



ELB E-BULLETIN

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01.

REGULATORY UPDATES

Ministry of Labour and Employment, Government of India, releases draft Central rules under Code on Social Security, 2020

On 28 September 2020, the President of India gave his assent *inter alia* to the Code on Social Security, 2020 (SS Code), which is yet to be brought into force by way of a notification in the Official Gazette. Part of the roadmap to implementation of the new labour law regime is release of the draft rules by the Central Government under the said code for public consultation (Draft Rules). The Draft Rules will be available for such consultation for a period of 45 days (i.e., until 28 December 2020).

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

1. Mechanism for voluntarily opting out: The Draft Rules provide that once an establishment has been voluntarily covered under Chapter III (relating to employees' provident fund) or Chapter IV (employees' state insurance fund) of the SS Code, it can apply for voluntary opting out upon making an application on a designated portal, provided there is an agreement between the employer and the majority of the employees to this effect. The Central Provident Fund Commissioner or the Director General of Employees' State Insurance Corporation have to decide on the application within 60 days, and if they fail to do so, the application shall be deemed to have been accepted. The Draft Rules, however, stipulate a cooling off period of 5 years between the time the establishment voluntarily opts in to be covered under the relevant chapters and the time it makes an application to opt out.
2. Registration requirements and intimation of change: The Draft Rules, in this regard, provide that an application for registration by a covered establishment would be made electronically in the form available on the Shram Suvidha Portal maintained by the Central Government. The certificate of registration will then be issued electronically within 7 days from the date of submission of the complete application, and where this is not done, the establishment shall be deemed to have been registered. It is then provided



that should there be any change in the particulars furnished for registration, the same shall be updated on the Shram Suvidha Portal within 30 days of such change.

3. Provision of crèche facility: It is provided that in every establishment with 50 or more women, there will be a crèche with adequate accommodation, lighting, and ventilation. The crèche shall be under the charge of women trained in the care of children and will be located within the establishment or at an appropriate distance from the establishment such that it is easily accessible to the women employees including a woman employee working from home.
4. Self-assessment mechanism for cess in relation to building or other construction workers: The Draft Rules provides that the cess shall be paid by an employer, at the time of approval or before commencement of the work, on the basis of self-assessment duly certified by Chartered Engineer. For this self-assessment, the employer would, if possible, calculate the cost of construction work as per the rates of construction specified by the respective state's Public Works Department or the Central Public Works Department or as per the documents submitted to the Real Estate Regulatory Authority. The Draft Rules then provide a format (Form XVI) in which the employer would furnish details of the self-assessment to the relevant officer.
5. Conditions for exemption from schemes under Chapter III and / or Chapter IV: While the existing regime allows exemption to establishments from the schemes formulated under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) and the Employees' State Insurance Act, 1948, the Draft Rules set out a detailed exemption provision for establishments which have at least 500 contributory members (as regards Chapter III, which pertains to employees'



provident fund) or 500 employees (as regards Chapter IV, which pertains to employees' state insurance fund). It is *inter alia* provided that in order to claim exemption from the relevant chapters, the employees must be receiving benefits that are substantially similar, if not superior, to those set out under the statutory schemes. Further, there should be no default in contributions under the statutory schemes for a period of 3 years immediately preceding the application.

Ministry of Labour and Employment, Government of India, releases draft Central rules under Occupational Safety, Health and Working Conditions Code, 2020

On 28 September 2020, the President of India gave his assent *inter alia* to the Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code), which is yet to be brought into effect. The Central Government has now released draft rules under the code for public consultation (Draft OSH Rules).

Set out below are some of the important provisions under the Draft OSH Rules:

1. Letter of appointment: The OSH Code requires every covered establishment to issue a letter of appointment to every employee on his / her appointment in the form prescribed by the appropriate government. The Draft OSH Rules provide a format for the letter of appointment. Aside from personal details, this includes particulars such as Aadhaar number, Labour Identification Number, Universal Account Number (in respect of employees' provident fund), Insurance Number (in respect of employees' state insurance fund), category of skill, wages, avenue for achieving higher wages/higher position, nature of duties etc.
2. Hours of work and related provisions: The OSH Code merely provides the daily working hour limit of 8 hours for establishments while leaving several other related requirements to the appropriate government to prescribe by way of rules. Pursuant to the above, the Central Government provides, in the Draft OSH Rules, that the weekly working hour limit for establishments would be 48 hours, in line with the present limit under the Factories Act 1948 and several state-specific shops and establishments statutes. During a working day, after every 5 hours of work, the employer must provide at least half an hour of rest interval. As for spread-over, the Draft OSH Rules state that the *period of work* (not the hours of work) of a worker should be *arranged* in a manner that, inclusive of his / her intervals for rest, the same does not spread over to more than 12 hours in a day.
3. Conditions for employment of women in night shifts: In a progressive move, the OSH Code provides that women can, upon their consent, work between the hours of 7 PM and 6 AM, subject to such conditions as may be prescribed by the appropriate government. The Draft OSH Rules sets out the conditions to be met while engaging women in night shifts. These include providing adequate transportation facilities to them for their pickup and drop off at their residence, making available toilet, washroom and drinking facilities near the place of work, providing safe, secure and healthy working conditions to them, and complying with the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (PoSH Act).
4. Journey allowance for inter-state migrant workers: One of the important shifts from the existing regime is inclusion of directly recruited employees from other states within the purview of 'interstate migrant worker' (if they fall in the INR 18,000 wage bracket). Under the existing regime, only workers engaged through third party manpower service providers were considered so. A necessary consequence of this change is that now, employers would be required to pay journey allowance to their employees hailing from other states. The Draft OSH Rules provide that an inter-state migrant worker would be eligible for journey allowance if he / she has worked for 180 days in the establishment in the preceding 12 months. If there is such eligible employee, he / she shall be paid a lump sum amount once in 12 months, which amount would cover the to and fro journey by train (not less than class-II sleeper), bus or any other mode of passenger transport, between the place of employment and the place of residence.



Bihar introduces important amendments to certain labour laws

By way of notifications dated 18 November 2020, the Government of Bihar has notified the Factories (Bihar Amendment) Act, 2020, the Industrial Disputes (Bihar Amendment) Act, 2020, and the Contract Labour (Regulation and Abolition) (Bihar Amendment) Act, 2020.

Through the amendment to the Factories Act 1948, the state government has increased the threshold for the application of statute from 10 workers to 20 workers for factories running with the aid of power and from 20 workers to 40 workers for factories running without the aid of power. The state government has inserted a new provision as well, which provides that the government may, by way of a notification in the Official Gazette, grant exemption from the provisions of the Factories Act, 1948 to any new factory or class of new factories. Here, the concept of a new factory pertains to those factories which are established and whose commercial production starts within a period of 1,000 days of the commencement of the amendment.



By way of Industrial Disputes (Bihar Amendment) Act, 2020, the state government has increased the threshold contained in Section 25K of Industrial Disputes Act, 1947 (IDA), from 100 workmen to 300 workmen. It may be noted that Section 25K provides for the application of Chapter V-B of IDA, which contains more stringent provisions for lay-off, retrenchment and closure of undertakings for larger establishments. Now, only establishments having 300 or more workmen would be bound by such stricter provisions, while establishments with a lower number of workmen can take recourse to the more flexible Chapter V-A to effectuate lay-off, retrenchment or closure.

Through the Contract Labour (Regulation and Abolition) (Bihar Amendment) Act, 2020, the state government has increased the threshold for application of the Contract Labour (Regulation and Abolition) Act, 1970 from 20 or more contract workers to 50 or more contract workers.

Karnataka introduces Karnataka Shops and Commercial Establishments (Second Amendment) Bill, 2020

The state legislative assembly in Karnataka has introduced the Karnataka Shops and Commercial Establishments (Second Amendment) Bill, 2020 (Second Amendment Bill), which aims to amend Section 15 of the Karnataka Shops and Commercial Establishments Act, 1961. At present, the section provides for an accumulation of a maximum of 30 days of earned leave. The Second Amendment Bill proposes to increase this accumulation limit to 45 days.

Andhra Pradesh and West Bengal take steps towards promoting ease of doing business

Through a notification dated 8 December 2020, the Government of Andhra Pradesh has introduced the facility of maintenance of either digital registers or details in an electronic format. This decision has been taken in view of the recommendations made by the Department of Industries and Commerce and Promotion, Government of India, and the Union Ministry of Commerce and Industry, with a view to improving the ease of doing business. The statutes in respect of which this facility has been allowed include, among others, Payment of Wages Act, 1936, Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Payment of Bonus Act, 1965, Andhra Pradesh Shops and Establishments Act, 1988, and Factories Act, 1948.

A similar facility has been provided by the Government of West Bengal by way of a notification dated 1 December 2020. Through another notification issued on the same day, the state government has also allowed auto-renewal of licenses under the Factories Act, 1948 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, subject to payment of the prescribed fees.



02.

CASE UPDATES

Contractor cannot shirk its responsibilities towards persons on its payroll: Supreme Court

In the case of Panther Security Service Private Limited v EPFO [Civil Appeal Number 4434-4435 of 2010], the appellant was engaged in the business of deploying security guards at the premises of its clients and registered under the Private Security Agencies (Regulation) Act, 2005 (PSA Act). The Employees' Provident Fund Organisation (EPFO) had passed an order making the appellant liable under the EPF Act. According to the appellants, such order was untenable since it only acted as a facilitator in providing security services to its clients and that it was the client which paid salary to the security guards.

The Supreme Court of India did not accept this contention. It observed that the provisions of PSA Act made it clear that the appellant was the employer of the security guards. As for payment of salary, the court noted, basis the material available on record, that the payment was made by the client to the appellant and not directly to the guards. Even here, merely because the client paid salary to the appellant which was disbursed by the latter to the guards does not mean that the client was the employer. The appeal was accordingly dismissed.

Internal committee members being from the same department as the respondent who is a senior official warrants reconstitution: Delhi High Court

In the case of Rashi v Union of India [WP (C) 3396/2019 (Delhi)], a complaint of sexual harassment was made against a secretary-level officer who was Chairperson of the Rehabilitation Council of India, which comes under the Department of Persons with Disabilities (DEPWD).



The question before the Delhi High Court was whether the internal committee constituted by DEPWD to inquire into such complaints was fair and unbiased, considering that the committee consisted of 3 officers from the same department where the accused was working. The court noted that the possibility that members of the committee may have worked under the accused would, in itself, be sufficient to require the constitution of an independent committee. *"When allegations are made against senior level officers, this court is of the opinion that the same should be inquired into by a committee appointed not at the level of the department but someone external and independent"*, the court noted.

Mere discrimination on the basis of sex is not 'sexual harassment': Kerala High Court

In the case of Prasad Pannian v Central University of Kerala [WP (Civil) Number 9219 of 2020], the Kerala High Court has opined that the PoSH Act does not contemplate a situation of mere discrimination on the basis of sex. According to the court, the very concept of sexual harassment in a workplace against a woman should start from an express or implied sexual advance, sexual undertone or unwelcome behaviour which has a sexual tone behind it.



03.

INDUSTRY INSIGHTS

India Inc sees a growing phenomenon of boomerang placements

With companies in India accustoming their functioning to the 'new normal', employees whose services were terminated in the beginning of the COVID-19 pandemic in view of the nationwide lockdown are being offered to rejoin the organisation. The motive behind such "[boomerang placement](#)" can be traced to the

benefit of immense saving of training costs, which saving is especially needed now in view of the liquidity crunch that employers are grappling with.

Various companies are exploring this option not only for the above-mentioned reason, but also because of the realization that such former employees are familiar with the work culture and the work ethos of a particular organisation, which, in turn, can take care of related aspects such as company loyalty and increased retention. It remains to be seen if this phenomenon is here to stay, but in the present climate characterized by increased uncertainty, it is definitely an interesting development to watch out for.

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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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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