



ELB E-BULLETIN

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01.

REGULATORY UPDATES

Sector-wise draft model standing orders floated for public comments

On 1 January 2021, the Ministry of Labour and Employment, Government of India, published draft model standing orders (Draft MSOs) prepared under the Industrial Relations Code, 2020 (IR Code) for the manufacturing sector, the service sector and the mining sector, respectively. The Draft MSOs are available for public comments for a period of 30 days since their publication in the Official Gazette.

Please note that unlike the extant regime, the IR Code gives the power to the Central Government alone to come up with model standing orders. Therefore, such model standing orders, once finalised and notified, would be relevant for all covered establishments i.e., establishments employing 300 or more 'workers' (employees not engaged in managerial capacity or supervisory capacity at wages exceeding INR 18,000 per month), irrespective of their location or sector of activity.

The Draft MSO for the manufacturing sector has been framed in line with the extant model standing orders of the Central Government, with a few notable changes. The Draft MSO, *inter alia*, (i) permits digital / electronic payment of wages with an intimation sent over SMS, e-mail, or social media communication; (ii) allows electronic publication of various notices in respect of working hours, holidays, wage rates etc.; (iii) requires the employer to frame a transfer policy for transfer of workers between departments / stations / establishments; (iv) mandates attendance registration for workers at the start and the end of their shift using identity cards / biometrics / any other system as notified by the employer; (v) expands upon the list of acts which constitute misconduct; and (vi) imposes an obligation upon workers who contract any infectious / contagious disease to immediately notify their Manager and keep away from work unless instructed otherwise.

While the draft MSO for the service sector is largely identical to that for the manufacturing sector, it specifically addresses the aspect of work from home by stating that, subject to the conditions of appointment or agreement between the employer and the workers, the employer may allow a worker to work from home for such period



of time as may be determined by the employer. While the express recognition of the new normal is certainly a welcome move, not much would be impacted as far as obligations of employers are concerned.

EPFO implements the Aatmanirbhar Bharat Rozgar Yojana (ABRY)

On 31 December 2020, the Employees' Provident Fund Organisation (EPFO) issued a circular for implementation of the ABRY scheme, which is intended to incentivize creation of employment opportunities in registered establishments, against the backdrop of COVID-19 impact. The scheme contains detailed guidelines in terms of eligibility, available benefits and procedures, the salient features of which are set out below:

- a) Period of validity: The validity of the scheme stands commenced from 1 October 2020 and remains open for registration up to 30 June 2021. The benefits thereunder will be available for 24 months from the registration of the eligible employer / employee but not later than 30 June 2023.
- b) Eligible employee: In order to avail the benefits under ABRY scheme, the employee must be a 'new employee' as defined thereunder. In other words, the employee must be one drawing monthly wages less than INR 15,000 and must be either a person who was not in employment before 1 October 2020 or a person who lost his / her job during the period between 1 March 2020 and 30 September 2020.
- c) Eligible establishment: An establishment can avail the benefits under ABRY scheme if it employs the required number of 'new employees'. The establishment must employ a minimum of 2 'new employees' (if it has up to 50 covered employees) or at least 5 'new employees' (if it has more than 50 covered employees), as the case may be.



d) **Amount of benefit:** Once an eligible employer / employee is registered under ABRY scheme, the Central Government will deposit contributions to the EPFO. For establishments having up to 1,000 covered employees in September 2020, the Central Government will deposit both employer's and employees' shares, or 24% of 'wages' ('wages' here being the components on which contributions are made under Employees' Provident Funds and Miscellaneous Provisions Act, 1952). For establishments having more than 1,000 covered employees in September 2020, the Central Government will deposit the employees' share, or 12% of 'wages'.

e) Since the Central Government would be depositing the eligible employee's share of provident fund contributions, the employer is not allowed to make any deduction from the concerned employee's wages towards such contribution. A declaration in this regard must be filed by the employer before the EPFO.

not be applicable / permitted for any other contribution period.



Few provisions of the Code on Wages, 2019 brought into force

By a notification dated 18 December 2020, the Central Government brought certain limited provisions of the Code on Wages, 2019 into force. These provisions (specific sub-sections under Section 42 and Section 67) collectively pertain to the constitution, composition and matters of internal procedure of the Central Advisory Board, which would be tasked with advising the Central Government on issues relating to fixation and revision of minimum wages and central 'floor wages', increased employment opportunities for women and related aspects. In doing so, the notification repeals the corresponding provisions (Sections 7, 8 and 9) under the Minimum Wages Act, 1948, in so far as they relate to the constitution and composition of the Central Advisory Board thereunder.

Please note that barring the aforementioned, all provisions of the four new labour codes are yet to be implemented and currently await notifications to be brought into force.

One-time extension for filing returns granted in respect of ESI contributions

Under the Employees' State Insurance (General Regulations), 1950, every employer is required to file a return of contributions along with copies of challans, within 42 days from the end of the corresponding contribution period. However, in view of issues faced by employers in this regard, the Employees' State Insurance Corporation issued a notification on 1 January 2021 providing a one-time relaxation for non-compliance with the 42-day timeline in respect of specific contribution periods i.e., from April 2020 to September 2020. For this period, the notification mandated all employers in default to file such pending returns latest by 15 January 2021. Further, the notification clarifies that this relaxation is relevant only for the period April 2020 to September 2020 and would

02.

CASE UPDATES

PoSH Act covers an act of sexual harassment committed by any 'person', irrespective of their gender – Calcutta High Court holds in *Dr Malabika Bhattacharjee v Internal Complaints Committee, Vivekananda College and Others*

In the case of *Dr Malabika Bhattacharjee v Internal Complaints Committee, Vivekananda College and Others* [WPA 9141 of 2020], the issue for consideration before the Calcutta High Court was whether an act of sexual harassment committed by a woman against another woman would be within the jurisdiction of the Internal Committee constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act).



The Calcutta High Court answered this question in the affirmative. The court referred to definition of the term 'respondent' under the PoSH Act, which includes 'a person', thereby including persons of all genders. The pertinent observations of the court in this regard are as below:

"The definition of 'sexual harassment' in Section 2(n) cannot be a static concept but has to be interpreted against the back-drop of the social perspective. Sexual harassment, as contemplated in the 2013 Act, thus, has to pertain to the dignity of a person, which relates to her/his gender and sexuality; which does not mean that any person of the same gender cannot hurt the modesty or dignity as envisaged by the 2013 Act."

'Workplace' in relation to sexual harassment also includes a remote digital setup – Rajasthan High Court clarifies in *Sanjeev Mishra v Disciplinary Authority & General Manager, Zonal Head, Bank of Baroda and Others*

In the case of *Sanjeev Mishra v Disciplinary Authority & General Manager, Zonal Head, Bank of Baroda and Others* [SB Civil Writ Petition No 150/2021], the Rajasthan High Court was faced the question of whether an act of sexual harassment can be said to have been committed remotely over a digital platform.

The petitioner in the case challenged the chargesheet issued to him by the disciplinary authority constituted under bank regulations on the ground of lack of jurisdiction, since (i) the petitioner and the concerned complainant were situated in different states; and (ii) the alleged messages in question were sent beyond working hours of the establishment.

However, the Rajasthan High Court negated both contentions and observed that (i) in case of sexual harassment, the concept of 'workplace' would include such a common digital platform, irrespective of the physical location of the parties; and (ii) obscene messages sent after working hours may also amount to sexual harassment at workplace. Accordingly, the petition was dismissed. It is important to note that the case has been decided under specific bank regulations, and it is yet to be seen how the judiciary embraces the concept of work from home vis-à-vis the definition of 'workplace' under the PoSH Act.



03.

INDUSTRY INSIGHTS

India Inc examines the possibility of an inoculation drive among employees

As per the [report](#) of the Economic Times, several companies are examining at the moment whether and how to facilitate a COVID-19-related inoculation drive for their employees. While the government has its priority list in consideration for the purpose of such vaccination, employers are looking to incur vaccination costs so that the infection curve could be flattened. The report also provides that the Confederation of Indian Industry has constituted a task force consisting of medical experts and key officials of certain companies, idea being to expedite the inoculation drive for the private sector workforce, among others.

The labour laws in India impose a general obligation on the employer to ensure health, safety and welfare of its workers to the extent reasonably practicable. Even the proposed labour code regime in the form of Occupational Safety, Health and Working Conditions Code, 2020 makes it imperative for employers to provide and maintain, as far as is reasonably practicable, a working environment that is "safe and without risk to the health of the employees". Considering this and to avoid any risk of contagion, some companies are connecting with vaccine suppliers to facilitate inoculation. Some of our clients have also indicated that these attempts are necessary to ensure timely vaccination which, in turn, will help ensure that employees are willing to return to their workplace without apprehensions.

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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