

# Labour Law & Alternative Dispute Resolutions

**AAT Level II**  
BLA - Business Law

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# Labour Law

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## 1) What is Labour Law?

- In simple terms, labour law is the law that governs the workers in a country.
- Labour law is applicable only to employees and not to independent contractors. Independent contractors are governed by the conditions of their contract.
- Therefore, it is important to distinguish between a labour and an independent contractor.

## 2) What is the difference between a labour and an independent contractor?

- The difference between a labour and an independent contractor is identified through the application of certain tests.
- An employee has a contract **of** service, whereas an independent contractor has a contract **for** service.
- They are;
  - a) Control Test
  - b) The equipment Test
  - c) The integration Test
  - d) Economic Reality Test
  - e) Multiple Test

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### a) The Control Test

- This measures the amount of control a worker is subject to by his or her employer.
- If the worker is subject to a higher degree of control by the employer, then the worker is an employee.
- In other words, if the employer can decide what work needs to be done by the employee and at what time, what place or how it should be done; these factors show that the employer has more control over the employee.
- Hence, if the worker is subject to a higher degree of control, then such a worker is an employee.
- If the worker decides how to do the work, at which time and what place, then such a worker is an independent contractor.

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## b) The Equipment Test

- The control test cannot be applied for every instance.
- This is because there can be situations where the employee although not under the control of the employer is still an employee.
- To determine this, we can apply the equipment test. This basically means that if the worker is provided with all the necessary tools, equipment and other devices to do the work, then such a worker is an employee.
- The employer provides all necessary equipment because the employee is doing the employer's work on behalf of him, even if there seems to be no control.
- Hence, in such a situation using this test we can determine whether a worker is an employee or an independent contractor.

## c) The Integration Test

- This test was formulated by Lord Denning.
- "under a contract of service, a man is employed as a part of the business; whereas under a contract for services, his work although done for the business, is not integrated into it, but is only accessory to it".
- Integration test basically checks how integrated a worker is to the business. Higher integration reflects that such a worker is an employee. If there is minimal integration or no integration, then such a worker is an independent contractor.

## d) Economic Reality Test

- This assesses the final benefit in a contractual obligation.
- If the worker is doing the work so that he/she will earn better profits, or if the risk of incurring a loss is with the worker, then such a worker is an independent contractor.
- If the worker obtains neither profit nor loss, but is paid for the work done, then such a worker is an employee.
- Therefore, if the final benefit / disadvantage is borne by the company, then such a worker is an employee. However, if it is borne by the worker him/herself, then that worker is an independent contractor.

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## e) Mixed Test

- In the modern day, courts do not rely on one test, but they apply a mix of tests to determine whether a worker is an employee or independent contractor.
- **Sri Lanka insurance corporation v A.C.R Wijesundara**
- In this case the courts applied a variety of tests such as the control test, economic reality test, the integration test, and the equipment test to determine whether the worker was an employee or an independent contractor.

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### 3) The Applicable Law for labour in Sri Lanka

- A) The Employee Provident Fund Act No. 15 of 1958
- B) The Employee Trust Fund Act No. 46 of 1980
- C) The Payment of Gratuity Act No. 12 of 1983
- D) Shop and Office Employees Act No. 19 of 1954
- E) Wages Boards Ordinance No. 27 of 1941
- F) Factories Ordinance No. 45 of 1942
- G) Workman's Compensation Act
- H) Maternity Benefits Ordinance No. 32 of 1939
- I) Women, Young Persons and Children Act No. 47 of 1956.
- J) Termination of Employment of Employees (Special Provisions) Act No. 19 of 1954.
- K) Industrial Disputes Act No. 53 of 1950.

**A) The Employee Provident Fund Act  
No. 15 of 1958**

## A) The Employee Provident Fund Act No. 15 of 1958

### a) What is the purpose of this Act?

- The purpose of this act is to provide a provident fund.
- Government workers usually get a pension after retirement, however, private workers do not.
- Therefore, the EPF serves as something like the pension for private workers. It is a financial relief after retirement.
- It is like a saving that is done during their years of working as a labour, they contribute to the fund. After retirement, they can claim the EPF. There are also other instances where EPF can be claimed prior to retirement.

### b) Who are covered under this Act?

- All private workers except for government workers are usually governed under this Act.
- However, to get a specific idea, it is important to see the persons who are not covered under this Act.
- It means not all private workers are covered under this law.
- Therefore, any worker apart from the uncovered list are covered under this Act.

## c) Who are not covered under this Act?

- 1) Government workers.
- 2) Non-performing directors.
- 3) Partners in a partnership.
- 4) Contributors to an approved provident fund .
- 5) Persons employed in religious institutions, social services and welfare institutions, charity organizations having less than 10 employees.
- 6) Employees in an organization providing technical training for minor offenders, destitute, deaf and blind.
- 7) Family members (contributions to EPF applicable if family members is away from family).
- 8) Domestic workers, chauffeurs and employees abroad.
- 9) Apprentices under National Apprentice Board.
- 10) Workers below 14 years of age.

## d) Administration, operation and contribution of and to the fund

- The duty of administration of the fund rests with the Commissioner of Labour, while the management of the fund is with the Financial Commission of the Central Bank.
- When a person who is covered under the Act engages in an employment, they must fill a B card. This card must be submitted by the employer to the Labour department.
- Each employee will have a separate account. Employees cannot have multiple EPF accounts.



- All employees who are covered must contribute to this fund.
- They must contribute 8% from their total earnings.
- The employer from his side will contribute an amount of 12% of the employee's total earning.
- The collected fund is invested by the Financial Commission to earn interest benefits and all employees will get a proportionate share as to their amount of contribution.
- EPF contribution for each month should be made on or before the last working day of the following month. Otherwise, surcharges will be imposed against the employer according to the delay.

## e) What are the components to be considered when calculating the Total Earnings?

- Salary, wages or fees
- Cost of living allowances, special living allowances and other similar allowances
- Payment with respect to holidays
- The cash value of cooked or uncooked food supplied by the employer to the employee (Determination of such value will eventually be made by the Commissioner of Labour)
- Food allowances
- Any kind of remuneration that may be specified
- Payments in the form of discounts (Commissions) piece rate payments and contract basis payments

## f) When can you claim refund of benefits?

- 1) When you reach retirement age and ceased the employment. (50 for females and 55 for males).
- 2) Leaving employment on grounds of marriage.
  - must register marriage before 3 months of leaving employment or;
  - must have ceased employment within 5 years of marriage registration.
- 3) Cessation of employment due to total incapacitation

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4) Cessation of employment on leaving to a foreign country for permanent residency

- Permanent resident visa with a photocopy
- Original passport with a photocopy

5) When engaged in a permanent pensionable post in Government or Local Government service

6) Other factors such as;

- On conversion of government owned business undertaking or a corporation into a public company.
- On conversion of government owned business undertaking into a corporation.
- Retrenchment of excess staff in a government corporation.
- Closure of Government corporation or government owned business undertaking
- Death of a member.

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## B) The Employee Trust Fund Act No. 46 of 1980

## B) The Employee Trust Fund Act No. 46 of 1980

### a) What is the purpose of this Act?

- The purpose of this act is to enable non-contributory benefits to employees after retirement or at the time of termination and includes the provision of welfare.
- This Act has established a trust fund.
- It is the employer who must pay from his own account on behalf of the employee.
- The contribution is 3% of the Total Earnings.
- Total Earnings considered under EPF is considered here as well.

• The functions of the fund are as follows;

- 1) Collecting the relevant contribution from the employer.
- 2) Maintain records and accounts of all members.
- 3) Identifying illegalities, penalizing and taking legal action.
- 4) Payment of claims.
- 5) Investing.
- 6) Paying dividends annually.
- 7) Overall Administration of the fund and its members.

## b) Who is covered under this Act?

- 1) Private sector
- 2) Statutory bodies
- 3) Universities
- 4) Corporations
- 5) Finance sector of the government

### c) Who is not covered under this Act?

- 1) Domestic servants and chauffeurs.
- 2) Retiring government servants.
- 3) Apprentices under national apprentice board.
- 4) In a family business if employees are own family members.
- 5) Persons employed in religious institutions, social services and welfare institutions, charity organizations having less than 10 employees.
- 6) Employees in an organization providing technical training for minor offenders, destitute, deaf and blind.

### d) Claiming the Trust Fund

1. Cessation of employment is compulsory if a withdrawal claim is to be made.
2. Reason for cessation could be retirement, resignation, dismissal, vacation of post, etc.
3. A member is not entitled to make a second / subsequent claim until lapse of 5 years from the date of previous withdrawal of fund balance.

4) Can claim full amount for the following reasons;

- a) Reaching the age of 60 years.
- b) Migrating for permanent residence.
- c) Joining state service which entitles the member to a pension.
- d) Termination of employment due to permanent disability.
- e) Death of a member.

## C) The Payment of Gratuity Act No. 12 of 1983

## C) The Payment of Gratuity Act No. 12 of 1983

### a) What is the purpose of this Act?

- The purpose of this Act is to make legal the payment of gratuity for a worker who has served faithfully and for a long-term service rendered to the employer by the employee.
- This is one-time payment that should be paid by the employer to the employee.
- Applicable to the private sector workers at the time of termination or resignation.

### b) Who is eligible for Gratuity?

- 1) A worker who has worked for 5 or more years with the same employer without any interruption and;
- 2) The employer should have employed 15 or more employees during the year prior to the date of resignation or termination of employee.

Note: trade union actions, strikes, or halt in work not due to employee are not interruptions.

### c) What is the duration of payment?

- Gratuity should be paid within 30 days of the date of resignation or termination.

### d) How is the payment calculated?

$$\frac{\text{Number of years of service} \times \text{salary of last month}}{2}$$

### e) What can be deducted from the payment of gratuity?

- 1) Money earned fraudulently by the workman
  - 2) Money misappropriated by the workman
  - 3) Damages caused to the property of the employer
- The employee can object to any deductions and take the matter to the Labour Tribunal for a fair assessment.



## D) Shop and Office Employees Act No. 19 of 1954

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## D) Shop and Office Employees Act No. 19 of 1954

### a) What is the purpose of this Act?

- The purpose of this Act is to govern the wages and labour conditions and standards in Sri Lanka.
- This Act shall cover all employees working in shops and offices.
- Shops may include cafe, hotels, salons, laundries, retail shops etc.
- Office includes, corporations, banks, firms, companies etc.

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## b) Who are governed under this Act?

- All employees working in shop and offices.
- Semi government corporations and private employees are also governed by this Act.

## c) What are the benefits under this Act

### 1) Working hours

- The normal working day for all shop and office employees cannot exceed nine hours on any day (inclusive of a one-hour meal break) and 45 hours in any week. (8 hours + 1 hour meal break).

### 2) Rest breaks

- A rest break must be given to employees on the days that they work eight hours or more.
- Employees are not entitled to a rest break on a shorter working day.
- A one-hour rest break must be given between the hours 11.00am and 2.00pm where employees work during the daytime.
- The rest break for employees working during the night must be given between 7.00pm and 10.00pm.

3) Maximum overtime is 12 hours per week.

4) Leave and pay on holidays

- Annual leave = 14 days
- Casual Leave = 7 days
- In addition, entitled to 9 statutory holidays.
- If working on a public holiday must be paid double the normal rate.
- Maternity leave
  - 84 days for first and second delivery
  - 42 days for third delivery.

This Act does not provide a common minimum wage, the salaries and wages will depend on the contract between employer and employee

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## E) Wages Boards Ordinance No. 27 of 1941

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## E) Wages Boards Ordinance No. 27 of 1941

### a) What is the purpose of this Act?

- The purpose of This act is to establish a minimum wage through a wage board.
- It also aims to regulate other conditions in work of certain traders in the industry.
- There are over 40 different traders in the country.
- Each trader has an established wage board.
- The wage board includes an equal number of representatives of employers and employees in each trade.
- Apart from that, three persons are appointed by the Minister of Labour.
- The main function is to determine the minimum wage in a particular rate.

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### b) what are the benefits under wages boards ordinance ?

- 1) Establishing fair labour standard. Ex: Maximum hours of work in a week is 45.
- 2) To provide rise in wages with the increasing cost of living
- 3) Eliminate all low wages and to establish a minimum wage.
- 4) To establish annual leave. Ex: some boards provide 30 days while some provide a maximum of 14 days.

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### c) Who are covered under this Act?

- Usually, plantation workers who are employed in the industries of tea, rubber and coconut are governed by this Act.
- Other trades that as applicable also governed under this Act.

### F) Factories Ordinance No. 45 of 1942

## F) Factories Ordinance No. 45 of 1942

### a) What is the purpose of this Act?

- The purpose of this act is to provide protection and welfare for the factory workers.

### b) What are the conditions to be followed by a factory as per this ordinance?

- All factories shall be registered and a license of obtained to continue work as a factory.
- Take necessary steps to prevent accidents.
- Adequate protection is mandatory prior to use of dangerous machines .

- Placed limitations on the number of people in an elevator.
- Young persons are not to clean main parts of a machine.
- Young persons should be educated on the risk of accidents and the prevention of accidents.
- Young persons must be provided training to operate machinery and they should work under supervision.
- First aid facilities should be made available.
- Precautions should be taken to avoid accidents rising from steam, heat or dangerous gases.
- Precautions should be made regarding radiation, electricity , temperature and noise.

## G) Workman's Compensation Act

## G) Workman's Compensation Act

### a) What is the purpose of this Act?

- The purpose of this act is to provide compensation for an employee or he's next of kin in the event of a death or injury.

### b) Who is covered under this Act?

- All employees including government employees all covered through this act

### c) Who is excluded under this Act?

- The tri-forces in Sri Lanka (Army, Navy and Air Force)
- the Police

### d) Who can claim compensation? (sec. 3)

- The employee is entitled to receive compensation for physical and mental damages arising out of the cause of employment.
- There should be an employer - employee relationship.
- Should have been disabled for more than three days.
- If injury was caused while under the influence of liquor, that worker is not entitled to receive compensation even though the accident occurred during his employment.
- If injury caused death of employee, even if he was drunk, the employer will have to pay compensation to the next of kin.
- If the employee had worked without following precautions no compensation is payable except in case of death.
- If a worker intentionally removes safety in dangerous machines and an injury rose due to that action, then employer is not liable except in case of death.

### H) Maternity Benefits Ordinance No. 32 of 1939



## H) Maternity Benefits Ordinance No.32 of 1939

### a) What is the purpose of this ordinance ?

- The purpose of this act is to determine benefits that should be received by pregnant mothers.

### b) What are the benefits received?

- This Ordinance entitles the mother to receive 12 weeks with paid leave.
- Her job security is guaranteed because her service cannot be terminated before five months to her delivery.
- after delivery she's entitled to receive half an hour to feed the child up until one year.
- This ordinance covers only the females, however in Australia there is a concept called paternity as well.
- This entitles the fathers to take leave when the mother is ready to deliver the child and few weeks after delivery.

## I) Women, Young Persons and Children Act No. 47 of 1956.

## I) Women, Young Persons and Children Act No. 47 of 1956.

### a) What is the purpose of this Act ?

- The purpose of this act is to govern women young persons and children who are working.

### b) what are the benefits under this Act for female workers?

- No female worker can be compelled to work at night against her will. Further, prior consent from the female workers should have been obtained.
- If a female worker has been employed between 6:00 AM and 6:00 PM she shall not be employed in the night.
- If any female worker is to work after 10:00 PM the written permission of the Commissioner of labour important.
- when female workers are working at night there should be a female warden to attend or appointed to see the welfare of the female workers.

### c) What are the benefits under this Act for young persons?

- They shall not be made to clean main parts of an engine or any machinery while in operation.
- Training should be given to them on how to operate machinery.
- They should only operate machinery by land supervision
- Young persons who are less than 16 yes of age cannot be employed over 12 hours.
- The working duration is limited from 6:00 AM to 6:00 PM.
- If above 16 years but less than 18 years overtime cannot exceed 50 hours per calendar month.
- Young persons cannot be requested to work during hours allocated for meals.

## J) Termination of Employment of Employees (Special Provisions) Act No. 19 of 1954.

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## J) Termination of Employment of Employees (Special Provisions) Act No. 19 of 1954.

### a) What is the purpose of this Act?

- This act is to provide a relief for those who are terminated without the consent of the employee or the approval of the commissioner of Labour.

### b) Who are covered under this Act ?

- All persons under the;
  - i) Shop and Office Act
  - ii) Wages Boards Ordinance
  - iii) Factories Ordinance

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### c) Who are not covered under this Act ?

- If the number of employees in the working establishment is less than 15
- During a period of 12 months, if the employee has worked less than 180 days.
- Employees under government authorities
- Employees who have been retired as per their contract

### d) What is the effect of this Act?

- As per Section 5 of this act any termination without the consent of the employee, or the approval of the commissioner of Labour, or on non-disciplinary grounds are void.
- The commissioner of Labor can reinstate the employee if the termination is void, pay due salaries or gratuity where necessary.
- However, any such void termination should be reported to the commissioner within three months of such termination occurring.

### e) What is a misconduct?

- An act is regarded as a misconduct if it is inconsistent with the fulfillment of espresso implied conditions of service or if it has a material bearing against the smooth and efficient working process.
- Acts of misconduct are identified as follows;
  - i) absence and late attendance
  - ii) serious negligence
  - iii) insubordination
  - iv) disobedience to reasonable orders
  - v) assaults or threats, bodily harm to superiors or colleagues
  - vi) Dishonesty
  - vii) Intoxication (habitual)
  - viii) Incompetence – not a ground for Immediate termination

### f) Domestic Inquiry Procedure

- Both parties must be heard as per the concept of “ Audi alteram partem”.
- There should be an impartial person to conduct the inquiry.
- Reasonable notice of case should be provided.
- There should be good faith between both parties.
- Employee should be given the opportunity to provide a show cause letter, i.e., reasons for his misconduct.
- The gravity of the offense should be considered prior to any final decision.

- **Kumara Fernando and others v commissioner of Labour and others**

- It was held in this case that the commissioner of Labour has the authority to terminate workers when requested by a company to lay off additional workers.

- The company had requested permission from the commissioner of Labor and after proper evaluation he has granted it. This was held to be legal.

- **Talawakelle Plantations Limited v Ceylon Staff Union**

- The court held that the inefficiency of the workers is not a disciplinary ground for termination. However, disobedience to the employer is a disciplinary ground that can be used to terminate the worker.

## K) Industrial Disputes Act No. 53 of 1950.

## K) Industrial Disputes Act No. 53 of 1950.

### a) What is the purpose of this Act?

- The purpose of this act is to identify disputes and to provide dispute settlement mechanisms to avoid such disputes rising again.

### b) What is an industrial dispute as per this Act?

- An industrial dispute means “any dispute or difference between employers and workmen or between workmen and workmen connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person, and for the purposes of this definition “workmen” includes a trade union consisting of workmen;”

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## c) Dispute Settlement Mechanisms

### 1) Collective agreements

- This is an agreement about working conditions and terms of employment between an employer group of employers all with one or more representatives of the workers and may include a trade union.
- This method helps to settle industrial disputes relating to wages privileges and other terms and conditions of work.
- a collective agreement should be published in the Gazette, and it shall be binding on all the parties and its terms are imply terms in the workers' service contracts.
- However, a collective agreement can be terminated by one party after giving one-month prior notice of such intention.

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- The effect of a collective agreement is that all the parties will be bound by the agreement.
- For example, all the members of the union will be bound by this collective agreement and the conditions in the collective agreement are considered as implied conditions in the service contract of each worker.
- Further, if the commissioner recognizes a dispute, he can refer it for settlement through a collective agreement.

## 2) Conciliation

- This means there is an intervention of a third party who tries to mediate between the disputing parties and balance out the difference between the disputing parties.
- If commissioner of Labor decides that an industrial dispute exists in any industry, or he is of the understanding that an industrial dispute will occur in the future he can try to cause a fair and amicable settlement through conciliation or authorize another office on his behalf.
- If a settlement is reached, and the parties have signed the settlement, it will be binding on them and become an implied term in their contract of service.
- However, either party can repudiate that contract in writing.



### 3) Voluntary and compulsory arbitration

- Voluntary arbitration is when the parties agree that there is an industrial dispute and consent to go to arbitration or refer such dispute to the Commissioner of Labour which leads to an arbitration that is chosen by the parties themselves.
- Compulsory arbitration rises when the Minister of Labour is of the opinion, that an industrial dispute has occurred, he can refer the parties to an arbitrator even if they do not consent.
- The award of an arbitrator shall be in force for the period specified or until it is repudiated. This award should be communicated to the Commissioner of Labour who is required to publish it in the government Gazette.

### 4) Industrial court

- The parties cannot directly go to industrial courts.
- The authority is with the minister to refer any industrial dispute to the industrial court.
- the main function of an industrial court is to make an award on any industrial dispute referred to it by the minister.
- If a party desires to set aside the award they must make an application to the minister who will refer it back to the industrial court.
- the award of an industrial court should be published in the Gazette, and it is binding on the parties.

## 5) Labour Tribunal

- Labor tribunal is a judicial body that takes in disputes related to labour matters.
- Applications relating to termination of services by an employer;
- Questions on gratuity and other benefits at the time of termination.
- Matters relating to terms of employment and conditions of Labour.
- Labour tribunals tend to have quasi judicial powers and tends to balance the power between employer and employee.
- Any application should be made within six months from the termination.
- The labor tribunal president can make an order which is just and equitable.
- If the termination is found to be unjustified the labor tribunal can order compensation or reinstatement of the employee.

## 4) Fundamental Rights and the Employee

- Human rights Refer to the basic rights and the inherent rights that a person should have because they are human.
- The Fundamental rights are the rights that are recognized in each constitution.
- In the Sri Lankan constitution, it is recognized under chapter III.
- As per Article 12(2),  
"No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds".

- As per Article 14 of the Constitution, every citizen of Sri Lanka is entitled to, freedom of speech, freedom of assembly, freedom of occupation, freedom of movement, freedom of association, freedom to form and join a trade union etc.
- A violation of the fundamental rights of a worker such as joining a trade union is a violation against law.
- Although the fundamental rights mainly exists so that the government assures the citizens of their rights , private parties also should respect the fundamental rights of workers.

## 5) Trade Union

### a) What is a Trade Union?

Trade union “ means any trade union (whether of employers or of workmen) registered under the Trade Unions Ordinance.”

### b) What are the actions that can be taken by Trade Unions?

#### i) Strike

- This is when the work is halted by employees in any trade or industry acting in combination where they refuse to continue to work or accept employment.

#### ii) Stay in strikes

- This is a strike where they put down the equipment. This means although they come to work, they start striking by not doing anything.
- They strike while staying in the work premises.

#### iii) Picketing

- Picketing goes along with a strike, and it usually involves the workers not allowing the customers to deal with the employer or not allow workmen to enter the working premises.
- This is usually seen by the display of banners and chanting of statements related to the dispute.

#### iv) Lockout

- Lockouts are carried out by the employer or a union of employers. In lockout the employer close the place of business temporarily until the employees agreed to the terms of the employer.

#### v) Go slow

- This is not a refusal to work.
- In go slow whatever the action done by a labour, they do it extremely slow compared to the normal pace that a person usually takes to do such a task.
- Go slow can be considered as a misconduct in Sri Lanka.

## Summary

- 1) What is Labour Law?
- 2) What is the difference between an employee and an independent contractor?
- 3) The applicable law for labour in Sri Lanka.
- 4) Fundamental rights and employee.

THANK YOU