

Welcome to the first edition of the E-Bulletin (Volume II) brought to you by the Employment, Labour and Benefits practice group of Khaitan & Co. This E-Bulletin covers regulatory developments, case law updates and insights into industry practices that would impact businesses from a sector agnostic standpoint.



REGULATORY UPDATES

Code on Social Security 2019 introduced in Parliament

On 11 December 2019, the Government of India introduced the Code on Social Security, 2019 (Social Security Code) in the Lok Sabha. The Social Security Code proposes to consolidate the law on social security in India and replace the following extant statutes:

- a) Employee's Compensation Act, 1923;
- b) Employees' State Insurance Act, 1948;
- c) Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act);
- d) Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959;
- e) Maternity Benefit Act, 1961;
- f) Payment of Gratuity Act, 1972;
- g) Cine-Workers Welfare Fund Act, 1981;
- h) Building and Other Construction Workers' Welfare Cess Act, 1996; and
- i) Unorganised Workers Social Security Act, 2008.

While the Social Security Code introduces provisions relating to gig workers, fixed term employment, career centres, voluntary coverage under the employees' state insurance framework and limitation period for social security related matters, it also modifies the basis



of calculation of employees' provident fund contribution and allows for different rates of such contribution by employees. Our analysis of the bill may be accessed [here](#).

Union Cabinet accords its approval to the social security agreement between India and Brazil

The Union Cabinet has given its approval to execution of an agreement on social security (SSA) between the Republic of India and the Federative Republic of Brazil. According to news reports, it is likely that government will also ratify similar agreements with Russia, China and South Africa, as deliberated upon in the BRICS meeting held on 9 June 2016.

The concept of international workers envisages a situation wherein an employee, who is habitually employed in one country, is sent by his employer to another country in the context of that employment to perform services in the latter country *on behalf of* the said employer. In order to avoid dual social security contributions, India has entered into SSAs with 18 countries viz. Belgium, Germany, Switzerland, Luxemburg, France, Denmark, Korea, Netherlands, Hungary, Finland, Sweden, Czech Republic, Norway, Austria, Canada, Australia, Japan and Portugal.

A person deputed to India from an SSA country would fall outside the purview of the EPF Act if (a) he / she is enjoying the status of a detached worker, meaning that such person is complying with the social security system of the home country, *and* (b) he / she has a valid certificate of coverage obtained from the home country for the period specified in the SSA. Therefore, to the extent a company engages personnel from SSA countries, and such personnel have obtained valid certificate of coverage as mentioned above, it will not be required to make contributions in respect of those personnel under the EPF Act.

Karnataka mandates preference to locals in industrial establishments

Through a notification published in the Official Gazette on 26 December 2019, the Government of Karnataka effectuated amendments in the Karnataka Industrial Employment (Standing Orders) Rules, 1961. The newly incorporated provisions, which will take effect from 26 December 2019, provide that every industrial establishment located in Karnataka shall give priority as regards appointment to Kannadigas who are Indian citizens and are residing in Karnataka for not less than 15 years and are able to read, write and speak in Kannada subject to suitability, qualification, experience and other requirements in respect of workmen. Such establishments are also required to provide at least 5% of employment to persons with benchmark disability as defined in Section 2(r) of the Rights of Persons with Disabilities Act, 2016.

Karnataka Cabinet approves amendment allowing women to work in night shifts in S&Es

On 30 December 2019, the Karnataka cabinet approved the Karnataka Shops and Commercial Establishments (Amendment) Bill, 2019, which, when passed by the state legislature, will allow women to work in night shifts in shops and establishments, subject to employers providing transportation facilities free of cost to women and deploying adequate security guards at the premises. As per news reports, the bill is likely to be introduced in the assembly during the first session of 2020 to be held in February.

The move comes after the Government of Karnataka issued a notification dated 20 November 2019 allowing women in factories to work during night shifts (i.e. between 7 pm

and 6 am), notwithstanding the restriction imposed under the Factories Act, 1948 (Factories Act), on relaxation by state governments in this regard.

At present, the Karnataka Shops and Commercial Establishments Act, 1961, provides that no woman shall be required or allowed to work during night shifts, although establishments engaged in information technology / information technology enabled services can avail exemption from the government in the manner prescribed in the rules.

Noida: Requirement to register the internal committee set up under the PoSH Act

After Mumbai and Telangana released similar directions earlier in 2019, the District Magistrate, Gautam Buddha Nagar, has called upon establishments located in Gautam Buddha Nagar (including Noida) to register the internal committee, constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, on the Sexual Harassment Online Redressal (SHOR) app. The notice dated 14 November 2019 mandating such registration also requires establishments in the said region to upload the annual report prepared in accordance with the statute on the SHOR portal by 31 January 2020. It is further provided that non-compliance with the aforementioned provisions may entail a penalty up to INR 50,000.

Delhi Government proposes a law for mathadi workers

On 26 November 2019, the Government of Delhi released the Delhi Mathadi, Palledar and Other Unprotected Manual Workers (Regulation of Employment and Welfare) Act, 2019 (Draft Delhi Mathadi Act) for public comments. Based on the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969, the Draft Delhi Mathadi Act aims to regulate the terms and conditions of employment of otherwise unprotected manual workers in the National Capital Territory of Delhi.

The Draft Delhi Mathadi Act covers certain scheduled employments including iron and steel industry, grocery market, stationary, transportation and any other employment in connection with loading, unloading, stacking, weighing, measuring, filing, stitching, sorting and cleaning. If and when the proposed law takes effect, the government shall formulate schemes *inter alia* providing for registration of 'employers' (i.e. including the principal employer, where the unprotected worker is employed by or through contractor) and unprotected workers, and terms and conditions of work of registered unprotected workers. Further, no registered unprotected worker shall be asked to carry, on his head or back, any article(s) weighing more than 50 kilograms. Any wages earned by registered unprotected workers shall be paid by the 'employer' to the board constituted under the statute in a prescribed manner. The employer shall also ensure adequate safety measures at workplace.

The Draft Delhi Mathadi Act provides stringent penalties for contravention. For any violation of the provisions of the scheme framed under the statute, there shall be imprisonment for a term not exceeding 6 months or fine not exceeding INR 2,00,000 or both.

Tamil Nadu introduces several amendments to the child and adolescent labour rules

By way of a notification published in the Official Gazette on 25 December 2019, the Government of Tamil Nadu has introduced several amendments to the Tamil Nadu Child Labour (Prohibition and Regulation) Rules, 1994 (TN Rules). As per the Child and

Adolescent Labour (Prohibition and Regulation) Act, 1986 (Child and Adolescent Act), no child shall be employed or permitted to work in any occupation or process. However, a child may assist its family in an occupation other than hazardous occupations or processes set out in the Schedule to the Child and Adolescent Act, although only after school hours or during vacations. The amended TN Rules further provide that such assistance shall not relate to any stage of the manufacturing, production, supply or retail chain that is remunerative for the child or its family. Further, a child shall be allowed to help its family only where the family is the occupier (that is, person with ultimate control over the affairs of the establishment), that too not between the hours 7 PM and 8 AM.

The amended TN Rules now provide that a child, its schoolteachers / representatives from the school management committee, district-level Child Protection Committee, or task force appointed under a state action plan, may file a complaint before the competent authority for violation of the provisions of the Child and Adolescent Act.

As regards adolescents, it is provided that no adolescent shall be required or permitted to work in any establishment for more than 6 hours on any day inclusive of interval of rest and time spent in waiting for work. Further, no adolescent shall be allowed or made to work between 7 PM and 8 AM, nor shall he / she be engaged to work overtime.

The amended TN Rules require the state government to create a system of monitoring and inspection, which may include the number of periodical inspections to be conducted by the Inspector in respect of employment of children and adolescents.

Rajasthan discontinues the requirement of renewal of shops and establishments registration certificate

Through a notification dated 26 November 2019, the Labour Department, Government of Rajasthan, has done away with the requirement of renewal of the registration certificate granted under the Rajasthan Shops and Commercial Establishments Act, 1958. The registration certificates already issued (and containing a validity period) can be extended for an indefinite period through payment of a one-time fee, the quantum of which will depend on the number of employees employed by the establishment.

It may be noted that Rajasthan is the third state which has, in 2019, discontinued the requirement of filing a renewal application upon expiry of the registration certificate. Similar notifications were issued in the previous year by Andhra Pradesh and Karnataka, both of which have been examined by us in our ERGO dated [20 June 2019](#).

Punjab Cabinet approves several important amendments to labour laws

On 2 December 2019, the Punjab Cabinet approved several important amendments to labour laws. According to the [official press release](#), these amendments are intended to boost investment climate in the region. The proposed changes are set out below:

- a) ***Increase in CLRA threshold:*** At present, the threshold for the applicability of Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), in Punjab is 20 or more contract workers. The proposed amendment raises it to 50 or more contract workers.
- b) ***Applicability of the Factories Act:*** The proposed amendment seeks to increase the threshold number of workers specified under the Factories Act from 10 to 20 (*in case of manufacturing process being carried out with the aid of power*) and from 20 to 40 (*in case of manufacturing process being carried out without the aid of power*), with

the aim of promoting “small manufacturing units to create more employment opportunities for workers”.

- c) *Compounding of offences under the Factories Act etc.*: The proposed amendment seeks to amend Section 105 (*cognizance of offences*) of the Factories Act to the effect that cognizance of any offence shall be taken by the court on complaint made by an Inspector only after obtaining previous sanction in writing from the State Government. Further, a new Section 106B is sought to be introduced for compounding of offences.
- d) *Increase in threshold for Chapter VB applicability*: At present, the threshold for the applicability of Chapter VB under the Industrial Disputes Act, 1947, is 100 or more workmen in Punjab. The government intends to raise this threshold to 300.

CASE UPDATES

All provident fund dues to be included in the resolution plan: NCLAT orders in *Tourism Finance Corporation of India Limited and Others v Rainbow Papers Limited and Others* [Company Appeal (AT) (Insolvency) Numbers 354, 364, 404 and 1001 of 2019]

Few months ago, the National Company Law Appellate Tribunal (NCLAT) in *State Bank of India v Moser Baer Karamchari Union* [Company Appeal (AT) (Insolvency) Number 396 of 2019] held that the provident fund dues of a corporate debtor remain sacrosanct and do not form part of the waterfall mechanism under the Insolvency and Bankruptcy Code 2016 (under the waterfall mechanism, proceeds from sale of liquidation assets are distributed among various creditors in a certain order of priority). The recent NCLAT order in *Tourism Finance Corporation of India Limited and Others v Rainbow Papers Limited and Others* [Company Appeal (AT) (Insolvency) Numbers 354, 364, 404 and 1001 of 2019] is another pronouncement that emphasizes on the sacred nature of provident fund dues.

In the instant case (corporate insolvency proceedings against Rainbow Papers Limited), the resolution professional filed an application under the Insolvency and Bankruptcy Code 2016 (IBC) seeking approval of the resolution plan submitted by Kushal Limited. The National Company Law Tribunal, Ahmedabad, approved the resolution plan. In the said plan, only part payment of the provident fund dues was envisaged, and therefore, the same was challenged by the Regional Provident Fund Commissioner-I, Ahmedabad. An affidavit was filed by Kushal Limited (Successful Resolution Applicant) stating that the approved resolution plan had duly taken care of the principal amount of provident fund dues; only the order of levying of interest by the EPF authorities post the corporate insolvency resolution process was not taken into account. It was also argued that the provisions of the EPF Act pertaining to payment of interest and damages cannot be relied upon as the IBC has an overriding effect on the same.

The NCLAT rejected the above arguments and held that there is no conflict between the EPF Act and the IBC, and therefore, there is no question of IBC prevailing over the former. On the contrary, the IBC reiterates the sacrosanct nature of provident fund dues under Section 36 (provident fund dues to not form part of liquidation estate). On this basis, the NCLAT ordered the Successful Resolution Applicant to release full provident fund dues, including interest, in terms of the provisions of the EPF Act and further ordered that the approved resolution plan shall stand modified to this extent and take care of such dues.

INDUSTRY INSIGHTS

Ministry of Labour and Employment to launch Santusht portal for grievance redressal

The Ministry of Labour and Employment is planning to launch a 'Santusht' portal in 2020 which would enable speedy resolution of grievances raised by both employers and employees. While further details on the same are yet to be released, it has been [reported](#) by The Economic Times that the portal would be implemented in phases – the government will, at the first instance, monitor the services provided by the officials at the Employees' Provident Fund Organisation and the Employees' State Insurance Corporation; thereafter, employers and employees will be allowed to raise complaints in respect of other labour related issues as well. In addition to the above, the portal will use data on a real time basis to assess the performance of the competent authorities.

Companies make efforts to support employees with disabilities

As per a recent [news report](#) of The Economic Times, multinational companies in India are taking steps to build infrastructure and craft a mentorship programme for employees with disabilities. The report cites the example of Accenture group, wherein programmes have been devised with the aim of promoting an adaptable work environment for persons with disabilities including modifications and adjustments in application software and infrastructure, chalking out career progressions, providing mentorship and interactions with leaders and creating awareness among teams / managers.

It may be noted that the International Labour Organisation's [guidelines](#) on *Managing Disability in the Workplace* call upon employers to do more than lip service to workplace inclusion. It *inter alia* recommends building in-house training programmes, making necessary adjustments to the workstation, reviewing job description and performance requirements in consultation with the disabled employee on a continuous basis, among others, as steps towards such inclusion.

We hope the E-Bulletin enables you to assess internal practices and procedures in view of recent legal developments and emerging industry trends in the employment and labour law and practice landscape.

*The contributors to this edition of the E-Bulletin are Anshul Prakash (Partner),
Deepak Kumar (Principal Associate) and Deeksha Malik (Associate).*

For any queries in relation to the E-Bulletin, please email us at elbebulletin@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).

For private circulation only

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2020 Khaitan & Co. All rights reserved.

Bengaluru

Simal, 2nd Floor
7/1 Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
F: +91 80 2559 7452
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
F: +91 33 2248 7656
E: kolkata@khaitanco.com

Mumbai

One Indiabulls Centre
13th Floor, Tower 1
841 Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
F: +91 22 6636 5050
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
F: +91 11 4151 5318
E: delhi@khaitanco.com