



ELB E-BULLETIN

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01.

REGULATORY UPDATES

Ministry of Labour and Employment, Government of India, releases draft Central rules under Industrial Relations Code, 2020

On 29 October 2020, the Ministry of Labour and Employment, Government of India, released the draft Central rules (Draft Rules) under the Industrial Relations Code, 2020 (IR Code), which is not in force as yet. Note that the Draft Rules would be relevant for establishments for which the appropriate government is the Central Government. These establishments include the ones engaged in metro railways, mines, oil fields, major ports, air transport services, telecommunication, banking and insurance. For most private sector entities, the appropriate government would be the state government, which will come up with its own set of rules on various matters.

Following are some of the important provisions under the Draft Rules:

1. Formation of grievance redressal committee: The Draft Rules provide detailed provisions regarding formation of a grievance redressal committee. It is provided that the representatives of the employer on the committee shall, as far as may be possible, be officials who are directly connected with the working of the establishment (such as heads of major departments of the establishment). As for workers' representatives, the same shall be selected from the following two groups:

- a) registered trade union may choose their representatives in proportion to their membership; and
- b) non-unionised workers may choose, amongst themselves, representatives for the committee.

Importantly, it is provided that if a worker is aggrieved by the decision of the grievance redressal committee or if the committee fails to resolve a grievance within 30 days from receipt of the application, the worker may file an application for conciliation before the conciliation officer through the Samadhan portal of the Union Ministry of Labour and Employment (or by registered post or speed post), within 60 days. In case the



application is sent through registered post or speed post, the conciliation officer shall get the same digitized. This is a new provision like several other provisions under the labour codes, all aimed at digitization of procedures and cutting down the prevailing red tape.

2. Application to industrial tribunal: Under the IR Code, a concerned party may make an application to the Industrial Tribunal in respect of matters not settled by the conciliation officer. The Draft Rules provide that such application may be made through the Samadhan portal of the Union Ministry of Labour and Employment. The Industrial Tribunal shall then direct the party to file a statement of claim, which can be done electronically or can be uploaded on the Samadhan portal.
3. Contribution to the worker reskilling fund: The IR Code introduces a new requirement, that of making contributions at the rate of 15 days of last drawn wages towards a worker reskilling fund in respect of each impacted worker in the event of retrenchment. Pursuant to the same, the Draft Rules provide that every employer who has retrenched a worker shall, within 10 days of doing so, electronically transfer the contribution amount to the account to be maintained by the Central Government. The Central Government would then electronically transfer the amount to the account of each impacted worker within 45 days.
4. Compounding of offences: Like other labour codes, the IR Code sets out a procedure for compounding of offences. The procedure is briefly described below:
 - a) *If the prosecution has not been initiated:* The compounding officer will send a notice through Samadhan Portal to the accused.



This form will contain certain details such as the name of the offender, the details of the offence, the compounding amount, the consequences of not compounding the offence, and the application to be filed by the accused if there is willingness to compound the offence. The accused may then send the form to the compounding officer electronically and deposit the compounding amount electronically or otherwise, within 15 days of receipt of the notice, to the account specified by the compounding officer in the notice.

- b) *If the prosecution has already been initiated:* Where the prosecution has already been instituted, the accused may make an application to the competent court to compound the offence. The court may, after considering the application, allow composition of the offence.

Karnataka's labour department issues an advisory regarding quarantine leave

The Labour Department, Government of Karnataka, issued an advisory on 6 November 2020 to employers of all public or private companies located in the state. The advisory follows a public interest litigation filed by All India Trade Union Congress before the Karnataka High Court, wherein it alleged that the COVID-19 infected employees across several organisations were not been given paid leave during the quarantine period. The court had, as an interim measure, directed Karnataka government to consider issuing appropriate directions under the Disaster Management Act 2005 for workers who had to undergo quarantine such that their absence of work is not treated as leave.



The advisory issued by the state government, therefore, suggests that the period of quarantine of infected employees should not be treated as unauthorised absence. Even if the infected employee is not entitled to leave, the employers should, in public interest, grant leave to undergo quarantine. Similarly, if the infected employee has exhausted all leaves in his / her account, the employer should transfer the leave from the account of another employee to allow such infected employee to undergo quarantine. If there is any discord between the employer and the employee in respect of grant of such quarantine leave in addition to the latter's leave entitlement, the same should be resolved amicably.

Haryana passes Haryana State Employment of Local Candidates Bill, 2020

On 5 November 2020, the Haryana legislative assembly passed the Haryana State Employment of Local Candidates Bill, 2020 (Local Candidates Bill). The Local Candidates Bill, which will cease to have effect on the expiry of 10 years from the date of its commencement, applies to all companies, societies, trusts, limited liability partnerships, partnership firms and persons employing 10 or more persons.

Once the bill comes into effect, the above-mentioned employers will be required to reserve 75% of the posts - wherein the monthly wages are not more than INR 50,000 - for persons domiciled in the state of Haryana. In the event the employer wishes to recruit from outside the state on the ground that there is dearth of local candidates who meet the requisite skill, qualifications or proficiency, it would be required to apply to the Designated Officer appointed under the Local Candidates Bill. Failure to fill in 75% of the relevant posts for local candidates in the specified manner may attract fine within the range of INR 50,000 - INR 2,00,000.

Rajasthan and Haryana introduce auto-renewal system for certain licenses

Through an order dated 29 September 2020, the government of Rajasthan has introduced an auto renewal system as regards the license issued to an entity under the Factories Act, 1948, subject to online payment of prescribed fee. A similar change has been brought about by Haryana by way of orders dated 21 October 2020 and 23 October 2020 in respect of licenses under the Contract Labour (Regulation and Abolition), Act 1970, the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, and the Factories Act, 1948. However, such auto-renewal is subject to certain conditions. For instance, such auto-renewal mechanism will not be applicable in cases where there is a change in the particulars relevant for the license (such as name of occupier / employer, address of the establishment etc.). The usual process for renewal will be followed in the event there is such change.

Interestingly, the Haryana government has come up with another order dated 23 October 2020 wherein it has allowed electronic maintenance of records under various labour laws such as Equal Remuneration Act, 1976, Factories Act, 1948, Payment of Wages Act, 1936, Punjab Shops and Commercial Establishments Act, 1958 etc. These measures, if implemented as intended, would aid in cutting down red tape and promoting the ease of doing business.

Karnataka notifies amendment to Karnataka Shops and Commercial Establishments Act 1961

By way of a notification in the Official Gazette dated 19 October 2020, the Karnataka government has brought into effect the Karnataka Shops and Commercial Establishments (Amendment) Act, 2020. At present, Section 25 of Karnataka Shops and Commercial Establishments Act, 1961 forbids the employer from requiring any woman to work during night shifts. However, the state government may exempt any establishment engaged in IT/ITeS sector from this provision subject to provision of the prescribed transportation and security facilities to such women employees.



The amendment, however, substitutes the above provision in a progressive manner. It is now provided that if willing, women can work during night shifts subject to the employer fulfilling certain conditions. These conditions include obtaining the written consent of the concerned women, engaging such women on a rotation basis, providing transport facilities to them from their residence to the workplace and back free of cost and with adequate security, conducting pre-employment screening of the antecedents of all drivers etc. Notably, the amended provision states that non-compliance of the said requirements would lead to cancellation of the registration certificate obtained by the shop or the commercial establishment.

Uttar Pradesh introduces a wide enabling power under the Factories Act, 1948

Under Factories Act, 1948, state government has the power to exempt any factory or class or description of factories from its provisions only in case of a 'public emergency', which term refers to war, internal disturbance and external aggression. However, by virtue of Factories (Uttar Pradesh Amendment) Act 2020, the state government has incorporated another provision to the effect that if it is satisfied from the standpoint of creating more economic and employment opportunities, it can exempt new factories or class of new factories which are established and whose business commences within 1,000 days from commencement of the amendment, from any provision of the Factories Act, 1948. It at all this exemption is granted, the same would be applicable for a period of 1,000 days from commencement of the business.

02.

CASE UPDATES

Denying the benefit of gratuity under the pretext of the employee being a trainee would defeat the object of the statute: Kerala High Court rules

In *IREL (India) Limited v Raghava Panicker* [Writ Petition (Civil) Number 2254 of 2020], the employer challenged the order of the Controlling Authority under the Payment of Gratuity Act, 1972, whereby it had ordered certain amount of deficit gratuity to be made good by the employer as regards an employee. The employer argued that the employee in question was initially hired as a trainee helper only and was not an employee;

accordingly, he was not entitled to gratuity for the said period.

The Kerala High Court, however, did not accept the above arguments. The court noted that there was enough evidence to suggest that no training was imparted to the person in question during the so-called training period in any specified trade, nor there was such intention on the part of the employer while engaging him as 'trainee helper'. In fact, the person was posted in shift duties along with other trainees and employees as per the requirements of the plant, and this practice continued even after completion of the so-called training. Stating these facts, the court held that the main or predominant object of training is that the person should learn his / her work during the period of training when he / she is engaged as apprentice. If that is not the object, then an employer cannot escape the liability to pay gratuity by merely designating an employee as trainee.

03.

INDUSTRY INSIGHTS

Sector-specific model standing orders in pipeline

If [reports](#) including that of *Business Standard* are to be believed, the Central Government is working on a model wherein sector-specific model standing orders would be drawn under the

Industrial Relations Code, 2020, in consultation with industry executives. According to one of the officials of the Union Ministry of Labour and Employment, each sector has its own peculiar issues including terms and conditions of employment, hence the need for customization.

Under the new code on industrial relations, an employer can adopt the model standing orders framed by the Central Government and inform about the same to the concerned certifying officer in the prescribed manner.

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 or the workforce related issues occasioned by COVID-19 outbreak, please email to us at elbebulletin@khaitanco.com.



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