



ELB E-BULLETIN

VOL 3 | ISSUE 7

July 2021

- ▶ LABOUR CODES: STORY SO FAR
- ▶ REGULATORY UPDATES
- ▶ CASE UPDATES
- ▶ INDUSTRY INSIGHTS



**KHAITAN
& CO**

Advocates since 1911

Welcome to the seventh edition of the e-Bulletin (Volume III) brought to you by the Employment Labour and Benefits (ELB) practice group of Khaitan & Co. This e-Bulletin covers regulatory developments (including those relating to the upcoming labour codes), case law updates, and insights into industry practices that impact businesses from a sector agnostic standpoint.

01.

LABOUR CODES: STORY SO FAR

In this section, we help you understand developments that have taken place thus far on the implementation of the four labour codes on wages, social security, industrial relations, and occupational safety, health and working conditions, which received Presidential assent between the years 2019 and 2020.

In the [previous edition](#), we discussed the status of the labour codes and the implementation framework being built by state governments in the form of rules thereunder. While uncertainty around the implementation of the codes continues, we note that few state governments initiated the public consultation exercise in connection with the framing of the rules under the codes in the month of July 2021. These states include Rajasthan, Jharkhand, and Himachal Pradesh.

02.

REGULATORY UPDATES

In this section, we bring to your attention, important regulatory developments in the form of notifications, orders, bills, amendments, etc., witnessed in the past one month in the context of employment and labour laws.

Tamil Nadu issues guidelines for mandatory COVID-19 vaccination of employees

By way of the guidelines dated 24 July 2021, the Office of the Director of Public Health and Preventive Medicine, Government of Tamil Nadu, has directed all Deputy Directors of Health Services to enforce certain preventive measures at workplaces to contain the spread of COVID-19 in coordination with the district

administration. Some of these measures include:

- a) screening staff as they enter the workplace along with quarantining suspected cases of COVID-19 and transporting them to a nearby health facility for testing;
- b) not letting any employee, without a face mask, to continue working at the workplace;
- c) ensuring that all employees and their family members are vaccinated with two doses of the COVID-19 vaccine;
- d) appointing a qualified Health Inspector where there are more than 300 employees or where the workplace spans more than 10,000 square feet; and
- e) creating awareness about COVID-19 appropriate behaviour among the staff.

Pune Women and Child Development Department mandates notification of details of internal committee constituted under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act)

The Pune Women and Child Development Department issued a public notice through a local newspaper Sakal on 24 July 2021, whereby it required establishments having ten or more employees to notify the details of the internal committee constituted by them under the PoSH Act. These details must be notified to the District Women and Child Development Office (Gulmarg Park Housing Society, 3rd Floor, Near Vijay Bakery, Somwar Peth, Pune - 411 011) on or before 30 August 2021. No specific format / mode has been provided in the public notice for submission of the internal committee's details.

The notice has been issued along the lines of the general letter issued by the Women and Child Development, Government of Maharashtra, in 2019, whereby it mandated all establishments in Mumbai to constitute and register their internal committee with the concerned Sub-Divisional Magistrate.



Delhi allows common display of certain labour law related registers in electronic format

The Government of National Capital Territory of Delhi has, by an order dated 5 July 2021, allowed electronic maintenance of various records and registers in a combined form under extant labour laws. The compliances for which this facility may be utilised include display of minimum rates of wages under the Minimum Wages (Central) Rules, 1950, display of periods and hours of work, holiday, and payment of unclaimed wages under the Industrial Employment (Standing Orders) Central Rules, 1946, and display of wage period, place and time of disbursement of wages, rates of wages, and hours of work under the Delhi Contract Labour Rules, 1972.

03.

CASE UPDATES

In this section, we share important judicial decisions rendered in the past one month from an employment and labour law standpoint.

Violation of the conditions of retrenchment will not automatically entail reinstatement of services: Supreme Court

The jurisprudence in relation to retrenchment of a workman (non-managerial employee) under the Industrial Disputes Act, 1947 is an interesting one. The statute contemplates certain conditions to be followed before an employer can retrench a workman who has completed 240 days of continuous service in the establishment. These requirements are an advance notice of one month or payment of wages in lieu thereof, intimation to or permission from the competent authority (the permission requirement becoming applicable in larger factories, mines, or plantations), and payment of retrenchment compensation.

Speaking generally, the conditions set out above are regarded as conditions precedent to effectuating retrenchment. This is now a well-settled principle owing to several judgments of the Supreme Court such as *State of Bombay v Hospital Mazdoor Sabha* [(1960) 111 SCR 251]. The natural consequence of non-payment of retrenchment compensation, for instance, is that the termination of the employee's services

itself becomes void ab initio. Even if there is a short payment of retrenchment compensation, courts follow the same principle. It is significant to refer to the judgment of the Bombay High Court in *Auro Engineering Private Limited v RA Gadekar* [1991 (93) BomLR 595], wherein it was argued by the concerned management that the short payment was a miniscule amount of INR 25 per impacted employee and, therefore, the termination could not be declared invalid based on a minor infraction. Disagreeing with this contention, the court held as follows:

"It is also settled law that, considering the negative language used in Section 25-F, the section imposes a mandatory duty on the employer which is a condition precedent to retrenchment of workmen. Consequently, contravention thereof, however slight, vitiates the act of retrenchment itself."

Ordinarily, in cases of an invalid termination, courts grant a relief of reinstatement with back wages. The Rajasthan High Court held, in the case of *Kishan Kumar v Union of India* [1982 WLN 209], that once a retrenchment is held to be invalid, a declaration should follow that the workmen continue to be in service with all consequential benefits including back wages.

However, courts have also realised that this approach cannot be followed universally. In *MD Hyder and Others v Industrial Tribunal* [LNIND 2005 AP 1000], the Andhra Pradesh High Court held that one ought to look at several factors before deciding whether reinstatement or, in the alternative, compensation should be granted to impacted employees.

In the recent case of *Madhya Bharat Gramin Bank v Panchamlal Yadav* [Civil Appeal Number 9792 of 2010], the Supreme Court affirmed this principle. The court determined a compensation of INR 5,00,000 to the workman to be reasonable in the case of violation of the conditions of retrenchment, noting that the workman worked with the appellant-employer between 26 December 1980 and 12 December 1985. The order of the court is in line with several other cases wherein after a prolonged period of time, courts do not consider it appropriate to direct restoration of employment due to a considerable change in circumstances.

In the presence of the service rules, internal committee's report is only a



fact-finding report: Karnataka High Court

In the case of Arabi U v The Registrar, Mangalore University, Mangalagangothri [Writ Petition Number 15070 of 2020], the Karnataka High Court examined the provisions of the PoSH Act, particularly the aspect of appropriate disciplinary action to be taken in case of a finding of guilt arrived at by the internal committee in a case of sexual harassment at workplace.

It may be noted that Section 9 of the PoSH Act states that if the internal committee has come to the conclusion that the charges of sexual harassment are established pursuant to the inquiry, it shall recommend to the employer to take appropriate disciplinary action which may be written apology, warning, reprimand, withholding of promotion or increments, termination of the services of the respondent, or counselling sessions or community service to be undertaken by the respondent. This would, however, not be applicable where there are service rules in place. In furtherance of this carve-out, the Karnataka High Court in the cited case noted that where the service rules have been rolled out by the organisation, "the report of the internal committee becomes a fact-finding report or a preliminary report, with regard to the allegation of sexual harassment and the employer becomes duty bound to proceed under the service rules before imposing any major penalty." Therefore, if the service rules provide additional safeguards to an employee before disciplinary action is taken against him / her as regards a proven case of sexual harassment, the same ought to be followed.

04.

INDUSTRY INSIGHTS

In this section, we delve into interesting human resources related practices and / or initiatives noticed across various sectors in the past one month.

Remote job positions may thrive in the post-pandemic world, too

There are [reports](#) to suggest how India Inc. has discovered the idea of remote job positions against the backdrop of the COVID-19 outbreak, with one [study](#) indicating an increase of 966% in the search for remote work since April 2020. Companies that opened job positions in recent months noticed that offering remote working as a work model in their call for applications helped them attract the best talent given the absence of location barriers. With a continued threat of a third wave in the country, such flexibility ensures that prospective applicants shun their apprehensions as regards the safety and preventive mechanisms adopted at the workplace.

Needless to mention, such remote job positions warrant a re-look at the existing human resources policies, job descriptions, and appointment letters (where, for instance, the law governing the various terms and conditions of employment such as working hours and leave entitlements in a remote working setup is clearly identified). However, it appears that more companies are prepared on this front, with some also promoting their employee wellness programmes to attract and retain talent. The emerging idea behind these initiatives is that remote job positions are likely to thrive in the post-pandemic world as well, given *inter alia* that the upcoming labour code regime in the country expressly allows employers to determine the terms and conditions of a work-from-home model.

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) 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.



AMBITION STATEMENT

"Our ambition is to be a respectable law firm providing efficient and courteous service, to act with fairness, integrity and diligence, to be socially responsible and to enjoy life. We should put greater emphasis on working in consonance with our aforesaid values than on maximizing earnings. Earn we should but with dignity and pleasure."

Khaitan & Co is a premier full-service Indian law firm with over 700+ lawyers, including 150+ partners and directors, and has offices in Mumbai, New Delhi, Bengaluru, Kolkata, Chennai and Singapore

To know more about us, please visit www.khaitanco.com.



**KHAITAN
&CO**
Advocates since 1911

www.khaitanco.com