

Q & A



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I run shop in Mumbai and have obtained a registration under shops and establishment act. I am now planning to expand my business from the same premises in addition to my usual business. Please let me know if I am required to obtain a fresh registration for the new business?

Please note that under Section 8 the Bombay Shops and Establishment Act, 1948, ("Establishment Act"), an employer registered under the Establishment Act on commencement of a new business is not required to obtain a fresh registration unless the employer is using new machinery or equipments to start the new business. The only obligation of the employer in such a case is to notify the Inspector

regarding the commencement of new business in addition to the original business from the same premises. The aforesaid position was settled in the case of *Dayawanti Bai v. Corporation of City of Nagpur* (1969 II LLJ 128) wherein the court held that no fresh registration is required for starting a new venture in the same premises if the said venture is started with the same machinery or same equipments used in the original business.

We are a private company. One of our employees resigned two weeks ago, which we accepted on the same day. We immediately started the process of taking charge of his work and transferring the same to another employee in his team. However, before we could send him the written acceptance of his resignation, this employee changed his mind and has sent a letter revoking his resignation. However, we do not wish to keep him. Should we terminate his employment? Or is revocation of resignation illegal? It is a settled principle that an employee can withdraw his resignation before it is validly accepted. While it is imperative that an employee's resignation must be accepted, however, non-communication of acceptance or delay in communication of acceptance would not render the acceptance invalid. In *North Zone Cultural Centre vs. Vedpathi Dinesh Kumar* (2003) 5SCC 455, the Supreme Court held that non-communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before the withdrawal.

Thus, if your company had accepted the resignation of the concerned employee before he revoked it, the resignation would be deemed to have become effective. We understand that you had initiated the process for taking charge from the concerned employee, which in

our view clearly demonstrates acceptance of the resignation.

Thus, if there is sufficient ground to establish that the resignation was in fact accepted, the same would be operative and the revocation of the same by the employee may not be sustainable. Accordingly, there is no reason to terminate his employment, as he is no longer your employee.

I have started an infrastructure company with 80 employees in Karnataka. Please let me know whether accountants and assistant engineers will be considered as workmen in terms of the Industrial Disputes Act.

Please note that the Industrial Disputes Act, 1947 defines the term 'workman' as any person employed in an industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. However, it does not include those employees that are employed in managerial, administrative or supervisory capacity (provided an employee in supervisory position is drawing wages equal to or more than ten thousand rupees per month, i.e., INR 10,000/-).

Accountants: Though it may vary from case to case depending upon the facts and circumstances, the courts have held that the work of an accountant is mainly clerical in nature unless he is vested with supervisory or administrative duties. It has been held that merely signing of salary cheques does not exclude a person from the purview of the definition of workman [*Punjab Co-operative Bank Limited vs. R.S. Bhatia* (1975 (31) FLR 326 (SC))].

Assistant Engineer: An assistant engineer performing the functions of a technical nature was held to be a workman. [*Uttar Pradesh State Sugar Corporation Limited vs. The Deputy Labour Commissioner, Meerut* 1990 LLR 138].

Notwithstanding the above, as indicated, whether a person is a workman or not has to be determined keeping in view his overall role, functions, responsibilities and the salary that such person draws. **HC**