



ELB E-BULLETIN

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01.

REGULATORY UPDATES

Ministry of Health and Family Welfare releases fresh guidelines for preventive measures to contain the spread of COVID-19 in offices

On 13 February 2021, the Ministry of Health and Family Welfare (MoHFW), Government of India, released an updated standard operating procedure for undertaking preventive and response measures to contain the spread of COVID-19 in workplaces (Office SOP). As part of the generic measures, the Office SOP suggests employees to maintain a 6-feet distance in common places and wear a mask at all times. Employees have also been encouraged to self-monitor their health and report any illness at the earliest to their reporting manager. Interestingly, the draft model standing orders released by the Central Government under the Industrial Relations Code 2020 provide that disciplinary action may be taken against a worker if he / she deliberately suppresses the fact of his / her suffering from an infectious or contagious disease and that such a conduct on the part of the worker shall amount to misconduct (hence liable to disciplinary action).

As for office-specific preventive measures, the Office SOP recommends installation of sanitizer dispensers and thermal screening provisions at the entrance of the establishment. Simultaneously, sanitization of the workplace and disinfection using 1% sodium hypochlorite in case of frequently touched surfaces should be carried out at least twice a day. As for entry of persons, the Office SOP states that only asymptomatic individuals should be allowed to enter the office. It also provides that a member of the staff residing in a containment zone should inform the same to his / her supervisory officer and refrain from attending the office till such containment zone is de-notified. Such staff member may continue to work from home until such de-notification.

Regarding response measures to be taken upon occurrence of COVID-19 cases at the workplace, the Office SOP provides that a person showing COVID-19 related symptoms should be immediately isolated and provided with a mask until he / she is examined by a doctor. The employer in such cases should inform the nearest medical facility (hospital / clinic) or call the state or district helpline number dedicated to COVID-19.

Employees' Provident Fund Organisation's electronic facility for checking compliances of contractors

The Employees' Provident Fund Organisation (EPFO) has launched an electronic facility for principal employers (i.e., establishments engaging contract labour through contractors / manpower service providers), whereby they may be able to verify compliance by their contractors with the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 vis-à-vis the contract labour. Pursuant to the launch, a principal employer can, at EPFO's *Unified Portal*, add the details of its contractors as well as the Universal Account Number of each of the contract workers deployed at the principal employer's establishment. Thereafter, the principal employer can, after logging in to the said portal, view the remittances made by the contractors on behalf of each of the covered contract workers. For more details regarding this update, please refer to our ERGO available [here](#).

Karnataka notifies amendment to leave accumulation entitlement

By way of a notification in the Official Gazette dated 19 February 2021, the Government of Karnataka has brought into effect the amendment to leave accumulation entitlement under the Karnataka Shops and Commercial Establishments Act, 1961 (Karnataka S&E Act). Section 15 of the Karnataka S&E Act provides 18 days of earned leave to employees of commercial establishments covered therein. The said provision also states that if an employee does not, in any one calendar year, take the whole of the earned leave allowed to him or her, any leave not taken by him or her shall be added to the leave to be allowed to him in the succeeding calendar year. The provision then places a cap on the number of leaves that may be accumulated by the employee, which has been increased from 30 days to 45 days by virtue of the Karnataka Shops and Commercial Establishments (Second Amendment) Act, 2020.



02.

CASE UPDATES

Detailed reasons not always required in the disciplinary authority's order imposing punishment: Supreme Court of India

In the case of *Boloram Bordoloi v Lakhimi Gaolia Bank* [Civil Appeal Number 4394 of 2010], the appellant was the manager of the first respondent bank. Disciplinary proceedings were initiated on the basis of certain allegations levelled against him. The enquiry officer appointed for this purpose held that the charges against the appellant were proved and consequently, the respondent bank passed an order against the appellant imposing the punishment of compulsory retirement from service. One of the appellant's contentions was that such order was untenable since the disciplinary authority had not recorded any reasons in its order imposing the punishment of compulsory retirement.

The Supreme Court of India (Supreme Court) rejected this contention. It observed that it was well settled that if the disciplinary authority accepts the findings recorded by the enquiry officer and passes an order, it is not required to record detailed reasons in the order imposing punishment. The rationale for the same is that the punishment is imposed based on the findings recorded in the enquiry report and, thus, no further elaborate reasons are required to be given by the disciplinary authority. The appeal was accordingly dismissed.

Certain heart ailments are not covered within the scope of Rights of Persons with Disabilities Act, 2016: Supreme Court

In the case of *Nawal Kishore Sharma v Union of India* [Civil Appeal Number 150 of 2021], the appellant was a part of the crew on a foreign going vessel of Shipping Corporation of India. In 2010, he was discharged with the declaration of being permanently unfit for sea service as he suffered from dilated cardiomyopathy (heart's reduced blood pumping capacity). One of the appellant's contentions was that the failure to accommodate him in an alternative job contravened Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1995 Act).

The Supreme Court of India rejected this contention. It analyzed Section 2(i) (defining 'disability') of the 1995 Act (now repealed) and observed that the same took into account visual disability, locomotor disability, mental illness, mental retardations, hearing impairment and leprosy. The Supreme Court noted that heart ailments were not covered by the definition and refrained from importing words which the legislature chose not to. It also made observations in this context on the Rights of Persons with Disabilities Act, 2016 (2016 Act) which replaced the 1995 Act. It analyzed Sections 2(s) and 2(zc) of the 2016 Act, which define 'person with disability' and 'specified disability' respectively. The expression 'person with disability' is defined as a person with long term physical, mental, intellectual or sensory impairment which prevents his / her full and effective participation in society. The court opined that neither is dilated cardiomyopathy covered by the schedule referred to in the definition of 'specified disability', nor does it hinder the full and effective participation in society. Therefore, it is not covered within the scope of the 2016 Act. The appeal was accordingly dismissed.



03.

INDUSTRY INSIGHTS

IT sector sees more women as part of its workforce

There have been several studies now that point towards the increased organisational growth facilitated by a gender-diverse workforce. According to [Harvard Business Review](#), gender diversity not only promotes innovative thinking (which may help develop better products) but also attracts talent. As per the study conducted by 451 Research (also [covered](#) by The Economic Times), women now constitute 34% of the workforce in the information technology sector in India. Moreover, there is a near 50:50 gender parity among STEM (science, technology, engineering and mathematics) graduates.

Even the legal regime in the country is moving towards a more facilitative and progressive framework for women workers. The upcoming Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code) makes an important shift from the existing regime that restricts employment of women in night shifts. The OSH Code states that women must be

allowed to work in night shifts if they have provided their consent, subject to provision of the prescribed safety and other facilitative measures.

However, a problem several reports have highlighted is that, while companies are able to attract female talent, the retention of female workforce continues to be a challenge. There are [reports](#) pointing towards women leaving their jobs after the first five years of employment. The issue here is not that women quit jobs on account of lack of ambition or to focus more on their family, for they [yearn](#) for a commensurate package and position in the organisation. However, beyond a certain level in the organisational hierarchy, there continues to be a bias against women, among other things. This calls for tweaking human resource policies and practices (such as, setting inclusion and advancement of women as one of the key performance indicators and giving a sensitive and careful treatment to career breaks) and organising women-centric mentoring programmes and networking initiatives.

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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