



ELB E-BULLETIN

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# 01.

## REGULATORY UPDATES

### President gives assent to the labour codes on occupational safety, social security and industrial relations

The last month saw a swift go-ahead on the three labour codes on occupational safety, social security and industrial relations respectively from Parliament. Soon after, on 28 September 2020, the President of India gave his assent to (i) Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code), (ii) Code on Social Security, 2020 (SS Code), and (iii) Industrial Relations Code, 2020 (IR Code). The codes now await notifications from the Central Government to become effective as law.

The OSH Code replaces 13 extant statutes, and speaking generally, it intends to apply to all establishments having 10 or more workers. Some changes sought to be introduced by the new regime include exclusion of managerial and supervisory employees (the latter earning monthly wages more than INR 18,000) from the definition of 'worker', introduction of the concept of 'core activity of the establishment' and restrictions on engagement of contract labour in core activities, deemed registration of establishments, requirement of consent for overtime work, and inclusion of directly recruited employees within the purview of 'inter-state migrant worker'. For a detailed analysis, please refer to our ERGO on the code as published [here](#).

The SS Code, while consolidating the law on social security, incorporates a uniform definition of wages which need to be maintained at 50% level in the overall remuneration structure for the purpose of social security contributions and gratuity. It also expressly recognises the concept of fixed term employment and mandates provision of benefits on a pro-rated basis to fixed term employees. The code has brought in concepts relating to gig economy to provide social security to the workforce that forms part of such economy and introduced a limitation period for initiation of inquiries as regards provident fund and employees' state insurance fund contributions. For a detailed analysis, you may refer to our ERGO on the said code as published [here](#).

The IR Code replaces Trade Unions Act, 1926, Industrial Employment (Standing Orders) Act, 1946, and Industrial Disputes Act, 1947 (IDA). The code, while extending the application of standing



orders to all establishments, increases the threshold for application of the relevant chapter to 300 or more workers (as opposed to the current threshold of 50 / 100 workmen). The code, to an extent, streamlines the dispute resolution mechanisms and also extends restrictions on strikes and lockouts (which are currently applicable to establishments engaged in public utility services) to all establishments. A new concept of recognition of trade unions is envisaged, and employers are now required to contribute towards worker reskilling fund in the event of retrenchment of a worker. These and other changes have been discussed at length in our ERGO as available [here](#).

### Goa implements Contract Labour (Regulation and Abolition) (Goa Amendment) Act, 2020

With effect from 26 June 2020, the Government of Goa has implemented Contract Labour (Regulation and Abolition) (Goa Amendment) Act, 2020. Through the said amendment, the threshold for application of Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) has been increased from the existing 20 or more contract workers to 50 or more contract workers. Further, a new Section 25A has been introduced in the statute which allows compounding of certain offences. These offences are:

- causing obstruction to Inspector in his discharge of duties; and
- offences *other than* failure to comply with any provision that prohibits / restricts / regulates contract labour and failure to comply with a condition of a license granted under CLRA.



The composition amount ranges from INR 20,000 to INR 50,000 and would be imposed on the basis of the number of workmen employed in the establishment.

## Telangana provides for deemed renewal of contractor license

By way of a notification dated 17 September 2020, the Commissioner of Labour, Telangana, has decided to grant exemption to contractors deploying manpower to other establishments from the application of renewal of license upon its expiry. In place of the existing process, the government now seeks to provide for a deemed online renewal of contractor license upon payment of the prescribed fee.

## Karnataka introduces auto-renewal system for certain registrations and licenses

Through a government order dated 26 September 2020, the government of Karnataka has

introduced an auto renewal system subject to online payment of prescribed fee. This mechanism would be available for registration under Karnataka Shops and Commercial Establishments Act, 1961, license under CLRA, license under Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, and license under Factories Act, 1948.

## Maharashtra extends application of ESI Act to certain entities with 10 or more workers

By way of a notification dated 10 September 2020, the government of Maharashtra has extended the application of Employees' State Insurance Act 1948 to certain entities employing 10 or more workers. These entities are shops, hotels, restaurants, road motor transport establishments, cinema, and newspaper establishments. The notification became effective on 1 October 2020.

## 02. CASE UPDATES

### "Pandemic is not an internal emergency threatening the security of India": Supreme Court

In its order in the case of *Gujarat Mazdoor Sabha v State of Gujarat* (Writ Petition (Civil) Number 708 of 2020), the Supreme Court of India (Supreme Court) has quashed the notification issued by the government of Gujarat whereby it had exempted factories from provisions relating to daily and weekly hours of work, rest intervals etc. in view of the COVID-19 pandemic. Notably, the state had provided that factories may enjoy these relaxations subject to certain conditions, including that the overall daily limit of work hours would be 12 hours, and wages shall be paid in proportion to the existing wages (meaning that if the wages for 8 hours of work is INR 80, the wages for 12 hours of work would be INR 120). Interestingly, the notification was issued by the government by invoking Section 5 of the Factories Act, 1948, which allows a state government to exempt a factory from its provisions in the event of a 'public emergency'. 'Public emergency' here refers to a situation

wherein the security of the country is threatened or where there is war, external aggression or internal disturbance.



The Supreme Court relied on Section 5 to observe that while the ongoing COVID-19 pandemic has adversely affected economic activities, it has not affected the security of India in a manner that "disturbs the peace and integrity of the country". The court accordingly held that when none of the abovementioned conditions is present, the government cannot exercise its statutory power of exemption. The notification was quashed and the state government directed to pay overtime wages to all eligible workers who were made to work in accordance with the impugned notification.



## Establishment contributed to COVID-19 spread among workers, closure order justified: Madras High Court

In *Care 4 Life v Secretary to Government* (Writ Petition Number 9381 of 2020), the petitioner-establishment approached the Madras High Court to seek a writ of mandamus that would direct the respondent to permit resumption of manufacturing operations by the petitioner. The petitioner is engaged in manufacture of surgical masks and related products, and it had been operating during the pandemic. Unfortunately, several workers were soon tested COVID-19 positive, and when inspection was conducted at the premises, the authorities found that the petitioner had not been adhering to safety protocols mandated by the government from time to time. Ultimately, the establishment was directed to be closed down. Hence the petition.



The court, however, declined to provide relief to the petitioner. It noted that courts should be slow in interfering with the order of the authorities, and that when the authorities found the petitioner to be contributing to the spread of the virus, it would not be appropriate on the part of the court to

allow it to resume operations. The court accordingly directed that until normalcy returns, the petitioner should refrain from carrying on operations and that once the situation is normal, it may approach the respondents again for reopening the establishment.

## No writ jurisdiction for retrenchment claims unless there are exceptional circumstances: Delhi High Court

The order of the Delhi High Court in *PTI Employees' Union v PTI Limited* (Writ Petition (Civil) 10596/2018) comes as a respite to employers to an extent. In this case, the petitioners approached the court challenging the retrenchment of 297 employees by the respondent and sought quashing of the retrenchment notices issued to the impacted employees.

The respondent, on the other hand, challenged the maintainability of the writ petition on the ground that the IDA already contains a dispute resolution mechanism for industrial disputes. On the merits, the respondent argued that there was no work for the retrenched workers for a long time and that the establishment had been facing operational losses. These reasons were also communicated to the retrenched employees and all requisite severance payments were made to them.

The court agreed with the respondent's contention, holding that the IDA is a complete code in itself when it comes to resolution of industrial disputes. Writ petitions in such matters should not be entertained by courts unless there are exceptional circumstances established. This principle assumes more significance when there are disputed questions of fact.

## 03. INDUSTRY INSIGHTS

### Union Labour Minister advises limited use of fixed term employment arrangements

With the three labour codes receiving the assent of the President of India, the Ministry of Labour and Employment, Government of India, has been issuing statements to allay some of the concerns of the workers. On 5 October 2020, the Union Labour Minister [stated](#) that the industry should

use fixed term employment contracts primarily for short-term projects or seasonal work. As regards permanent employment, he observed that when employees are involved in the affairs of an establishment for a longer duration, they are more productive.

The statement of the minister should, however, not come as a surprise to the industry. The statement reiterates the observations of the judiciary, which has noted in several cases that there should be a *bona fide* need to engage someone on a fixed term employment basis.



## As Indian workforce spends significant time working from home, burnout becomes a problem

For majority of the Indian workforce, work from home at the first blush was a new and exciting experience. It was perceived that one would finally be able to witness a flexible working model and be around their family while meeting work deadlines. However, as Indian workforce spends a considerable time working from home, the situation is not that rosy.

It is being [reported](#) that employees are now facing a burnout as the line between the personal and the professional is getting blurred. Microsoft, too, has [reported](#) that India has the “second-highest percentage of workers facing increased burnout in Asia at 29%”. Several employees have reported that there is a constant anxiety that they are grappling with during these times. There could be several reasons for the same: despite video

conferencing, employees miss personal interaction. Further, it is stated that managers are developing “trust issues” with their subordinates due to lack of visibility. As [noted](#) by a survey of Harvard Business Review, when doubts come into picture, “managers can start to develop an unreasonable expectation that those team members be available at all times, ultimately disrupting their work-home balance and causing more job stress.”

Companies are [responding](#) to these findings. Some employers are introducing a staycation policy and observing an organisation-wide holiday from time to time, thereby encouraging employees to avail leaves and rejuvenate. Another company has mandated that employees will not be disturbed during designated lunch hours. The idea of all such measures is simple: to create work boundaries even when the employee is not within the confines of an office. The new normal calls for a unique sensitization program for managers, who should be trained to allow their direct reports to take charge of matters without being micromanaged.

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.

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