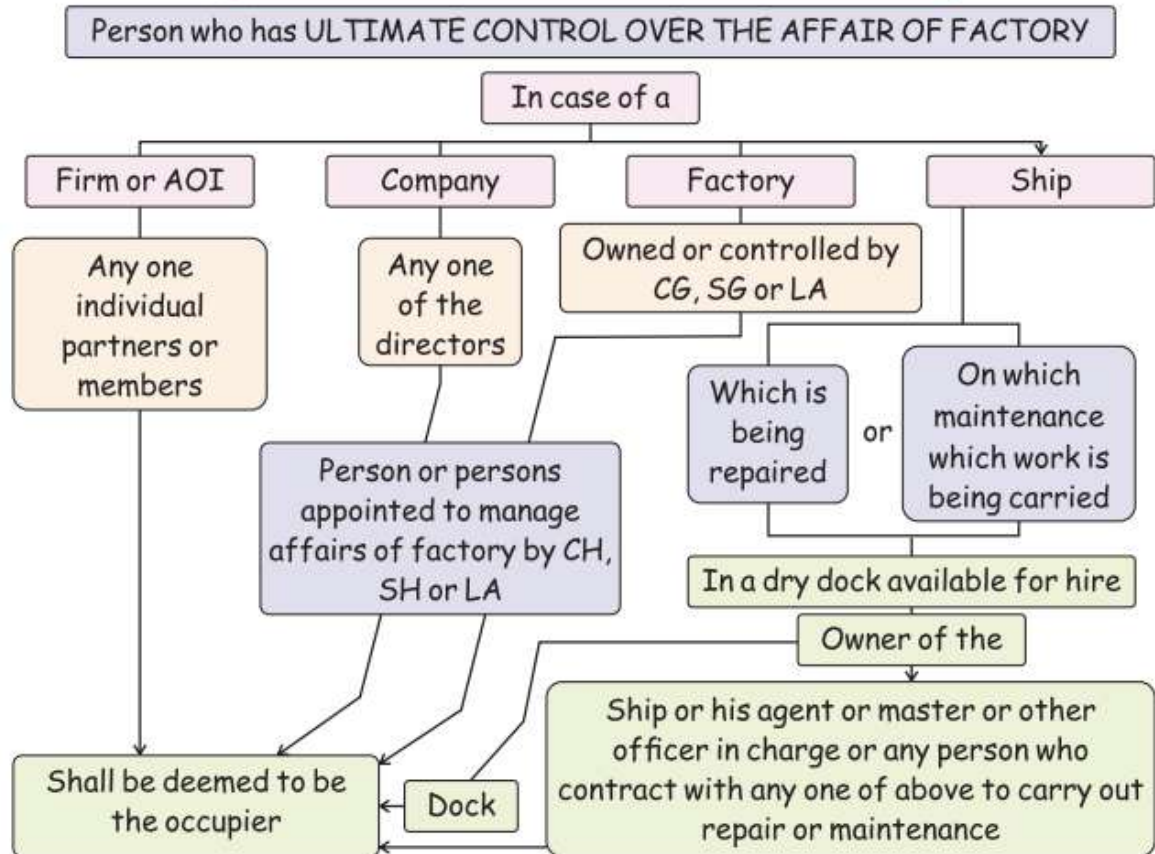
Responsibility of the occupier [MTP June 20 – 5 Marks]

Answer:



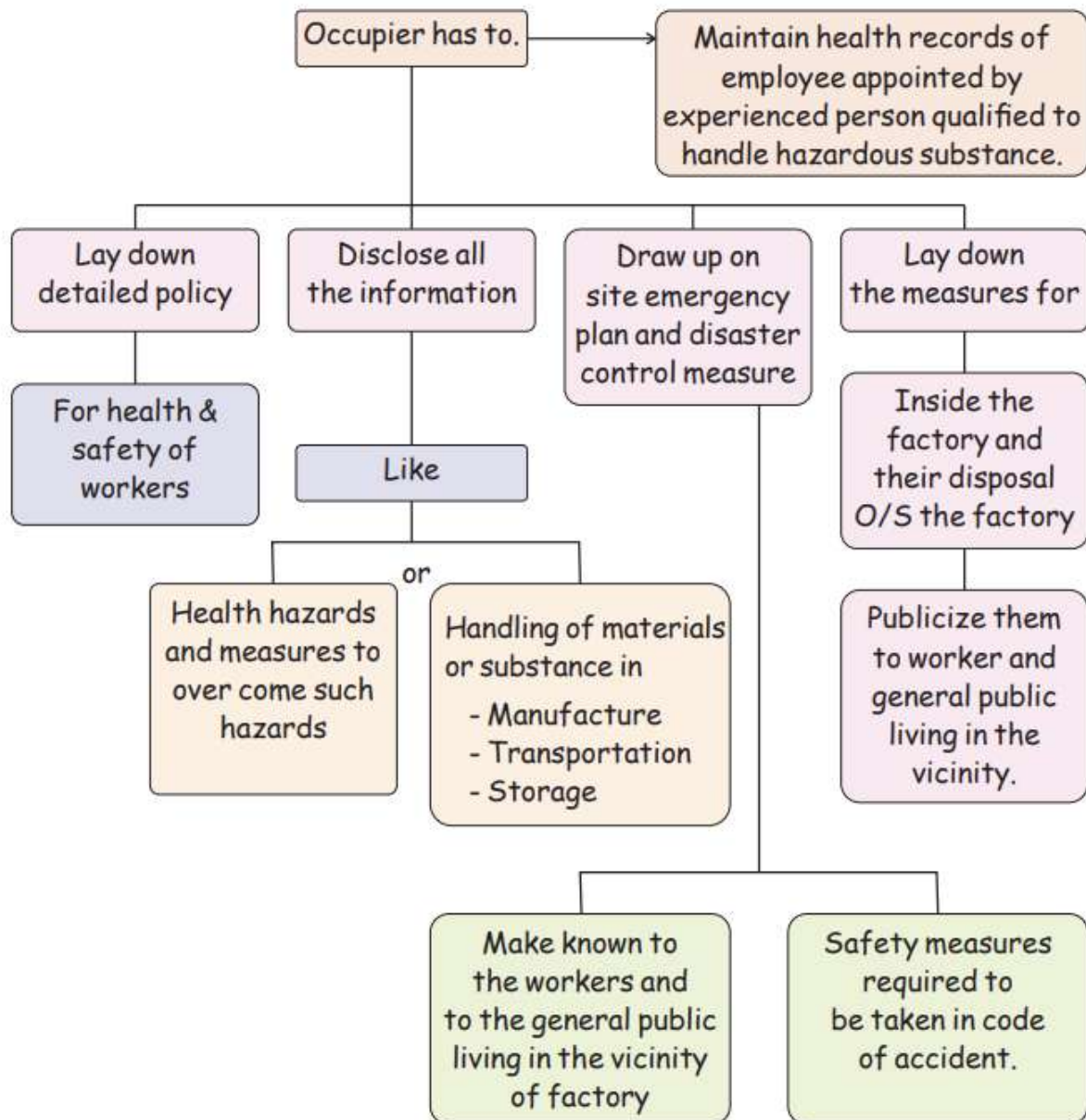
INDUSTRIAL LAW

Occupier of Factory [Section 2 (n)]





Responsibility of the Occupier



1. Health and Safety Policy

Example: In a small electronics assembly factory, the owner creates a safety policy that includes:

- Instructions on how to safely handle soldering equipment.
- Guidelines for wearing protective goggles and gloves.
- A schedule for regular safety training sessions for all workers.

2. Information Disclosure

Example: In a bakery, the owner informs all employees about the potential hazards of handling hot ovens and machinery. Notices are posted around the workplace detailing safety precautions, like using oven mitts and turning off machines when not in use.

3. Emergency Plan and Disaster Control

Example: A garment factory develops an emergency plan for fire safety. The plan includes:

- Regular fire drills.
- Clearly marked emergency exits.
- Instructions on using fire extinguishers.
- The plan is shared with workers and posted on notice boards throughout the factory.

4. Handling and Disposal of Hazardous Substances

Example: In a small metalworking shop, the owner sets up a safe procedure for handling and disposing of used oil and metal shavings:

- Used oil is stored in labeled, sealed containers.
- Metal shavings are collected and disposed of in designated recycling bins.
- Workers are trained on these procedures during their orientation.

5. Health Records and Qualified Personnel

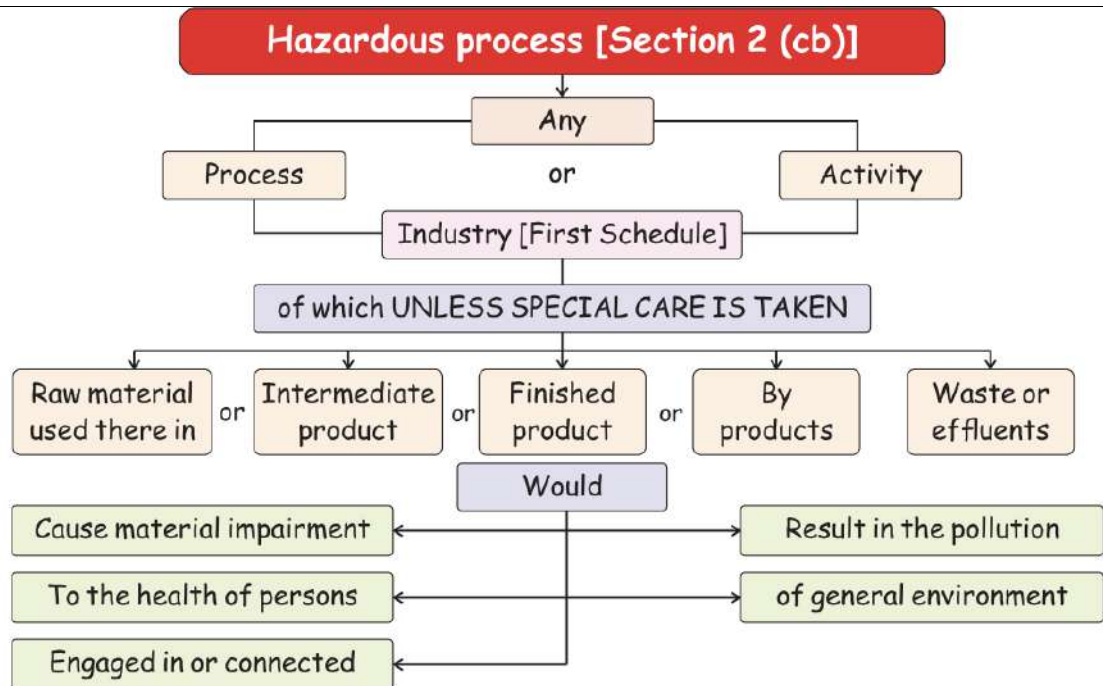
Example: In a paint manufacturing unit, the owner keeps health records of workers who are exposed to chemical fumes. These records include:

- Annual health check-ups to monitor any signs of respiratory issues.
- Appointment of a qualified safety officer who has training in handling hazardous chemicals and overseeing safety practices in the factory.

Question 4:

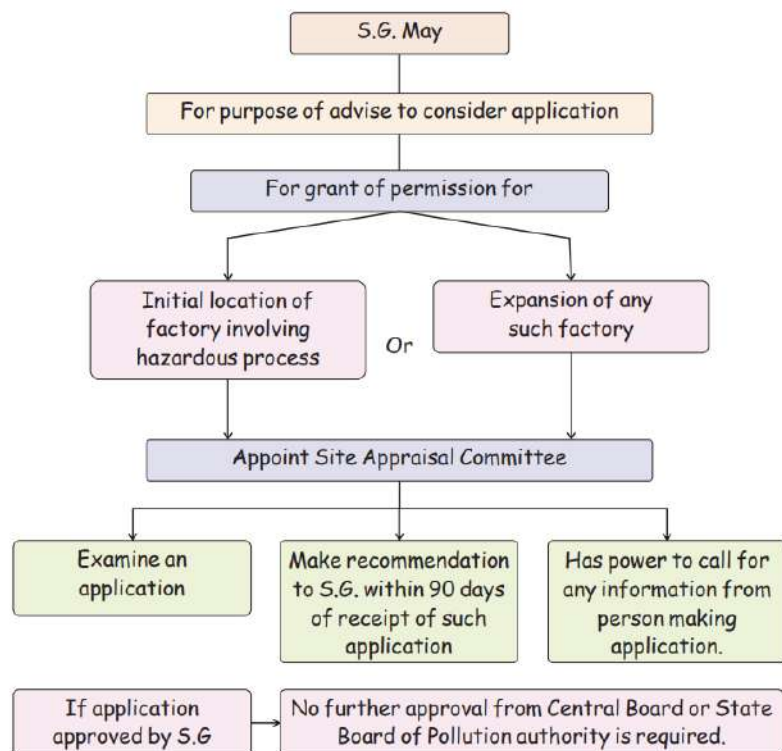
Write a short note on 'Hazardous processes.' [5 Marks – MTP Dec 23 – Syllabus 16]

Answer:



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Hazardous Processes



In simple words: 'hazardous process' as any process or activity in certain industries that can cause significant harm to the health of workers or result in environmental pollution if special care is not taken.

Example:

Chemical Manufacturing Plant:

Hazardous Process: Production of synthetic chemicals like pesticides.

- Health Impairment: Workers handling toxic chemicals without proper protective equipment (PPE) can suffer from respiratory issues, skin diseases, or chemical burns.
- Environmental Pollution: Improper disposal of chemical waste can lead to contamination of local water bodies and soil, harming wildlife and potentially entering the human food chain.

Special Care Measures:

- Installing proper ventilation systems.
- Providing PPE such as gloves, masks, and safety goggles.
- Training workers on safe handling and emergency procedures.
- Implementing waste treatment systems to neutralize harmful chemicals before disposal.



Question5:

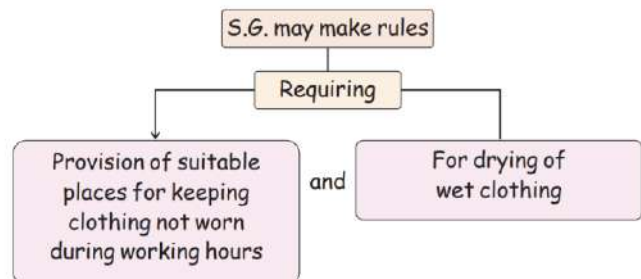
Discuss the welfare measures to be taken in a factory for the workmen employed therein as per the Factories Act, 1948. [8 Marks – Dec 19] [7 Marks – MTP June 24]

Answer:

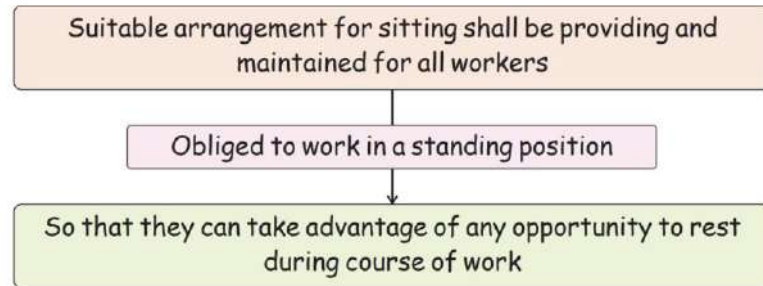
Welfare - Chapter - V, Section - 42



Section - 43

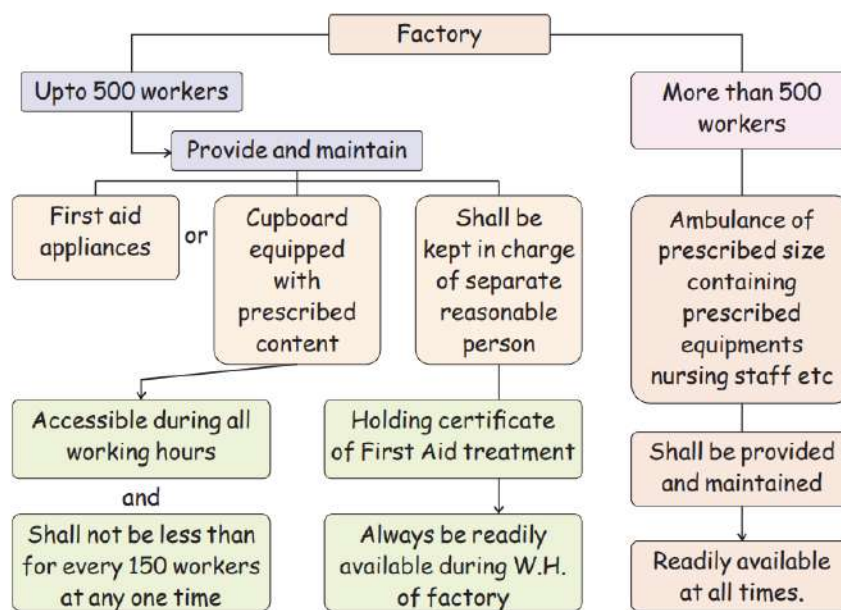


Facilities for sitting - Section 44

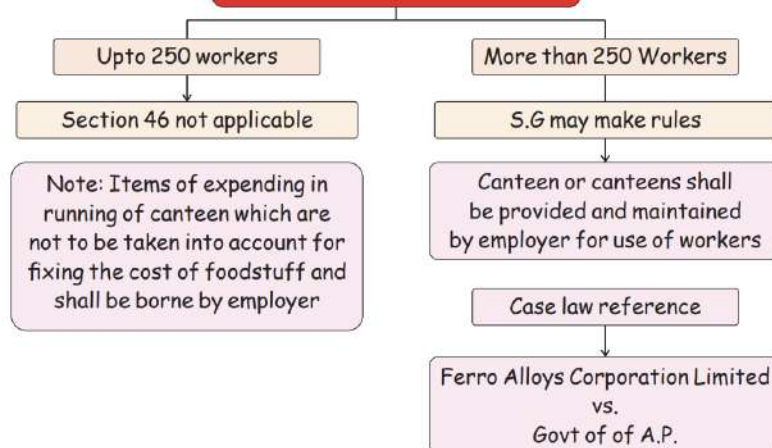


INDUSTRIAL LAW

First Aid Appliance - Section 45

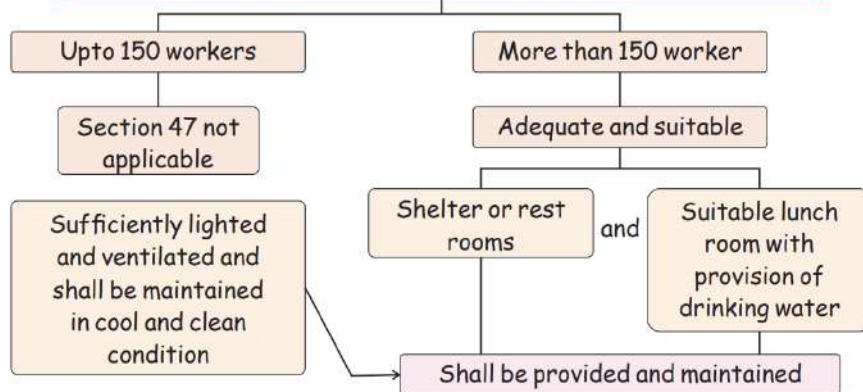


Canteens - Section 46

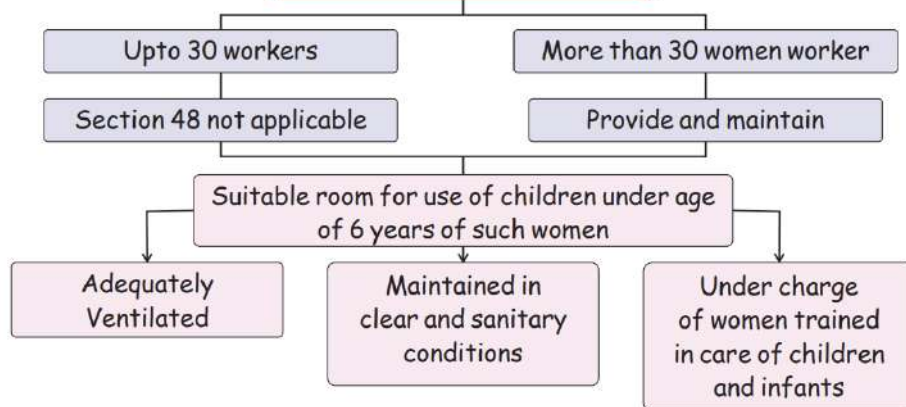




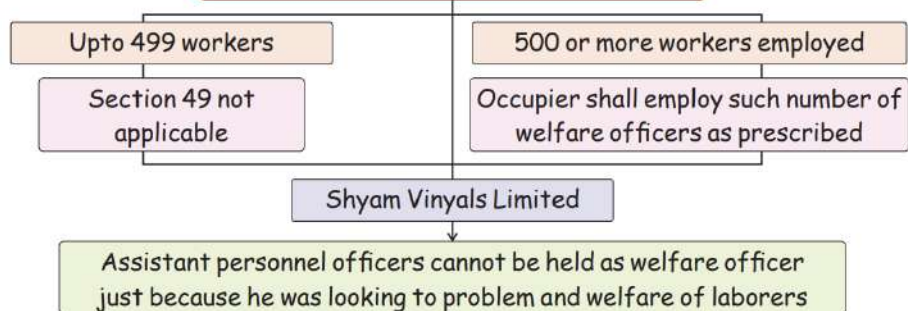
Shelters, restroom and lunch rooms - Section 47



Creches - Section 48



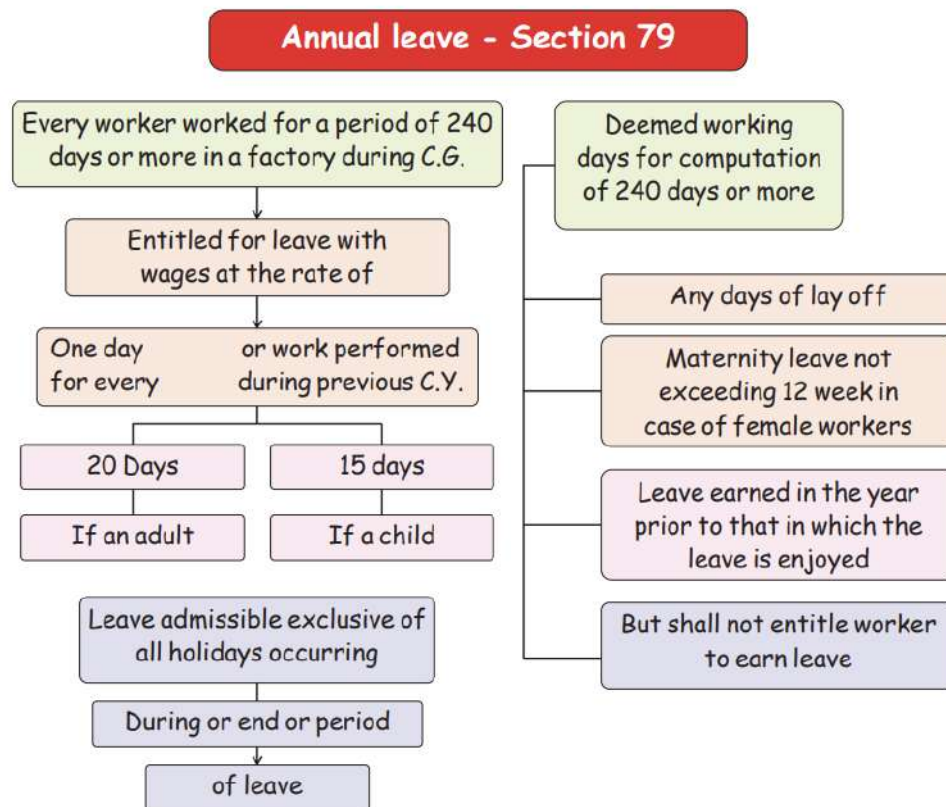
Welfare officers - Section 49



Question 6:

Write short notes on Annual Leave under the Factories Act, 1948 [5 Marks – June 19]

Answer:



Question 7:

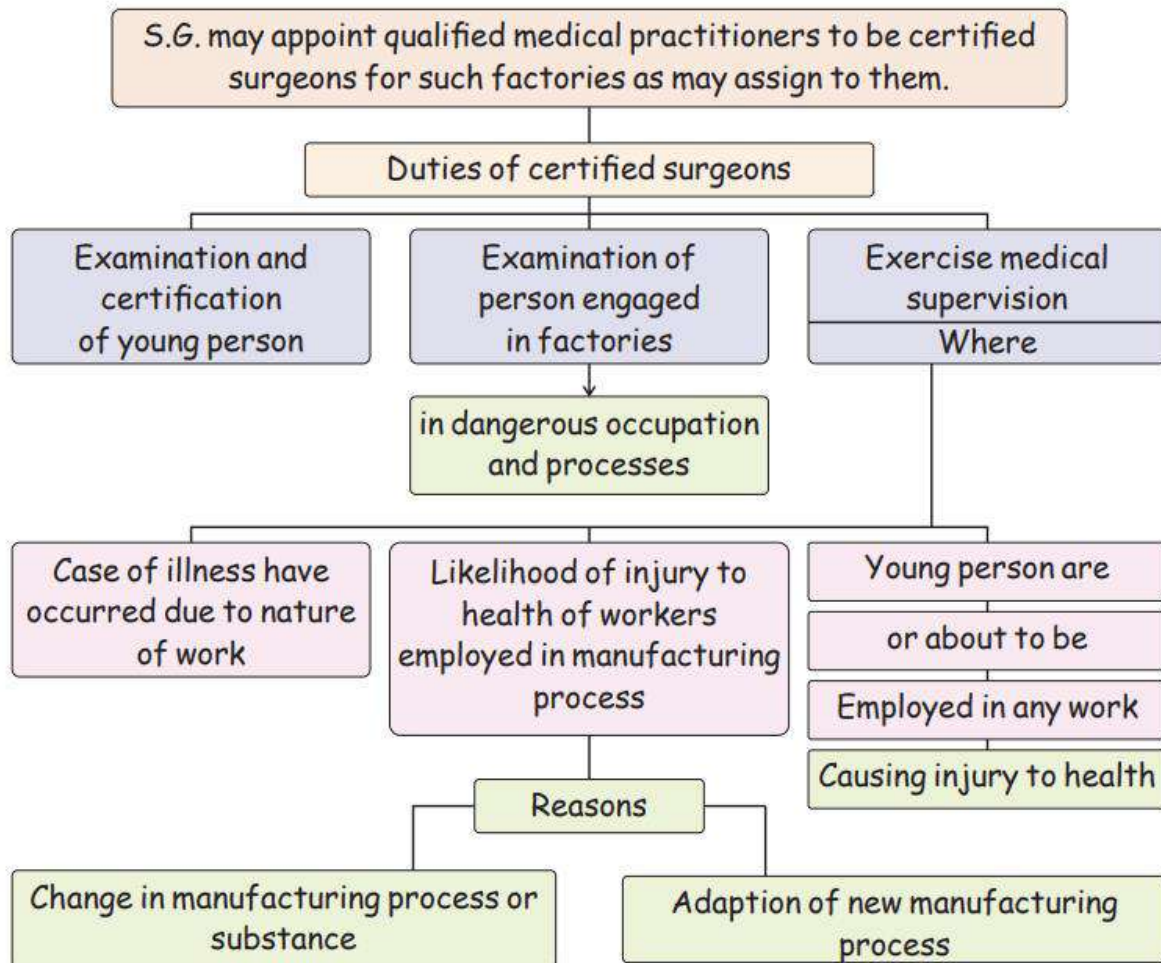
Critically examine the duties of certified surgeon. [5 Marks – MTP June 20]

Answer:



INDUSTRIAL LAW

Certified surgeons - Section -10



Example: Dr. Smith, a certifying surgeon appointed by the State Government, examines teenagers who apply for jobs in a textile factory. He assesses their physical and mental fitness to work in the factory environment, ensuring they are not exposed to any health risks.

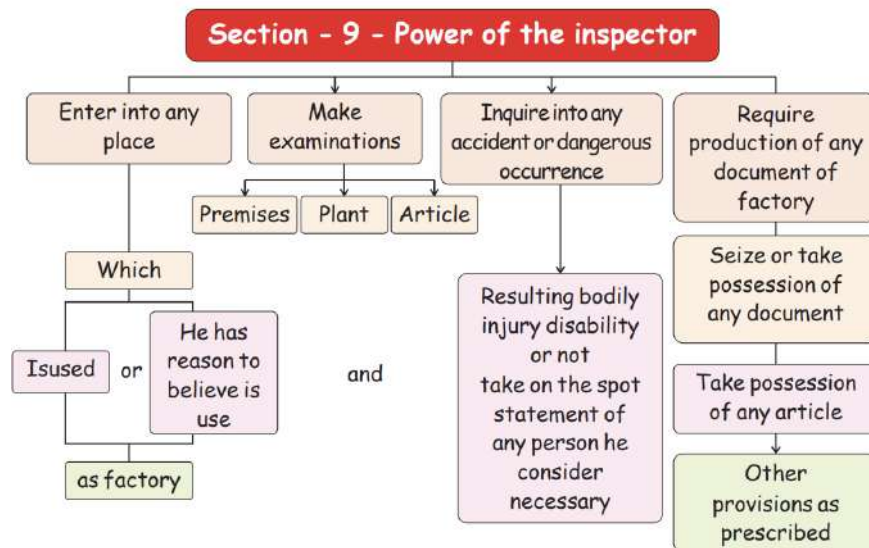
In a chemical manufacturing plant, Dr. Patel, the certifying surgeon, regularly examines workers who handle corrosive chemicals. He monitors their health and ensures they are not experiencing any adverse effects from their work.

In a metal fabrication factory, where workers are exposed to welding fumes, Dr. Khan, the certifying surgeon, conducts regular health checks on all employees. If any worker shows symptoms of respiratory illness, Dr. Khan investigates whether it is related to their work environment and advises necessary measures to prevent further health issues.

Question8:

Discuss the different powers that can be exercised by an inspector under the Factories Act. [7 Marks – Dec 21] [9 Marks – Dec 22]

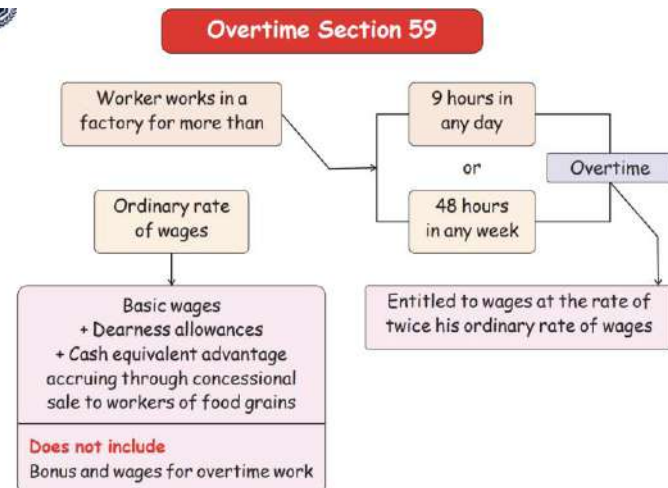
Answer:



Question 9:

Overtime [Dec 18 – 5 Marks]

Answer:



Formula

$$\frac{\text{Basic} + \text{DA} + \text{Advantage}}{\text{Total no of 26/30 days}} \times \frac{1}{\text{Working 8 hours}}$$

Amount X 2 then whatever amount come X overtime hours

Example

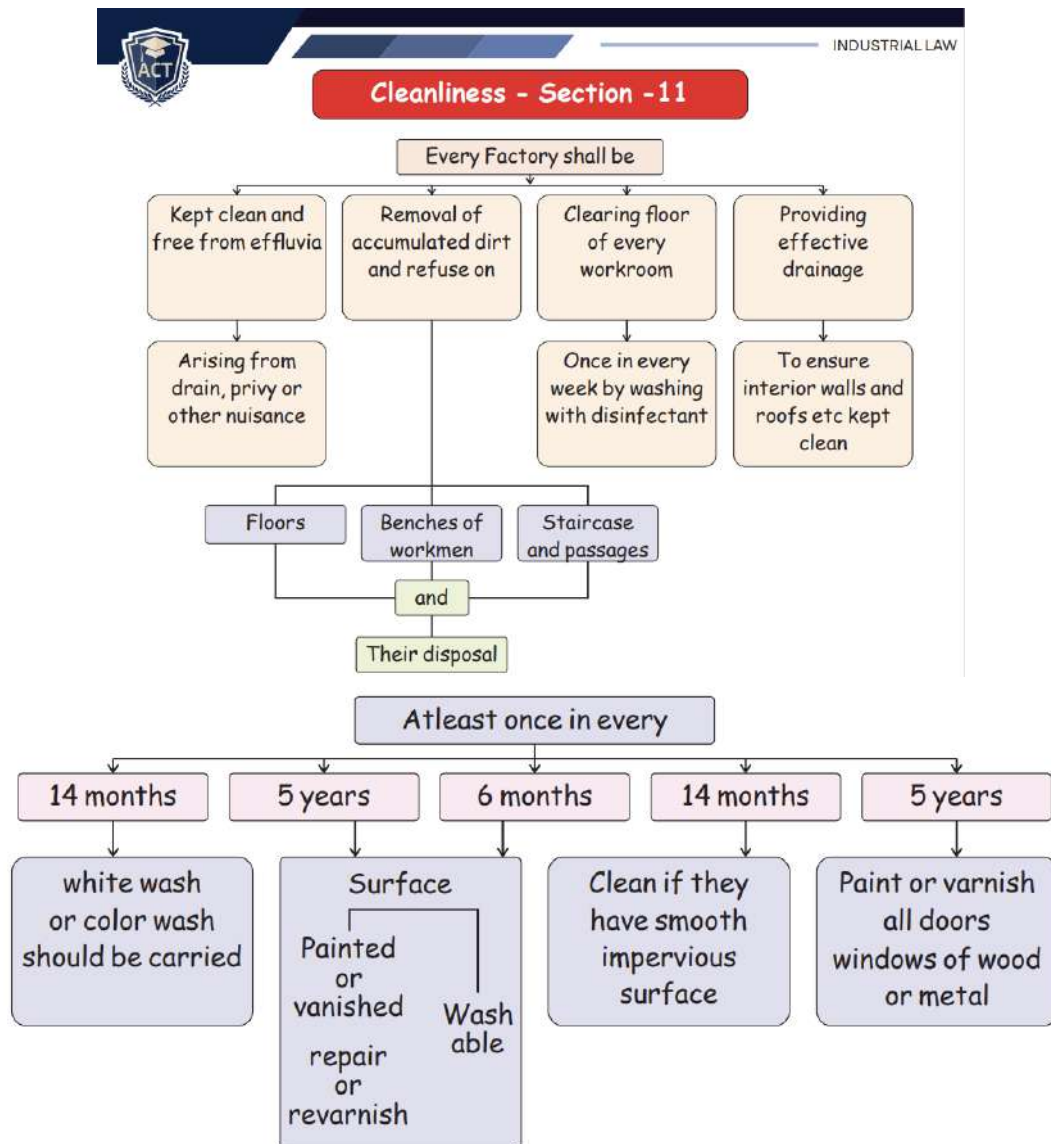
$$\frac{7000 + 1000 + 500}{30} \times \frac{1}{8}$$

= 35/per hour x2
= 70.84
= 70.84 x OT hours say 3
= 212.52

Question 10:

Cleanliness of factory [Dec 17 – 5 Marks] [MTP June 23 – 5 Marks]

Answer:

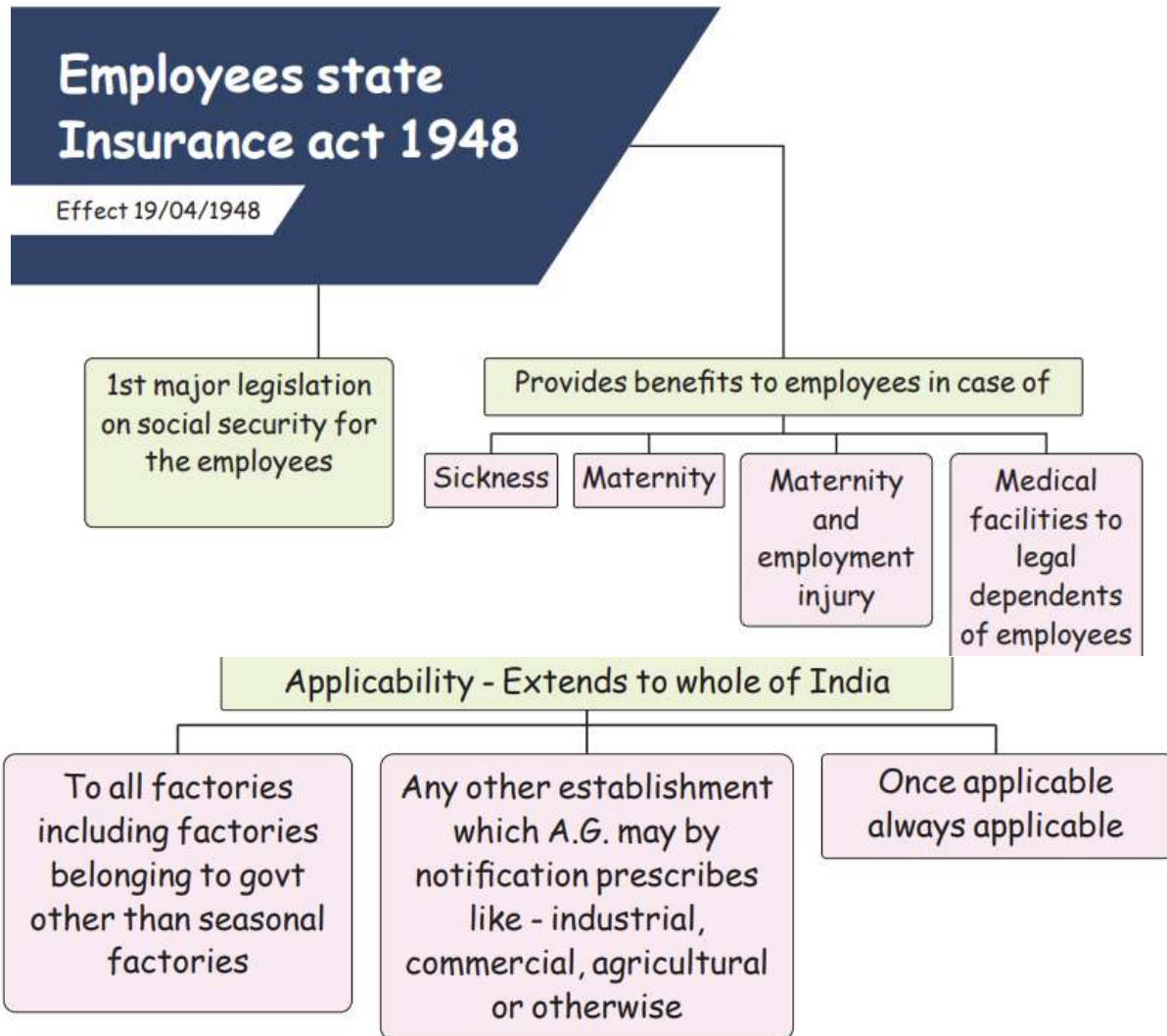


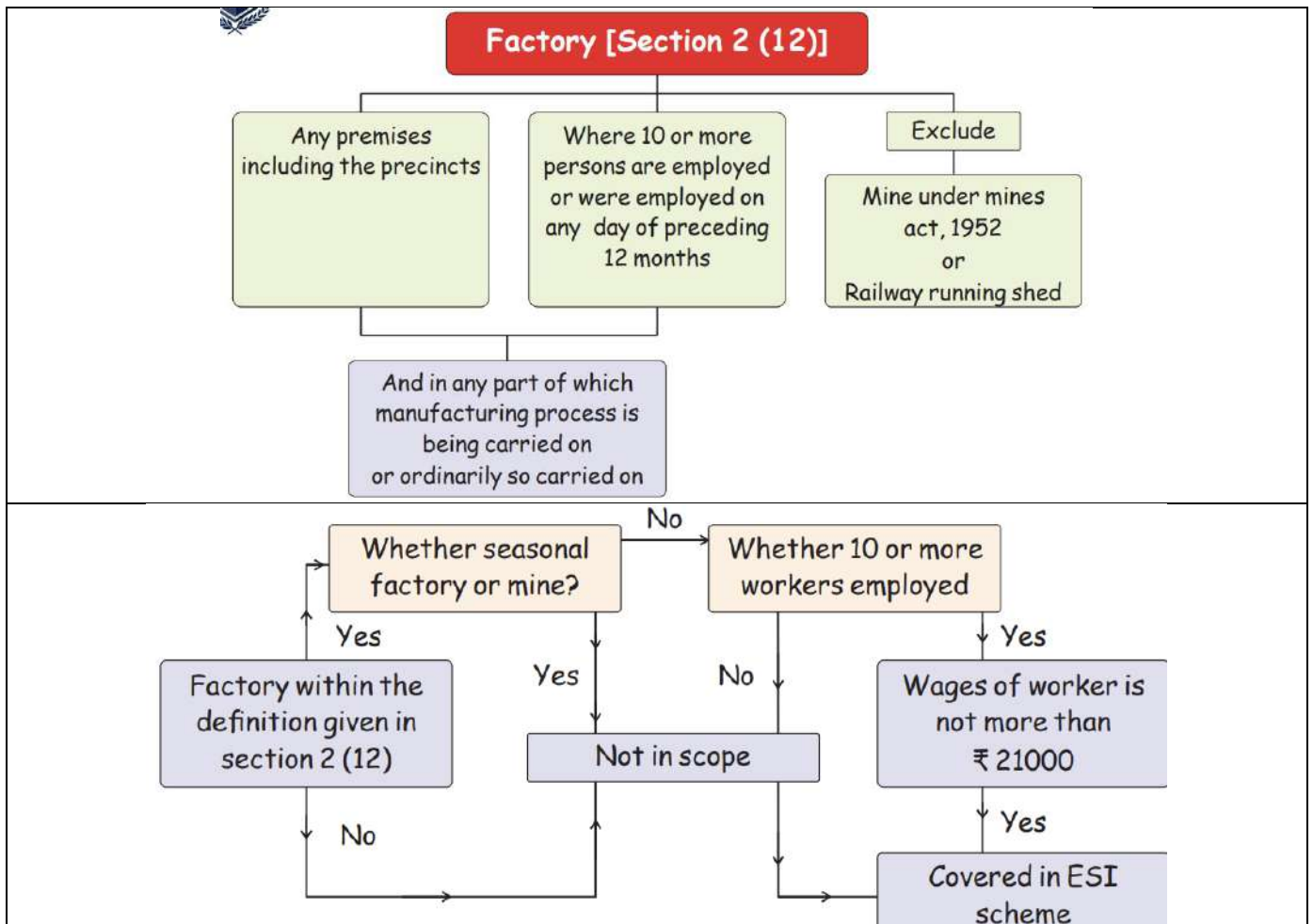
Employees State Insurance Act 1948

Question 1:

With reference to the Employees State Insurance Act in India examine what type of organisations are covered under provisions of this Act. [7 Marks MQP Set 1]

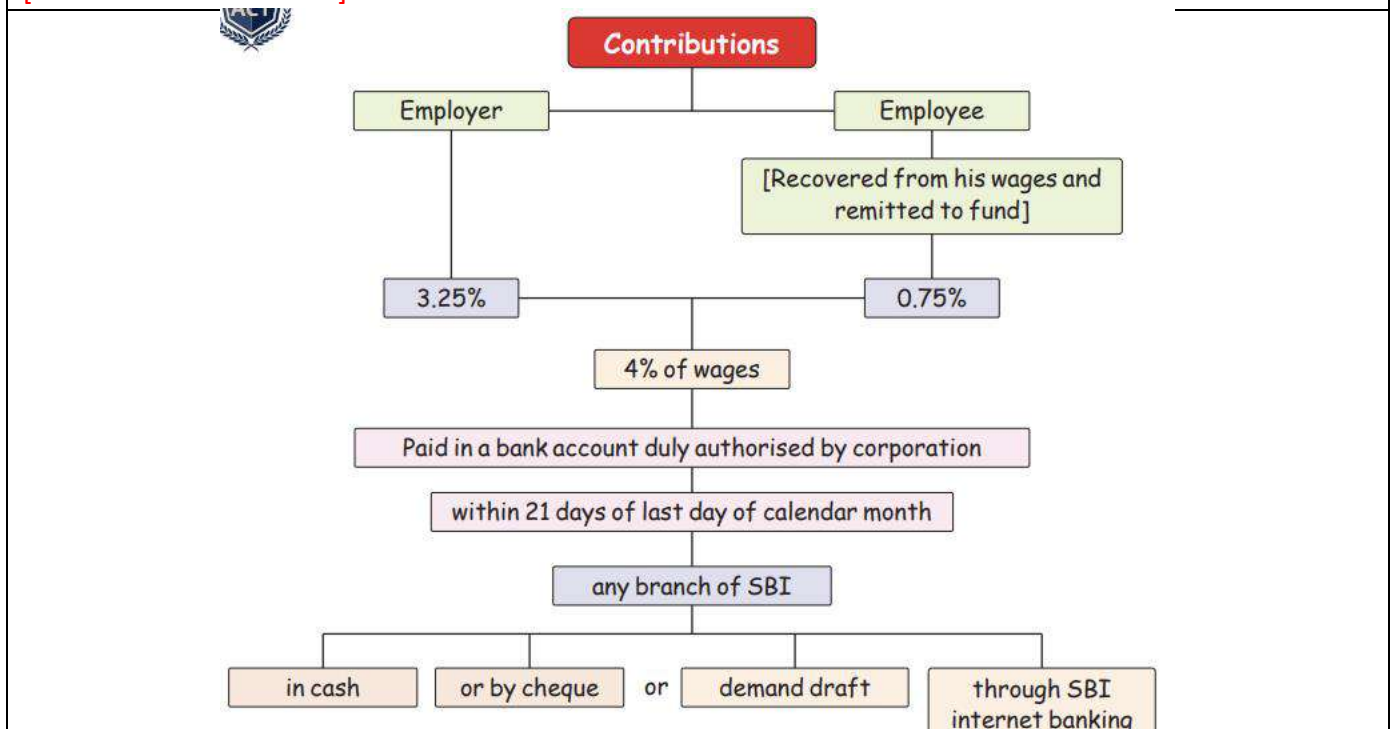
Answer:





Question 2:

Describe contributions payable under the ESI Act, 1948. Discuss the methods of recovery of contribution.
[7 Marks – MTP June 20]

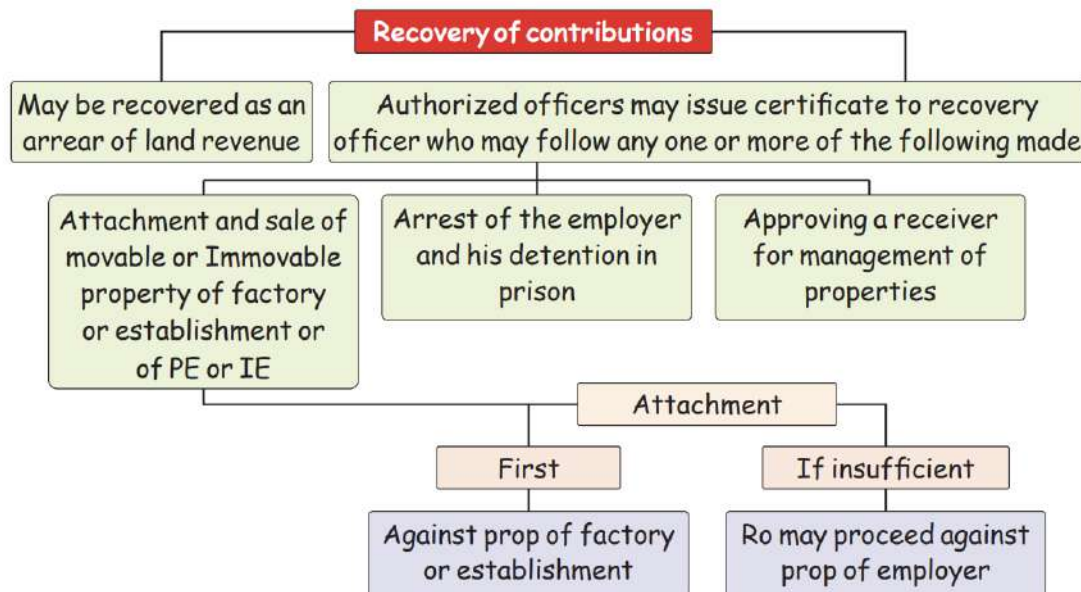


Answer:

The contribution payable under this Act is of two types - one is the contribution of the employer and the other is the contribution of the employee which is recovered from his wages and remitted to the Fund. The present rate contribution is 3.25% and 0.75% of workers' wages by employers and employees respectively.

The contribution shall be paid in a bank duly authorized corporation within 21 days of the last day of the calendar month in which the contribution falls due for any wage period.

The employer is required to file monthly contributions online through ESIC portal on a monthly basis in respect of all its employees after duly registering them. Through this, the employer has to file employee wise number of days for which wages paid and the amount of the wages paid respectively to ascertain the amount of contributions payable. The total amount of contribution, both by the employer and the employee, for each month is to be deposited in any branch of SBI in cash or by cheque or demand draft on generation of such a challan through ESIC portal using credentials. The contributions can also be paid through SBI internet banking.

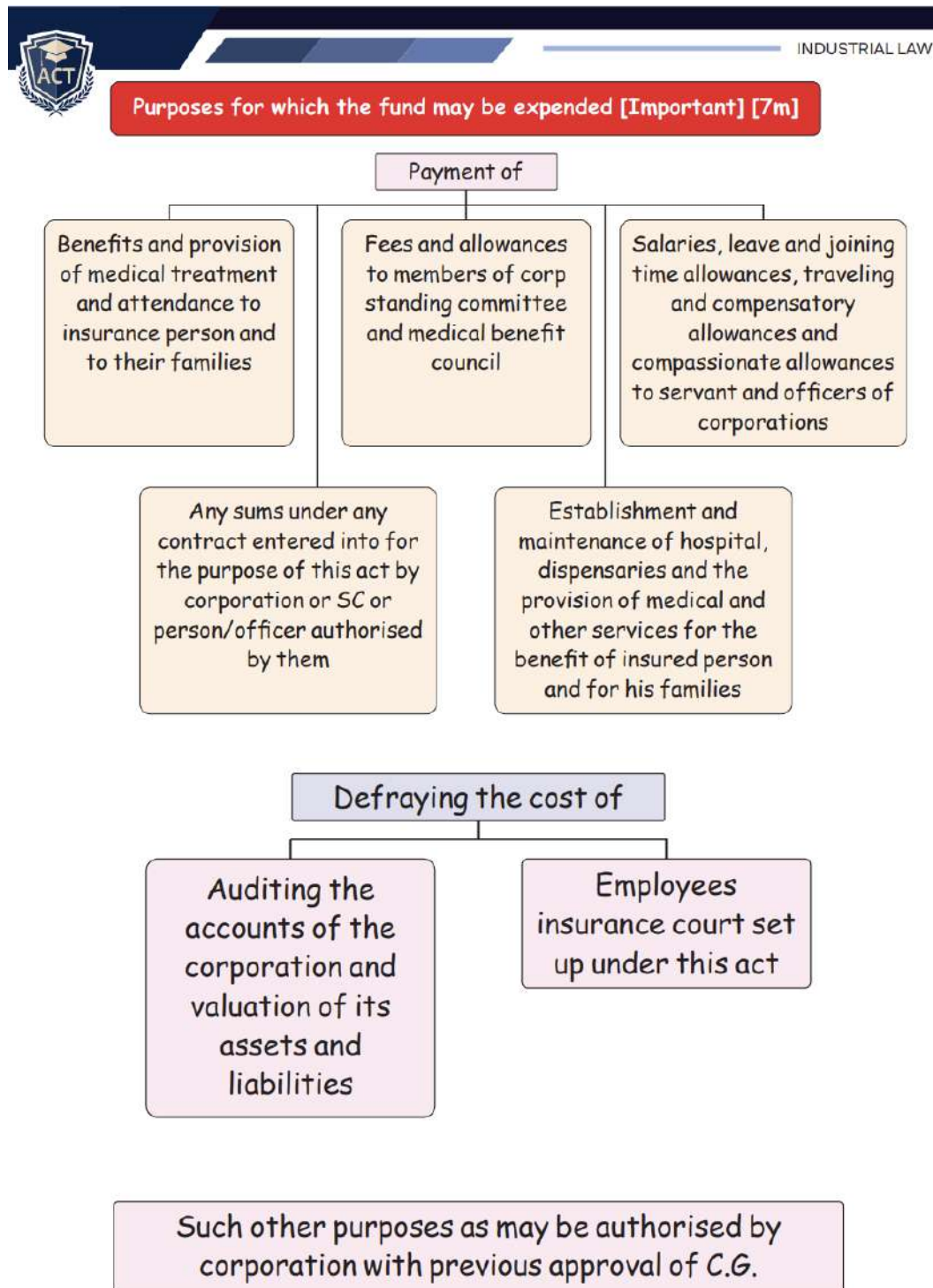


Question 3:

Mention any seven purposes for which the ESI fund may be expended. [7 Marks – Dec 19] [MTP June 23 – 5 Marks]

What is employees' state insurance fund and for what purposes the fund may be expended? [8 Marks Dec 23 Syllabus 16 – MTP]

Answer:



Examples:

Mr. Kumar, an insured person covered under the Employees' State Insurance Scheme, undergoes surgery for a work-related injury. The medical expenses are paid for from the State Insurance Fund, ensuring he receives necessary treatment without financial burden.

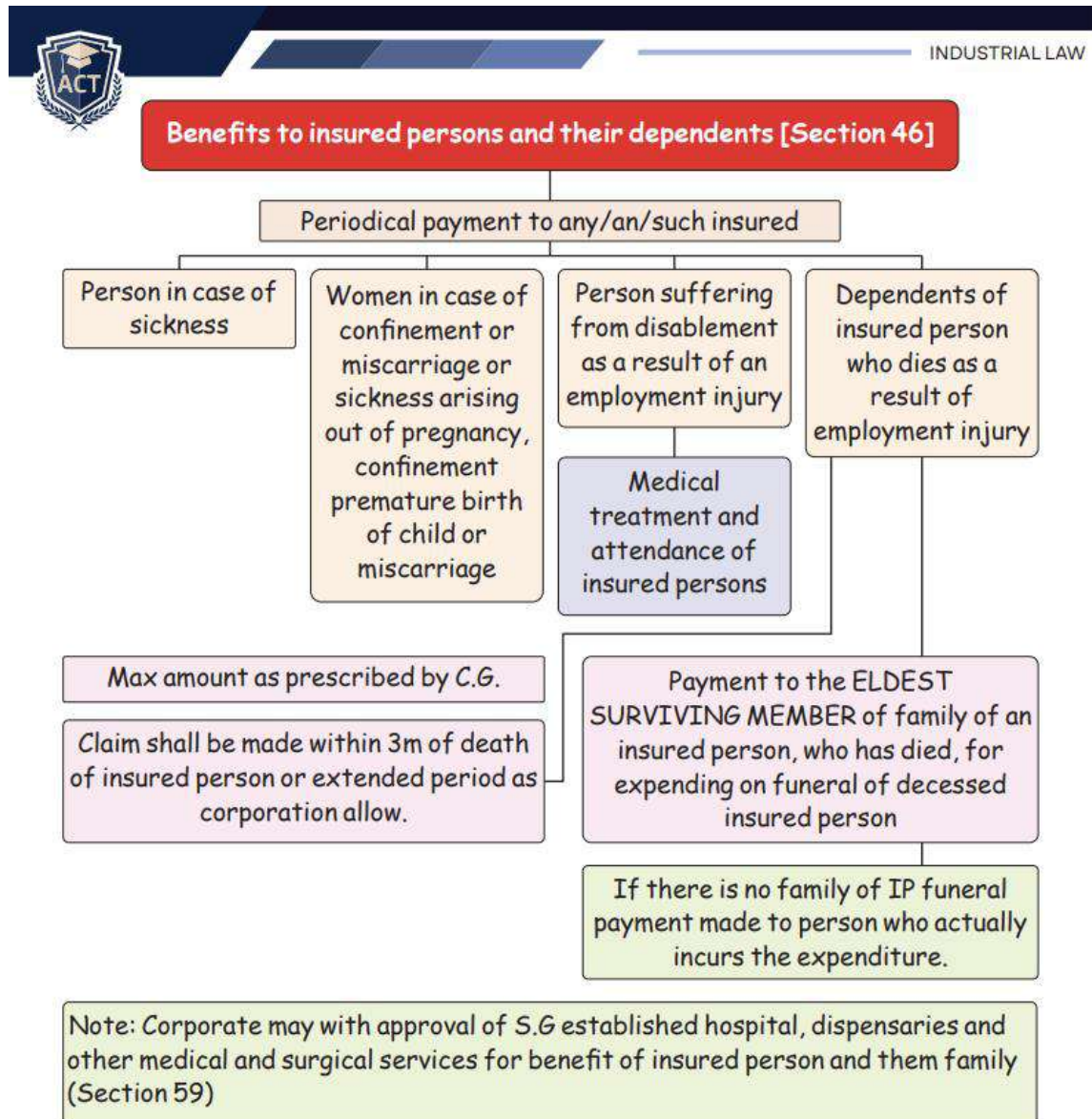
Members of the Medical Benefit Council receive allowances for attending meetings and providing recommendations on healthcare services under the scheme.

The ESIC reimburses a state government for the medical expenses incurred in treating insured persons in government hospitals.

Question4:

Mention the benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948. [6 Marks – Dec 18] [5 Marks – June 23 – Syllabus 22]

Answer:



Question5:

Write short notes on Dependent [5 Marks - Dec 19]

Answer:

Section 2(6A) defines the term 'dependant' as any of the following of a deceased insured person:

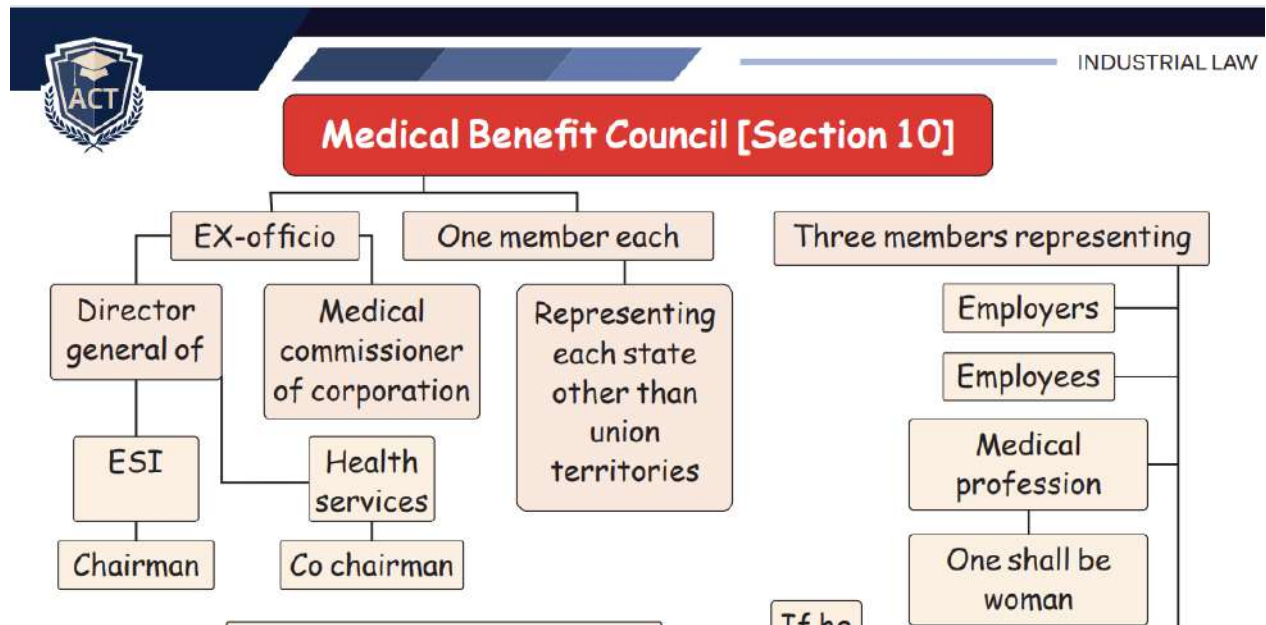
- a widow, a legitimate or adopted son who has not attained the age of 25 years, an unmarried legitimate or adopted daughter;
- a widowed mother;
- if wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of 25 years and is infirm;
- if wholly or in part dependant on the earnings of the insured person at the time of his death -
 - a parent other a widowed mother;
 - a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor;
- a minor brother or an unmarried sister or a widowed sister if a minor;

- a widowed daughter-in-law;
- a minor child of a pre-deceased son;
- a minor child of a pre-deceased daughter where no parent of the child is alive; or
- a paternal grand-parent if no parent of the insured person is alive.

Question 6:

Explain the composition of medical benefit council, under Employees State Insurance Act, 1948. [RTP Dec 18]

Answer:



Question 7:

Inspect whether an employee can be dismissed or punished during sickness under "Employees State Insurance Act, 1948"? [7 Marks – MQP Syllabus 22 – Set 2] [MQP June 23 Set 2]

Answer:

Employer cannot reduce wages of employees by reason only of his liability for any contributions payable under this act [Section 72]

Employee shall not dismiss, discharge or reduce or otherwise punish an employee during the period he is in receipt of

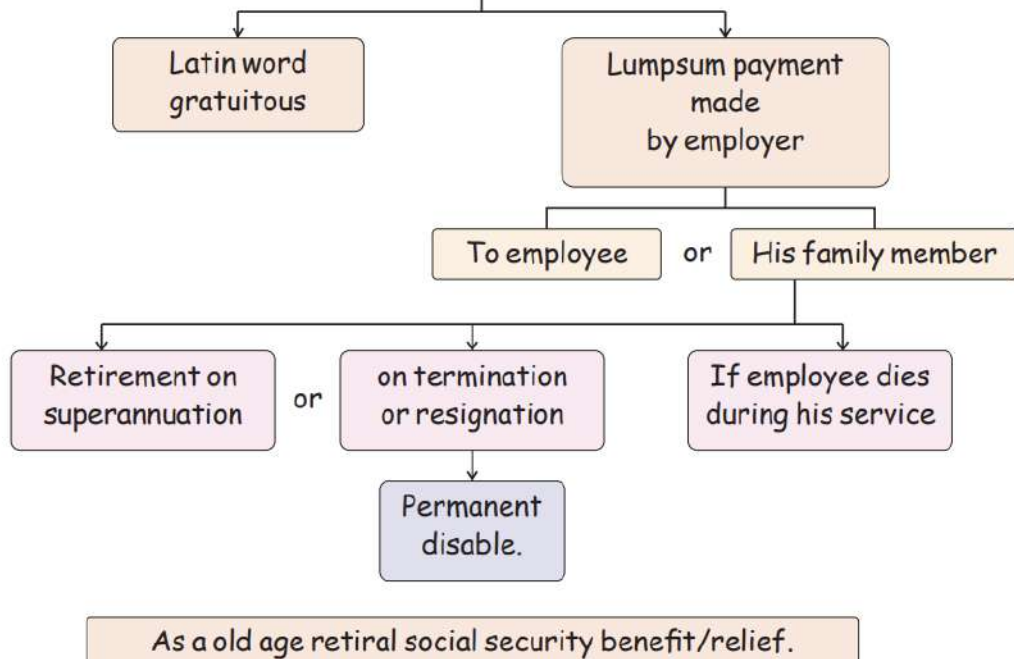
Sickness benefits or maternity benefit

Disablement benefit for temporary disablement or is under medical treatment for sickness or absent from work for illness

Payment of Gratuity Act, 1972

Payment of Gratuity Act, 1972

Effect 16th Sep 1972 | Extend-whole of India



Applicability

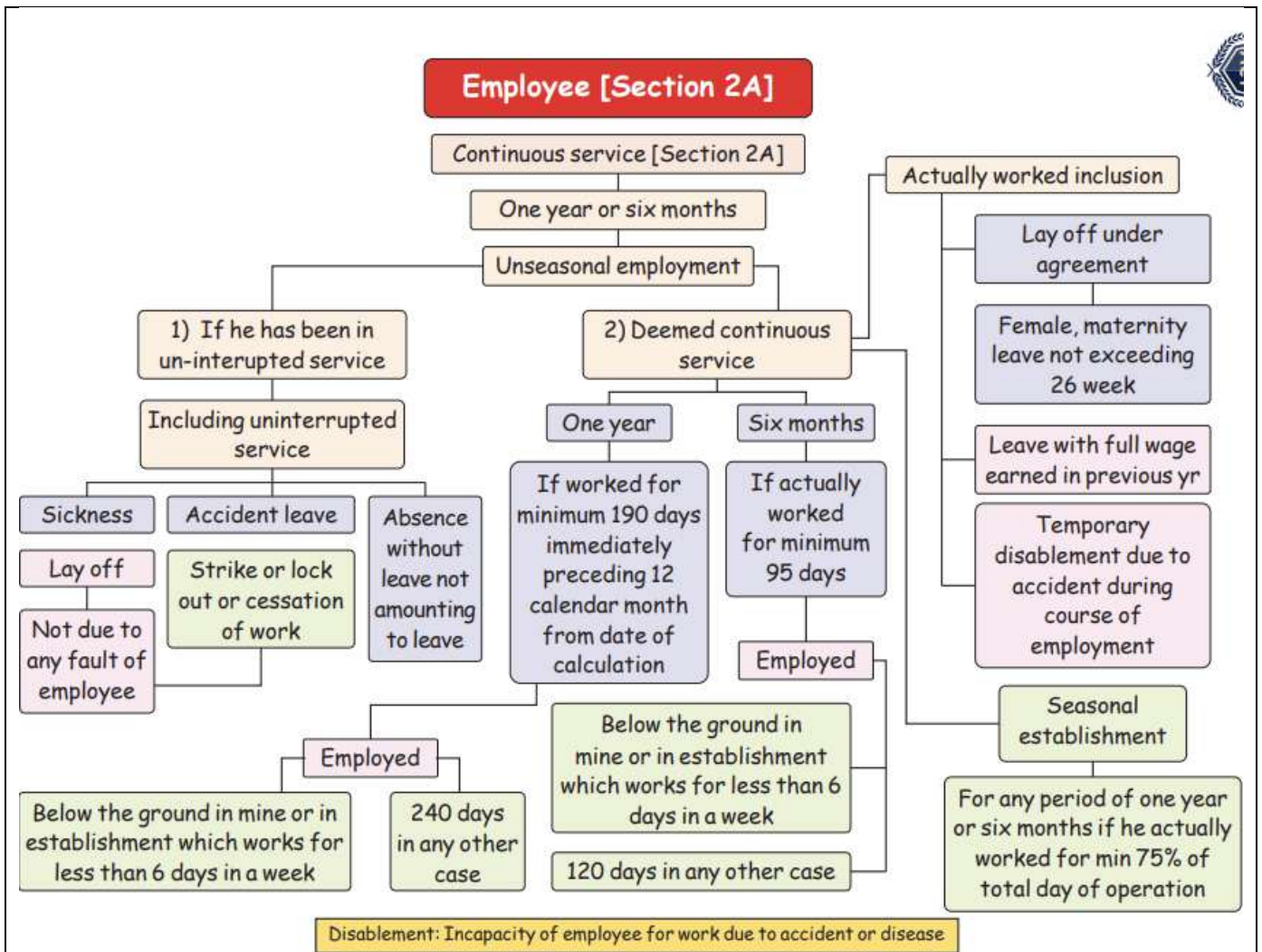
Every

- Factory
- Mine
- Oil field
- Plantation
- Railway company

Shop or other establishment

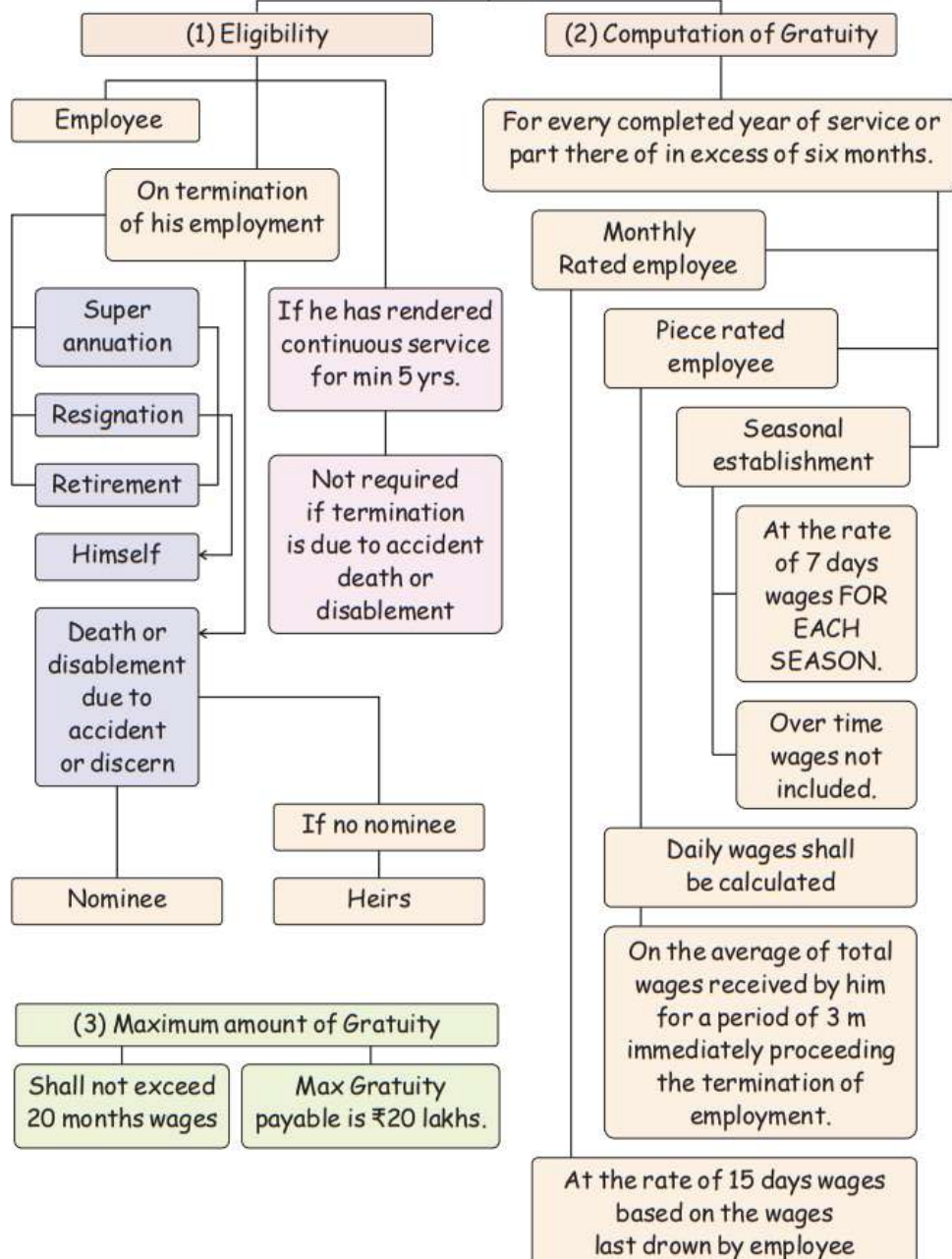
10 or more persons are
or were employed

On any day of preceding
12 months





Payment of gratuity [Section 4]





Practical example

Monthly rated employee

Formula:

$$\text{Basic salary} + \text{DA} \times \text{No of completed years} \times \frac{15}{26}$$

Suppose A's last drawn salary = 60000 pm
Worked with xyz ltd = 20 days and 7m

$$60000 \times \frac{21}{26} \times \frac{15}{26} = 7,26,923$$

Piece rated employee

Suppose A worked as piece rated employee for 10 yrs 7 months in xyz establishment

$$\text{Last 3m salary} \frac{41000 \times 35000 \times 21000}{3} = 32,333$$

$$\text{Calculation} \quad 32333 \times 11 \times \frac{15}{26} = 2,05,190$$

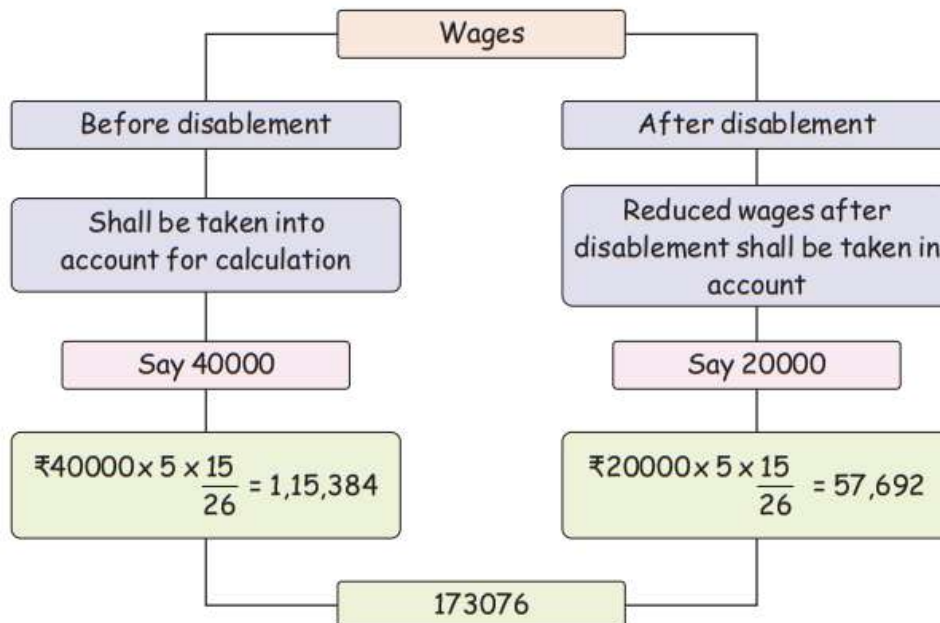
Seasonal employee

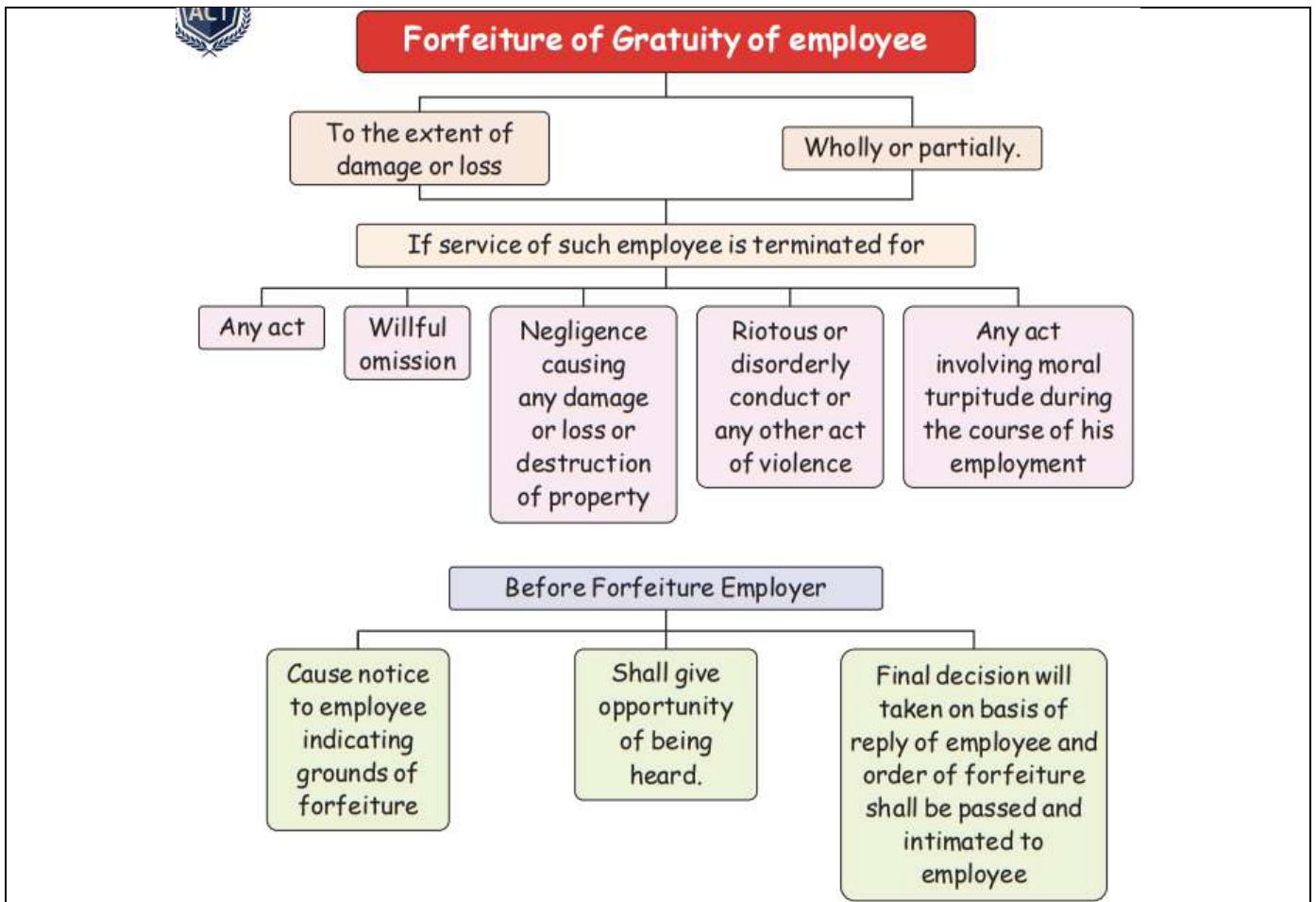
Suppose A worked as seasonal employee from 2005-2015, working one season each year with pay of 10000 + 6000 DA

$$16000 \times 11 \times \frac{7}{26} = 47384.6$$

If worked for two season each year??

Calculation of Gratuity Payable to employee who is employed after his disablement on reduced wages.





Question 1:

M/s TNT Pvt. Ltd. incorporated on 2nd Mach, 2009 carrying on business from the date of incorporation employing 70 persons. It is one of the renowned companies in the country.

There had been certain turn of events recently and the company has started to face challenges since mid of the year of 2020 due to COVID-19 pandemic. Like most parts of the world this company was also badly hit by this pandemic. A larger number of companies in India were affected directly or indirectly by this pandemic and complete lockdown. Due to this pandemic and losses, the number of employees reduced to 7 w.e.f. 15-07-2020 by M/s. TNT Pvt. Ltd. Mr. Jain who retired on 30-12-2020 was refused gratuity on the ground that the total number of employees is below 10. Another senior employee of the company Mr. T.K. Singhania who retired on 31-12-2020. Mr. Singhania, continued to occupy the quarter of the company for eight months after superannuation and as a result the company decided to forfeit the amount of gratuity of Mr. Singhania. Mr. Arun Bharat an employee of the company who was frustrated with his work and willfully causing damage of a machine. M/s TNT Pvt Ltd. had to spend Rs. 95000 to get the machine in working condition and due to this damages M/s TNT Pvt. Ltd. withhold the gratuity of Mr. Arun Bharat. On the other hand one employee Mr. Jain retired on 30-11-20 was refused gratuity on the ground that the total number of employees is below ten. M/s TNT Pvt. Ltd. has a separate factory which is a seasonal establishment.

Mr. Barun Bharat brother of Mr. Arun Bharat is employed in this factory. The factory was in operation for

four months only during the financial year: 2020-21 due to Covid-19 pandemic. Mr. Barun Bharat was not in continuous service during this period and he has worked only 60 days.

(i) Examine the validity of decision taken by M/s TNT Pvt. Ltd. to forfeit the amount of gratuity of Mr. Singhanian in the light of the Payment of Gratuity Act, 1972. (4 Marks)

(ii) Examine the validity of decision taken by M/s TNT Pvt. Ltd. to withhold the amount of gratuity of Mr. Arun Bharat in the light of the Payment of Gratuity Act, 1972. (2 Marks)

(iii) From the above decide whether Mr. Barun Bharat is entitled to claim gratuity under the provisions of the Payment of Gratuity Act, 1972. (4 Marks)

(iv) Examine the validity of decision taken by M/s TNT Pvt. Ltd. for Mr. Jain to refuse to pay the gratuity since the number of employees reduced to seven w.e.f. 15-07-20 under the provisions of the Payment of Gratuity Act, 1972. (2 Marks) [Dec 21]

OR

Mr. Gill, an employee of M/s Sonabheel Tea Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Mr. Gill. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. [5 Marks – Dec 18] [5 Marks – June 23 – Syllabus 22]

Answer:

(i) The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused. The gratuity payable to an employee may be wholly or partially forfeited:

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground for forfeiture of entire gratuity. In such case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Mr. Singhanian is entitled to receive the balance amount of gratuity.

The Employer cannot withhold or forfeit gratuity of Mr. Arun Bharat since his services were not terminated for the damages caused by the worker as per Payment of Gratuity Act, 1972.

For entitlement of gratuity one must work for at least 75% of the days on which the establishment was open and in operation. The factory was in operation for 120 days. One must work for 75% of 120 i.e. 90 days to claim gratuity. Mr. Barun Bharat is not entitled to gratuity, since he has actually worked for less than 75% of the number of days on which the establishment was in operation during such period.

Payment of Gratuity Act provides that a shop or establishment to which this Act has become applicable

shall continue to be governed by this Act in spite of persons employed therein at any time it has become so applicable falls below ten. Hence TNT Pvt. Ltd. cannot refuse payment of gratuity to Mr.Jain.

Question2:

Deepak is employed in Assam Coffee Estate Ltd., a seasonal establishment. The factory was in operation for four months only during the financial year 2018-19. Deepak was not in continuous service during this period. However, he has worked only 60 days. Referring to the provisions of The Payment of Gratuity Act, 1972, decide whether Deepak is entitled to gratuity payable under the Act. Would your answer be the same in case Deepak works for 100 days? [5 Marks – June 19]

Answer:

For entitlement of gratuity one must work for at least 75% of the days on which the establishment was open and in operation. The factory was in operation for 120 days.

One must work for 75% of 120 i.e. 90 days to claim gratuity. Deepak is not entitled to gratuity, since he has actually worked for less than 75% of the number of days on which the establishment was in operation during such period.

If Deepak had worked for 100 days, then he would have been entitled to gratuity since the number of days on which he would have worked, in that case, would have been 75% or more of the number of days on which the establishment was in operation.

Question3:

A is employed in XYZ Ltd., which is a seasonal establishment. The factory was in operation for five months during the financial year of 2016-17. A was not in continuous service during this period. However, he was worked for sixty days only. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether A is entitled to gratuity payable under the Act. Would your answer be the same in case A works for 100 days? [4 Marks – Dec 17]

Answer:

As per the provision given under the section 2A of the Payment of Gratuity Act, 1972, where an employee is employed in an seasonal establishment and is not in continuous service for any period of one year or six months, there such an employee shall deemed to be in continuous service under the employer for such period if he has actually worked not less than seventy-five percent of the number of days on which the establishment was in operation during such period.

In the given problem, as per the above provisions of the Act, A has worked has worked only for 60 days which is less than 75% of the number of days on which the establishment was in operation during such period, i.e. 150 days. Therefore A shall not be eligible for getting any gratuity in the first case.

In the second case also A would not eligible for gratuity for the same reasons, though he had worked for 100 days.

Question 4:

Mr. Green, an employee of Yellow Ltd. becomes disabled due to a disease and is unable to do the same work. He was then re-employed on the reduced wage. How the gratuity of Mr. Green shall be, computed under the provisions of the Payment of Gratuity Act, 1972? [RTP Dec 18]

Answer:

Computation of Gratuity of a disabled employee: According to Section 4(4) of the Payment of Gratuity Act, 1972, when an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in two parts:-

- For the period preceding the disablement: on the basis of wages last drawn by the employee at the time of his disablement.
- For the period subsequent to the disablement: On the basis of the reduced wages as drawn by him at the time of the termination of services.

In the case of Bharat Commerce and Industries Vs. Ram Prasad, it was decided that if for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are better than the Act, the employee is entitled for that benefit.

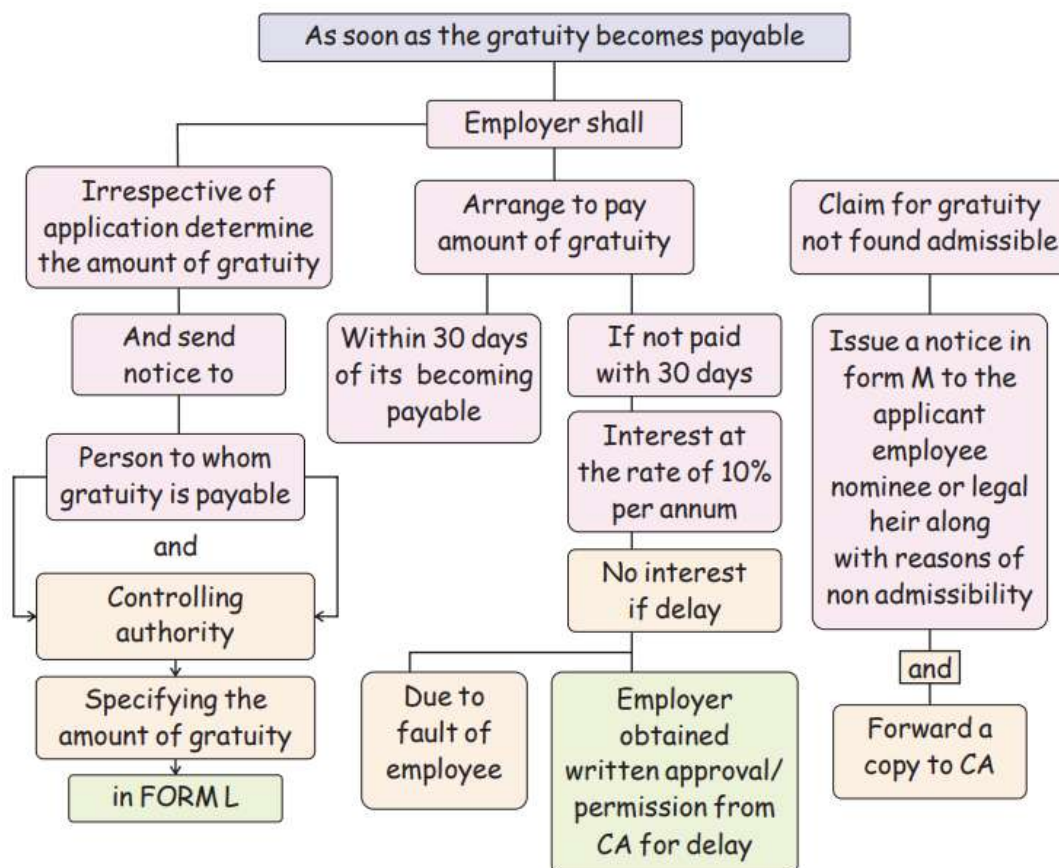
Question 5:

What is the procedure of determining the amount of gratuity as per the Payment of Gratuity Act, 1972? [Dec 22 – 5 Marks] [MQP June 23] [MQP Set 1 Syllabus 22]

Examine the provisions of the Payment of Gratuity Act related to determination of eligible employees and mode of payments with relevant examples. [5 Marks - MQP Set 1]

Answer:

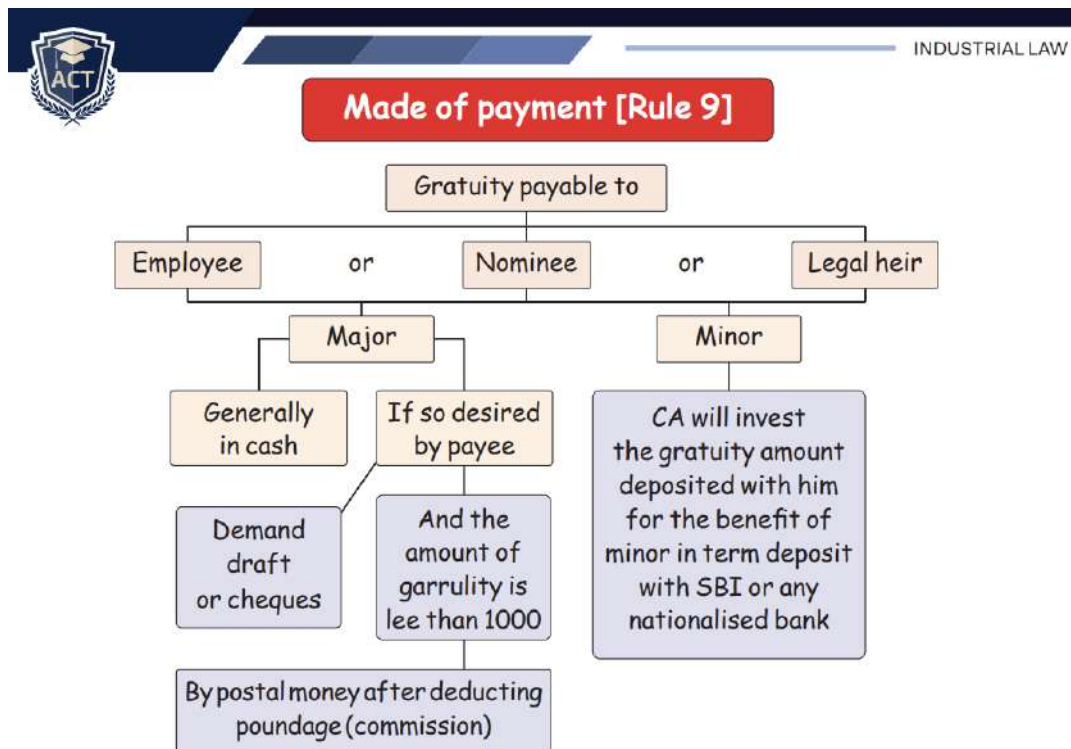
Determination of the amount of gratuity [Section 7]



Question 6:

Describe the mode of payment of gratuity. [MTP June 20 – 5 Marks]

Answer:



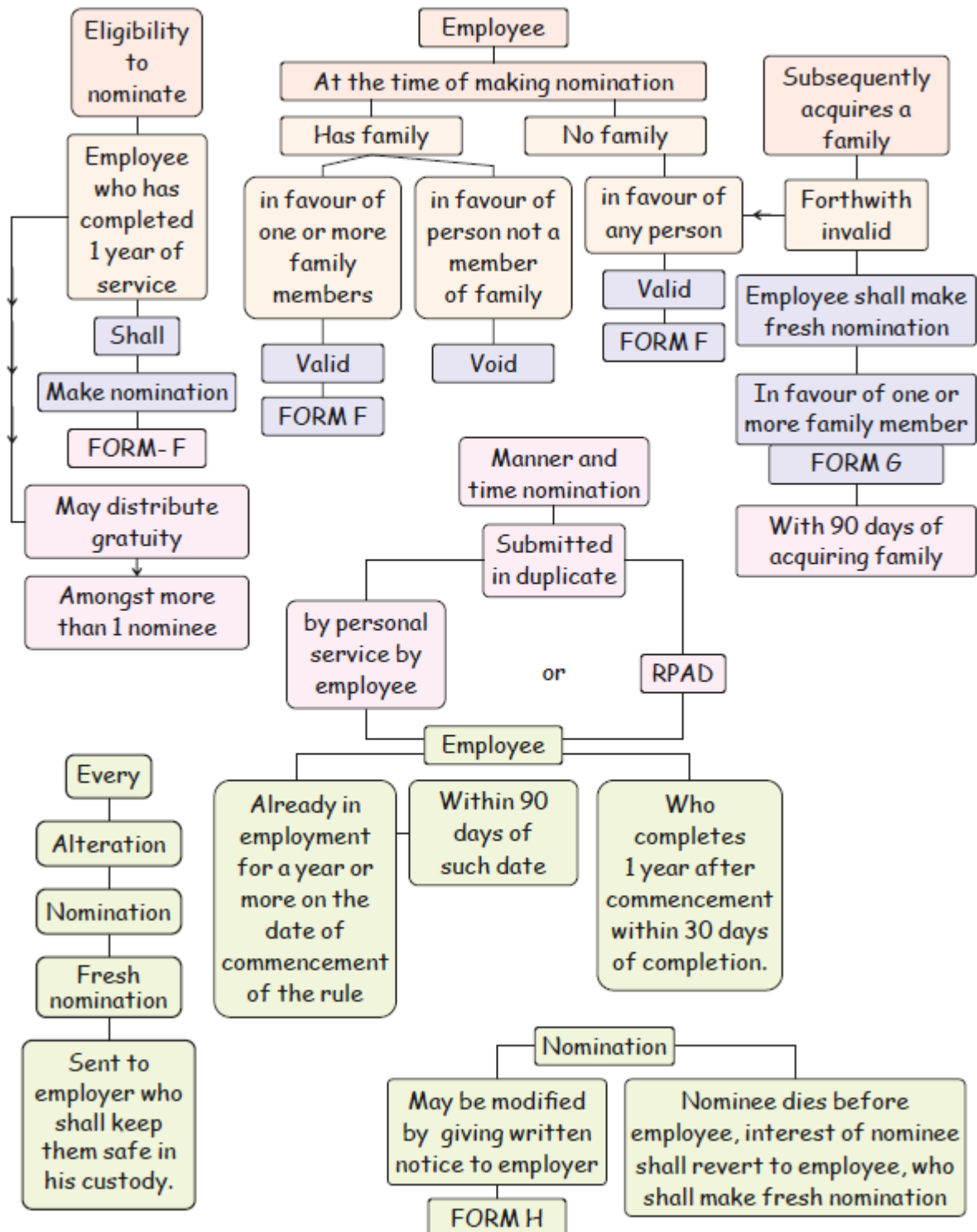
Question 7:

Analyze the different points to be noted for filing nomination for receiving the gratuity under the Payment of Gratuity Act, 1972.

Answer:



Nomination - Section 6





Within 30 days of Receipt of Form F, G, H.

Employer verify particulars with
record of the employee

And

Return to the employee
duplicate copy of nomination form
duly authorised by employer
or his authorised officer

Nomination, fresh nomination, modification

Shall take effect from date of receipt of employee

Question 8:

Prepare a list of the provisions relating to protection of gratuity as discussed in Payment of Gratuity Act, 1972. [5 Marks – MQP June 23 – Set 2]

Answer:

Section 13 provides that no gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Example: Suppose Mr. Sharma owes a significant amount of money to a creditor who files a lawsuit against him to recover the debt. The court cannot order the attachment of Mr. Sharma's gratuity payment to settle the debt, ensuring that he receives his rightful retirement benefits.

Section 13A provides that notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act 2009 receives the assent of the president, the gratuity shall be payable to an employee in pursuance of this notification of the Government of India in the Ministry of Labor and Employment vide SO 1080 dated the 3rd day of April 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the payment of gratuity (Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly.

Example: Suppose there was a notification issued by the Government of India on April 3, 1997, regarding the payment of gratuity. Even if there were any legal disputes or judgments related to gratuity payments during the period between April 3, 1997, and the enactment of the Payment of Gratuity (Amendment) Act, 2009, the gratuity payments as per the notification would still be valid and deemed to have been in force.

Question 9:

Analyze the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity under Gratuity Act 1972. [MTP June 24 – 7 Marks]

Answer:

Section 10 provides that where an employer is charged with an offence punishable under this Act,

- he shall be entitled, upon complaint duly made by him and
- on giving to the complainant not less than three clear days' notice in writing of his intention to do so,
- to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge;
- and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court-
 - that he has used due diligence to enforce the execution of this Act, and
 - that the said other person committed the offence in question without his knowledge, consent or connivance,
 - that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;

In seeking to prove as aforesaid,

- the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor.
- If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and
- if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

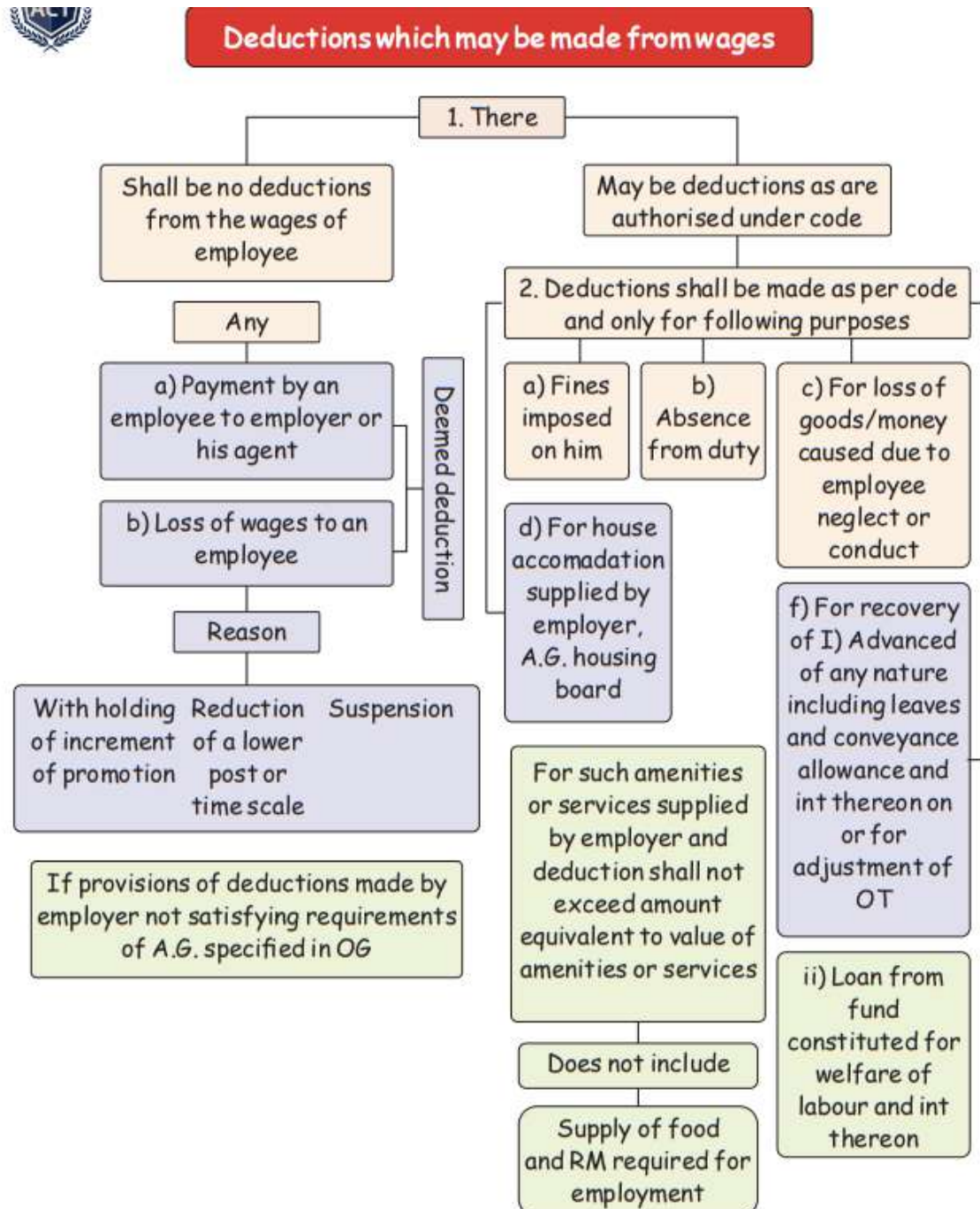
Payment of wages

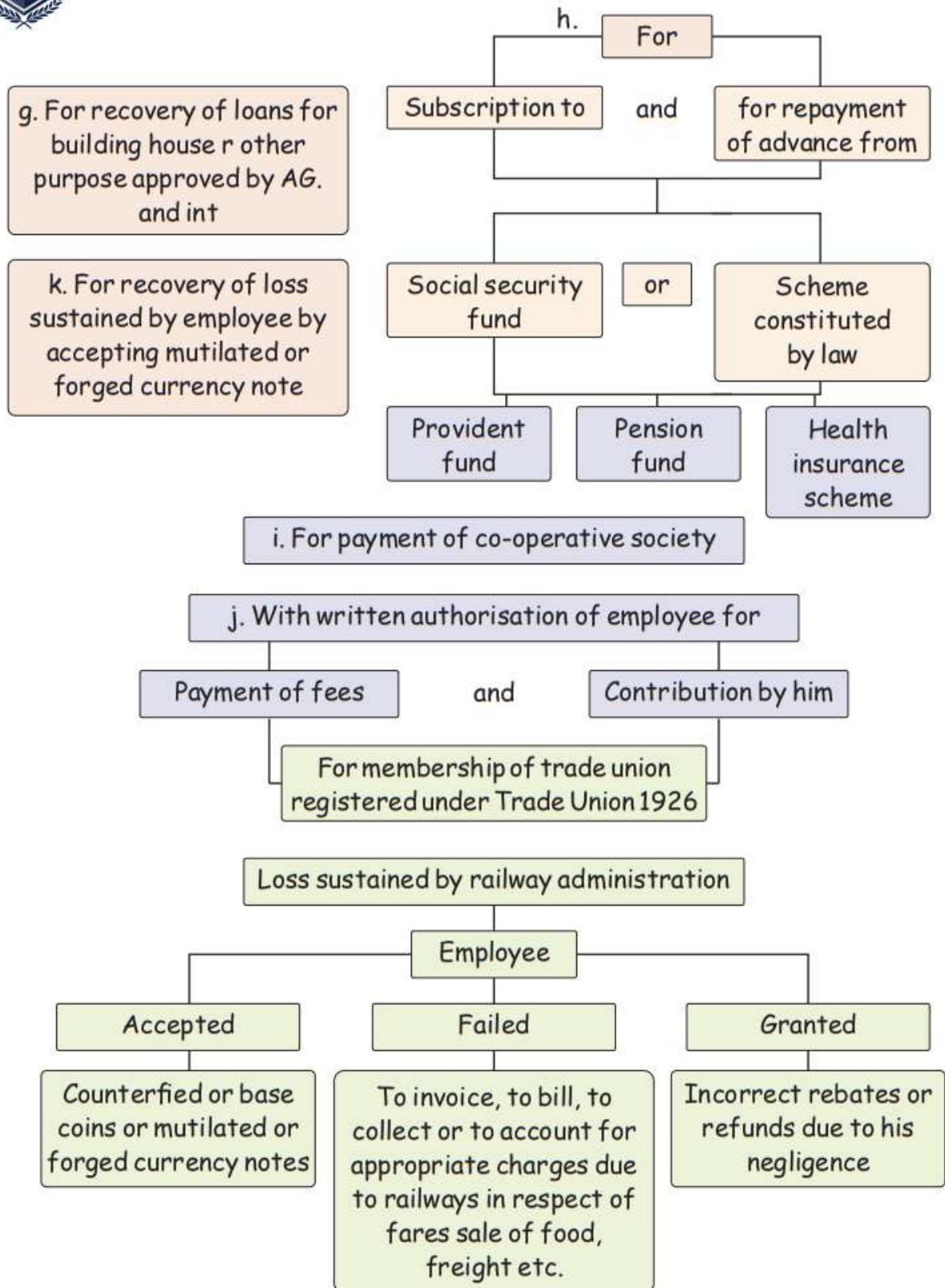
Question 1:

What are the different kinds of deduction that can be made from wages under the Payment of Wages Act, 1936? [10 Marks – MTP June 23 Syllabus 2016] [MTP Dec 23 Set 1 Syllabus 16]

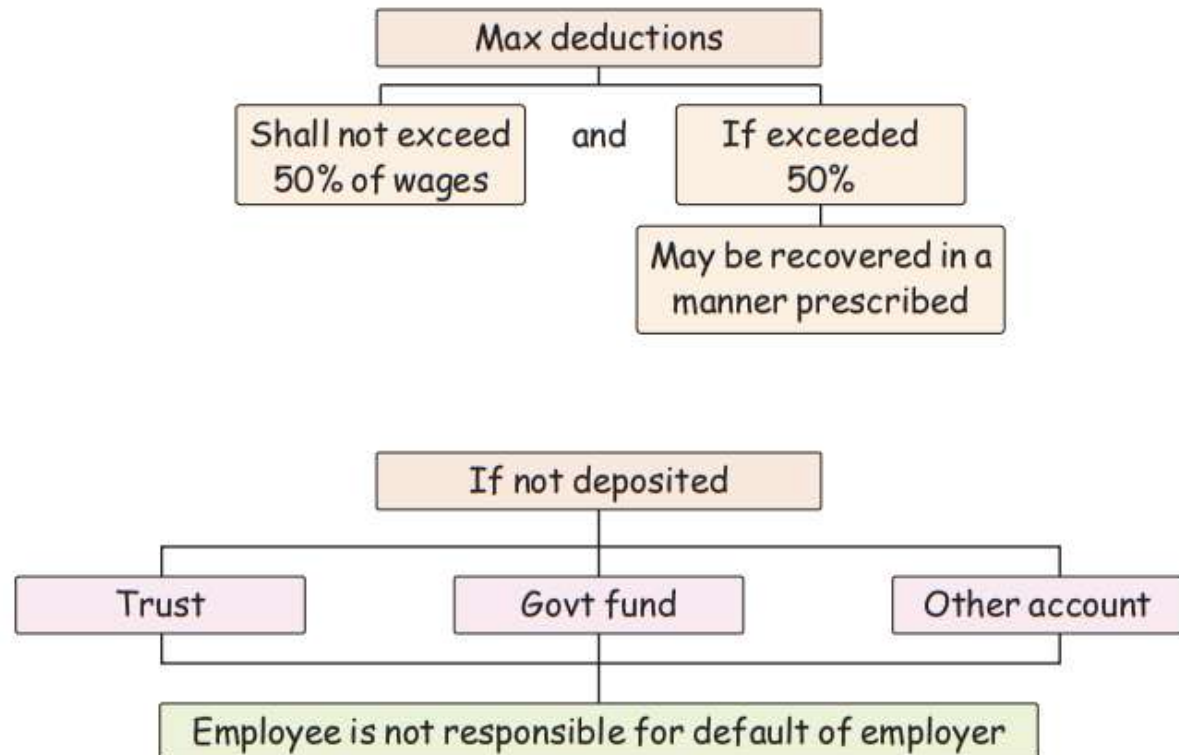
Demonstrate how deductions from wages are calculated in compliance with the provision of the Code of Wages, 2019. [8 Marks – June 23 – MQP Set 2]

Answer:





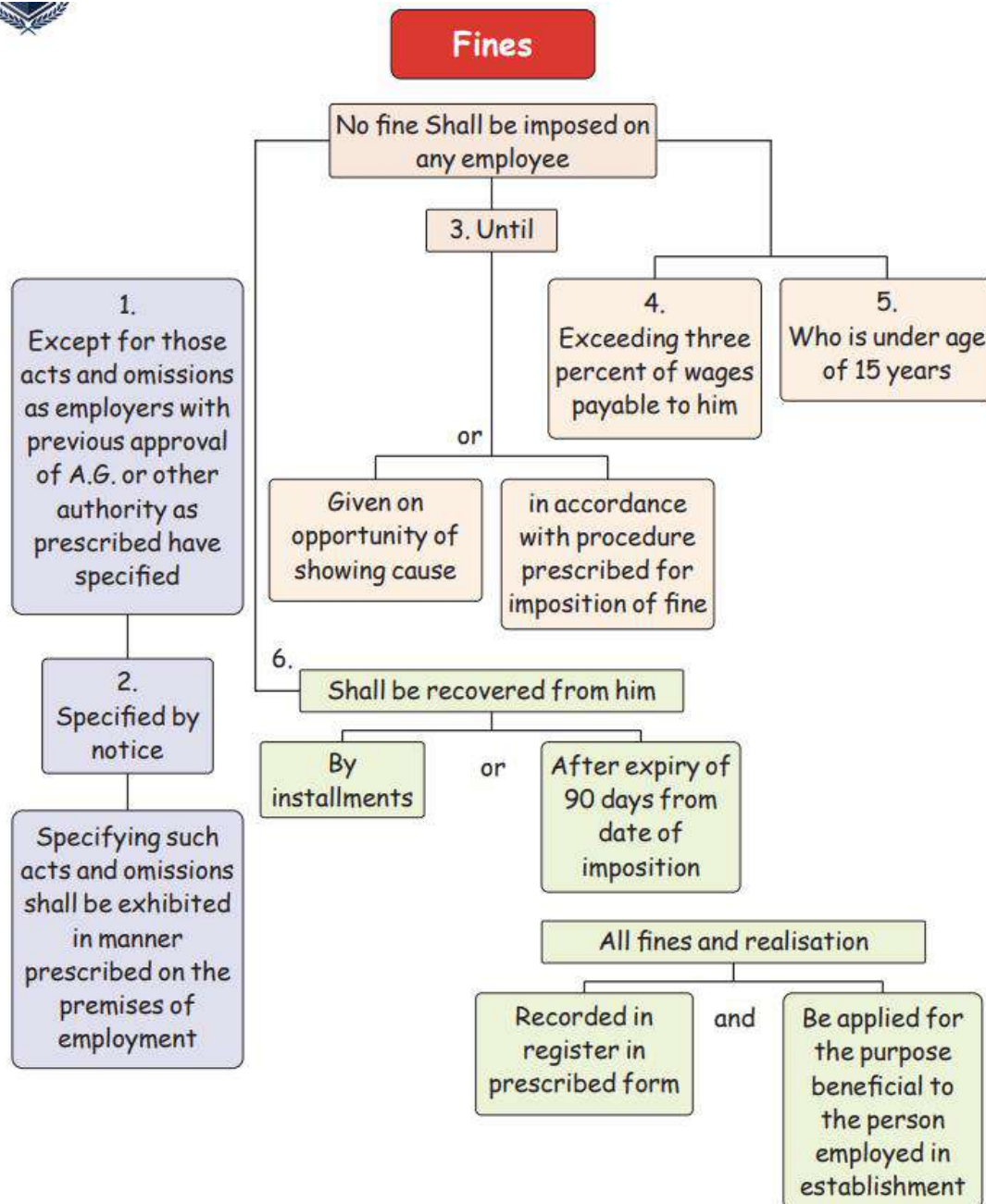
o) Made with written authority of employee for contribution to pm national relief fund or their fund as specified by C.G.



Question 2:

What is the procedure in imposition of fine on the employee under this Act? [8 Marks – MTP June 20] [8 Marks – June 23 – Syllabus 16]

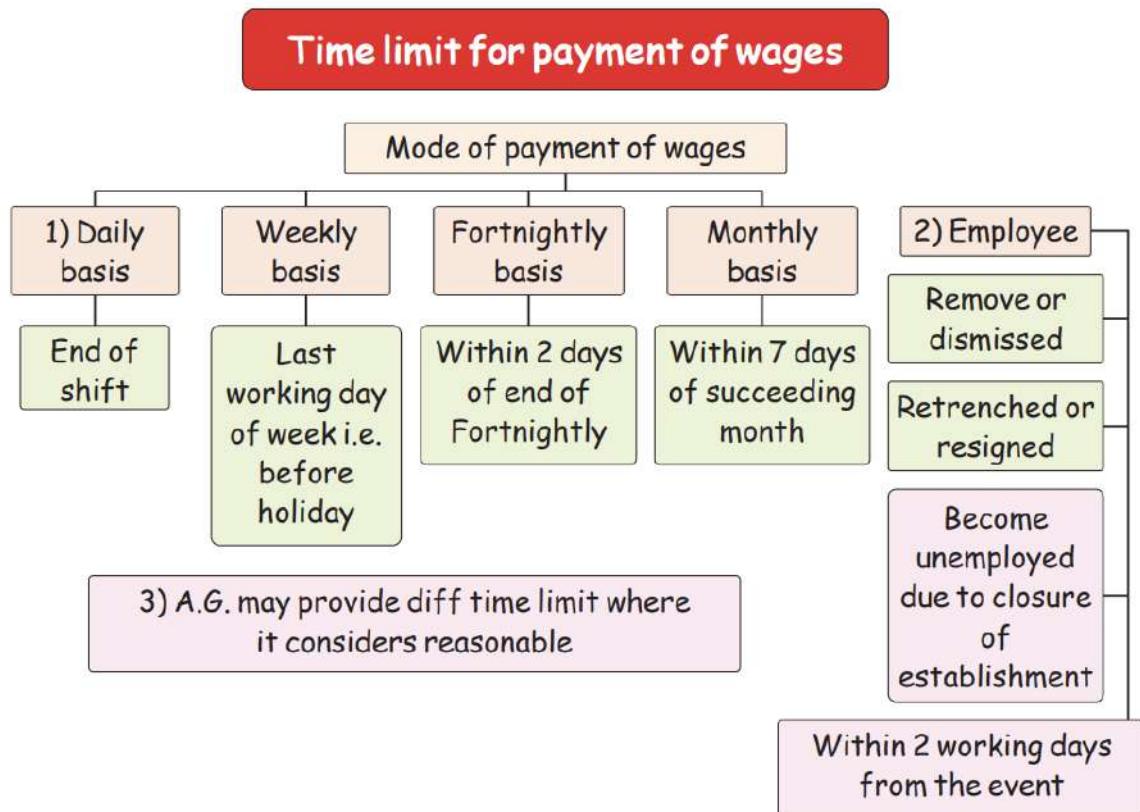
Answer:



Question 3:

Discuss the time limit for payment of wages under the Code on Wages, 2019? [7 Marks – MQP Set 1 Syllabus 22] [8 Marks – MQP Set 1]

Answer:



Minimum Wages

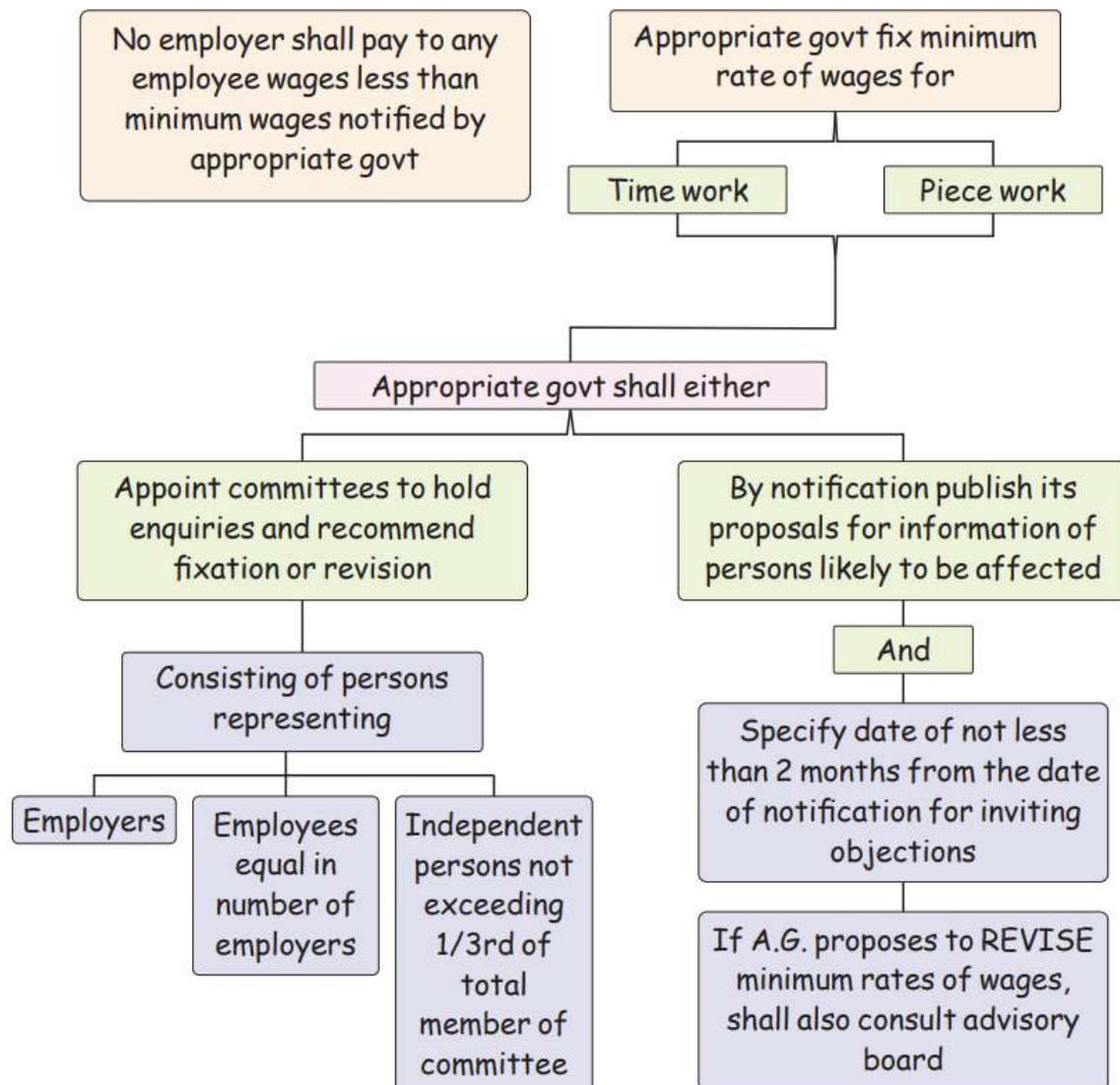
Question:

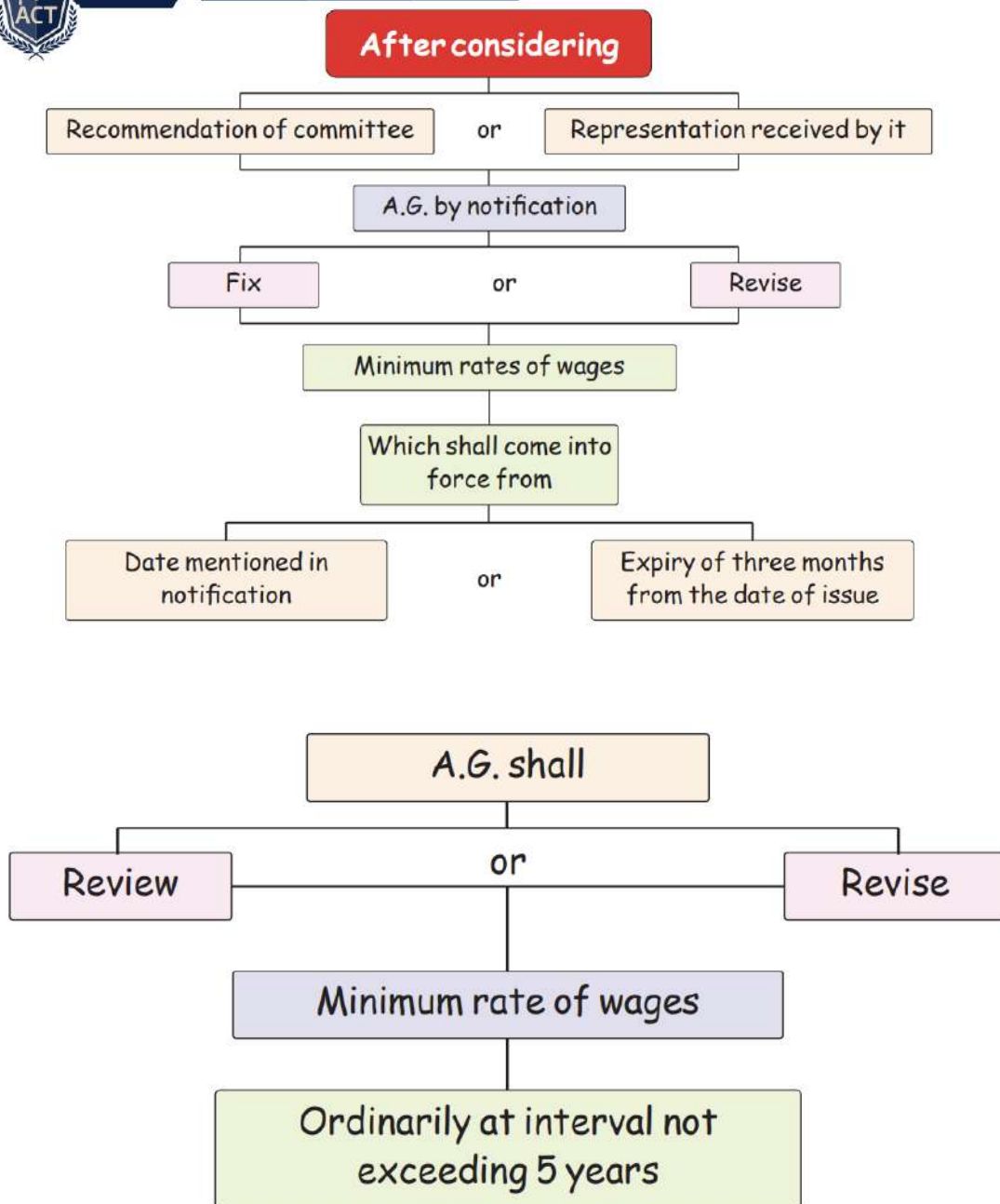
Explain the procedure for fixing and revising minimum wages under Minimum Wages Act, 1948. [9 Marks – Dec 18] [RTP Dec 18] [10 Marks – June 23 – Syllabus 22]

OR

'Review of Minimum wages' as per Minimum Wages Act, 1948 [5 Marks]

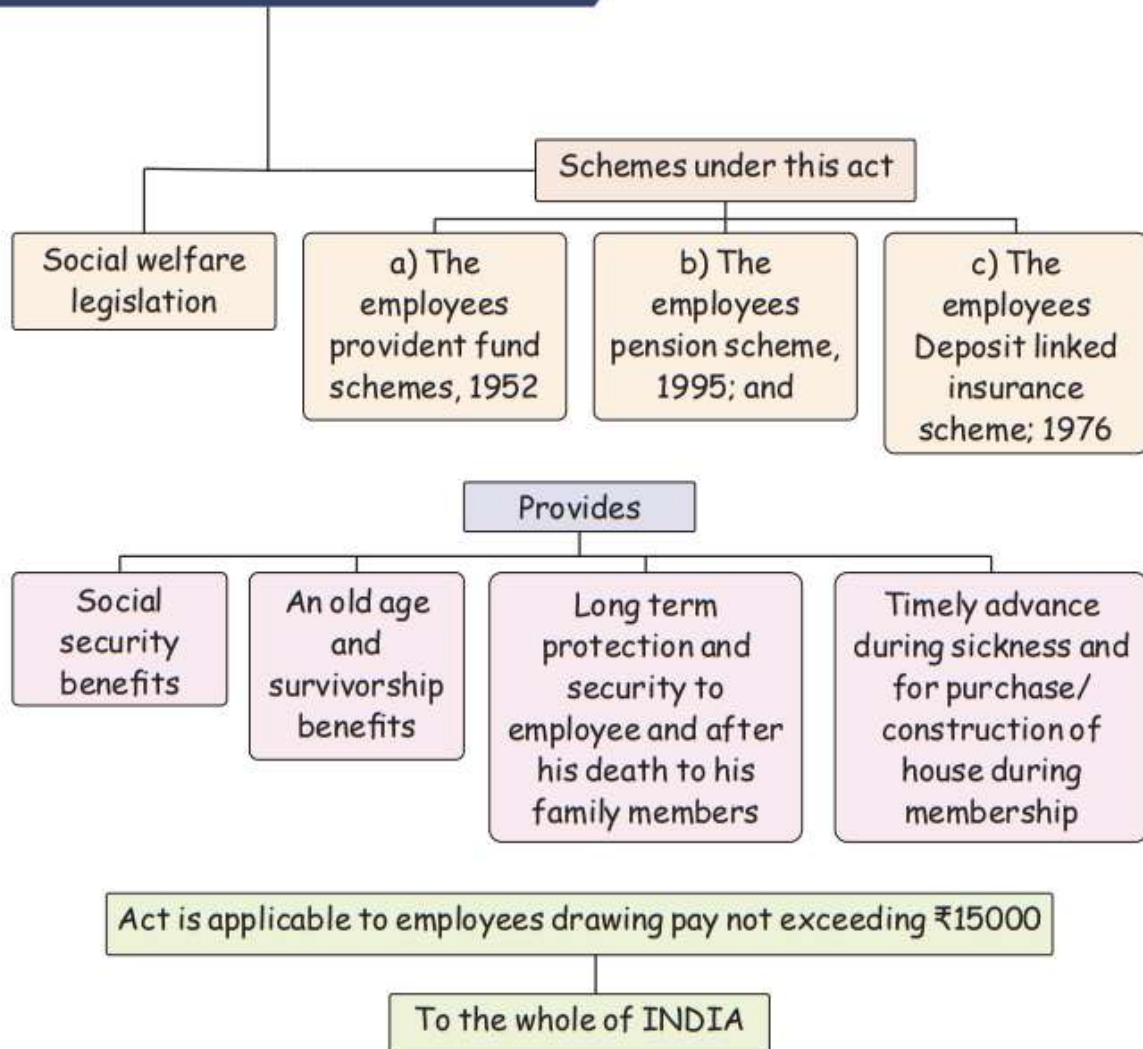
Answer:





Employees Provident Fund and Miscellaneous Provisions Act, 1952

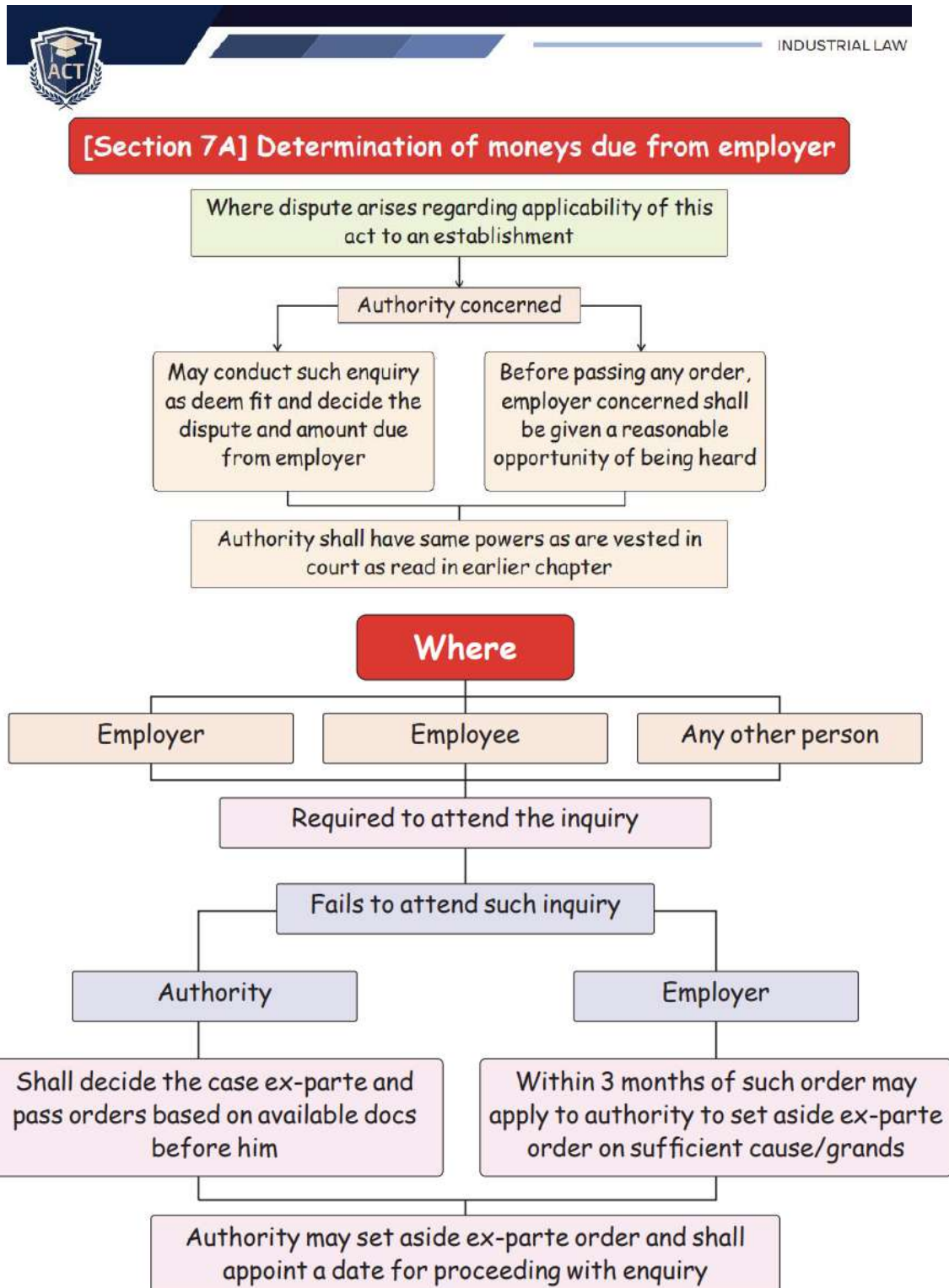
Employees Provident Fund and Miscellaneous Provisions Act, 1952



Question:

Enumerate the determination of moneys due from employers (Employees Provident Fund and Miscellaneous Act, 1952). [7 Marks – June 23 – Syllabus 16]

Answer:



In '**S.K. Nasiruddin Beedi Merchant Limited V. Central Provident Fund Commissioner**' it was held that the applicability of the Act to any class of employees is not determined and decided by any proceeding under Section 7A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under Section 7A of the Act is only determination of qualification of the same.