



ELB E-BULLETIN

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Welcome to the eighth 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 4 (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 the status remains the same as on the date of preparation of this bulletin, we do note that the Government of Maharashtra released a notification dated 27 August 2021, whereby it issued the draft Maharashtra Code on Social Security Rules, 2021 (Draft Maharashtra Rules). The Draft Maharashtra Rules will remain available for public consultation for a period of 45 days from the date of their notification in Maharashtra's Official Gazette (i.e., 27 August 2021).

Note that under the Code on Social Security, 2021 (SS Code), the appropriate government for the purpose of rule-making power is the Central Government for, *inter alia*, railways, mines, oil fields, major ports, air transport services, telecommunications, banking and insurance companies, and even other establishments which have branches in more than one state. The state government has rule-making power only in respect of the remaining establishments. As for Maharashtra, the Draft Maharashtra Rules, *inter alia*, envisage the process of nomination by an employee for the purpose of receiving gratuity, the application by an employee / nominee for receiving gratuity and the processing of such application by the concerned employer, and complaint to the Inspector-cum-Facilitator in respect of a claim for maternity benefit. On the procedural compliance side, the Draft Maharashtra Rules

require every employer to maintain a register of women employees (electronically or in hard copy), submit a unified consolidated return on the web portal of the state government, and maintain records under Chapter V of the SS Code for a period of 2 (two) years.

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 1 (one) month in the context of employment and labour laws.

[Securities and Exchange Board of India \(SEBI\) comes up with a new regime for equity-based benefits schemes and sweat equity shares for employees](#)

In an important development, SEBI notified the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, effective 13 August 2021, which has replaced the SEBI (Issue of Sweat Equity) Regulations, 2002 and the SEBI (Share Based Employee Benefits) Regulations, 2014. The new regulations increase the scope of coverage of employees to bring the employees of a group company or an associate company within the purview of a share-based benefits scheme implemented by a listed company. The new regime also enables switching between different modes of administration of a scheme and allocation of excess monies available to a trust at the time of winding up towards another scheme subject to shareholder's approval via an ordinary resolution. For a detailed examination of the new framework, please refer to our ERGO as available [here](#).

[Bengaluru mandates vaccination of employees as a responsibility of employers](#)

In a notable development, the Chief Commissioner, Bruhat Bengaluru Mahanagara Palike (Municipal Corporation of Bangalore), issued an order dated 26 August 2021, which mandates that every employer ensure 100% vaccination of its workforce and that at least 1 (one) dose of the vaccination must be administered by 31 August 2021. The employers must maintain proof of the vaccination status of their employees which may be furnished as and



when called upon to do so by the local authorities. This is in line with the mandate of the Maharashtra and Tamil Nadu governments which have introduced inoculation as a pre-condition to resumption of activities in offices.

[Auto renewal of registration under Andhra Pradesh Shops and Establishments Act, 1988 \(AP S&E Act\)](#)

By way of a notification dated 14 August 2021, the Labour, Factories, Boilers and Insurance Medical Services Department of the Government of Andhra Pradesh introduced the auto renewal of registration under the AP S&E Act. An employer can avail the said mechanism through self-certification and payment of fees online instead of exemption from renewal of the registration certificate previously granted to all shops and establishments in the state through a notification dated 7 June 2019. This step has been taken by the state government to minimise regulatory compliance burden and promote ease of doing business in the state of Andhra Pradesh and is in line with the practice of auto-renewal of registration undertaken by other states.

[Introduction of consolidated annual returns under the Contract Labour Regulation and Abolition \(Gujarat\) Rules, 1972 \(Gujarat CLRA Rules\)](#)

By way of notification dated 14 June 2021, the Government of Gujarat introduced amendments to the Gujarat CLRA Rules. One of the key amendments introduced is the substitution of the extant Rule 82, which pertains to filing of returns. The amended Rule 82 stipulates that every establishment / contractor / principal employer shall file consolidated annual returns in Annexure V, which is prescribed under the Self-Certification cum Consolidated Annual Return Scheme (Scheme) provided under the Gujarat Labour Laws (Amendment) Act, 2015. The Scheme applies to every employer which has employed 50 (fifty) or more employees in an establishment under either the Factories Act, 1948 or the Contract Labour (Regulation and Abolition) Act, 1970. With the amendment in the Gujarat CLRA Rules, returns can be filed online between the period of 1 January-1 March, annually. The amendment removes the requirement of furnishing half yearly returns in Form XXIV by contractors and yearly returns in Form XXV by principal employers.

03.

CASE UPDATES

In this section, we share important judicial decisions rendered in the past 1 (one) month from an employment and labour law standpoint.

[2010 amendment to Payment of Gratuity Act, 1972 to not have retrospective effect: Supreme Court](#)

In the case of Krishna Gopal Tiwary and Another v Union of India and Others [Civil Appeal Number 4744 of 2021], the Supreme Court of India (Supreme Court) considered an appeal from the decision of the Jharkhand High Court which declined the claim of the appellants (who were employees of Coal India Limited) to declare the applicability of Payment of Gratuity (Amendment) Act, 2010 (Amending Act) from 1 January 2007.

The background of the case involves the ceiling of gratuity under the Payment of Gratuity Act, 1972 (Gratuity Act) being raised from INR 3,50,000 to INR 10,00,000 through the office memorandum of the Government of India dated 26 November 2008. The appellants were provided gratuity in terms of the office memorandum. However, the Gratuity Act was amended in 2010 on receiving the assent of the President of India and the enhanced ceiling was brought into effect the same year through a notification issued by the Government of India which appointed 24 May 2010 as the date on which the Amending Act was to come into force.

The appellants challenged 24 May 2010 as the commencement date of the Amending Act and claimed that the Amending Act should be effective from 2007 and, accordingly, sought tax exemption under Section 10 of the Income Tax Act, 1961, which exempts gratuity received under the Gratuity Act from levy of income tax. They also claimed retrospective application of the Amending Act on the ground of the Gratuity Act having been enacted to grant liberalized benefits.

The Supreme Court, having considered the contentions of the appellant and the provisions of the Gratuity Act, denied the claim of the appellant as regards retrospective application of the Amending Act. The Supreme Court observed as follows:



"We find that the date of commencement fixed by the Executive in exercise of power delegated by the Amending Act cannot be treated to be retrospective as the benefit of higher gratuity is one-time available to the employees only after the commencement of the Amending Act. The benefit paid to the appellants under the office memorandum is not entitled to exemption in view of specific language of Section 10(10)(ii) of the Income Tax Act."

Therefore, the Supreme Court upheld the decision of the Jharkhand High Court as regards the 2010 amendment to the Gratuity Act not having retrospective effect.

Non-adherence to national guidelines on crèche in violation of Maternity Benefit Act, 1961 (MB Act): Himachal Pradesh High Court

In the case of Bahra University, Shimla v Dr Pooja Bhardwaj and Others [CWP Number 2955 of 2019], the Himachal Pradesh High Court penalised an employer for non-compliance with the provisions of the MB Act and emphasised women's entitlement to maternity benefit as provided thereunder. In the present case, the respondent was denied payment of maternity benefit for the duration for which she was on maternity leave. She was also not provided crèche facilities conforming to the requirements under the MB Act and the National Minimum Guidelines for Setting Up of Crèche Facilities as framed by the Ministry of Woman and Child Development, Government of India. Due to the said violations by the employer, the Himachal Pradesh High Court directed the payment of salary for the duration of maternity leave with interest and also directed that she be reinstated for the post which she held prior to her proceeding for maternity leave. The Himachal Pradesh High Court also did not interfere with the orders passed by the appellate authorities as regards the duration of the respondent's absence from employment to be counted towards her seniority and the provision and maintenance of crèche facilities as per applicable norms.

04.

INDUSTRY INSIGHTS

In this section, we delve into interesting human resources related practices and / or initiatives

noticed across various sectors in the past 1 (one) month.

India Inc. paving the way for office makeovers for the post-pandemic workforce

Despite reports predicting a third wave of the COVID-19 pandemic, many employers are strategising architectural makeovers of their office spaces and infrastructure for return of their employees to the office in 2021 or the beginning of next year.

In this regard, many [large organisations](#) have doubled their per square foot office space per employee. This increase in employee workspace ratio has also become possible with a certain percentage of employees working from home or working on a hybrid model with attendance at office being limited to specific days of the week. Use of voice operated technologies to prevent touch in elevators, meeting and conference rooms, etc. and use of plantations and soft furnishings to subtly create distance as per social distancing norms and at the same time [retain the collaborative nature of the workspace](#), are aspects that employers are focusing on in furtherance of their preventive measures against the backdrop of the pandemic. Other [common practices](#) being undertaken for ensuring safety at the workplace include installation of air filters, health screening at entrance gates, tracking of entry and exit of visitors, and greater frequency of visible cleaning schedules.

Some companies are also decentralising their operations to ensure business continuity through a fluid workforce. For this, greater investments are being made on the digital infrastructure front through better broadband networks and software applications to facilitate remote working and making the experience as interactive as possible.

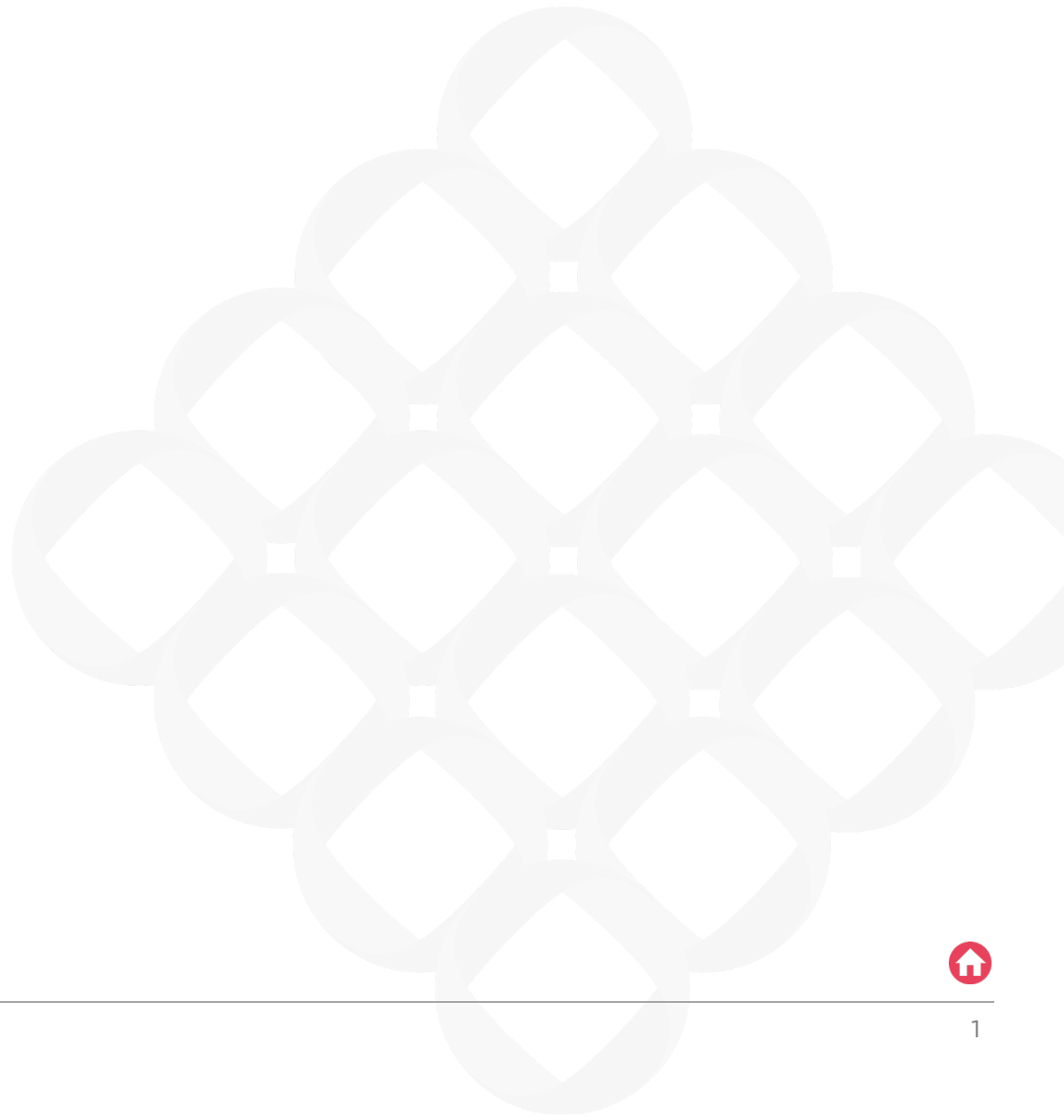
The architectural changes and modifications suitable to each workplace would depend on the model of working that would eventually be adopted by employers and would require accounting of costs and feasibility aspects. Given the uncertainty surrounding the pandemic, the practical functioning and effectiveness of such modifications of workspaces remain contingent on the spread of the virus and government regulations as regards opening of workspaces.



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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