



ELB E-BULLETIN

**VOL 3 | ISSUE 9**  
September 2021

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Welcome to the ninth 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 in understanding the developments that have taken thus far on the implementation of the 4 labour codes on wages, social security, industrial relations, and occupational safety, health and working conditions, which received the 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 largely the same as on the date of preparation of this bulletin, we do note that the Government of Maharashtra released a notification dated 3 September 2021, whereby it issued the draft Maharashtra Code on Wages 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., 3 September 2021). The said draft rules *inter alia* discuss the norms for fixation of minimum rate of wages by the state government (such as geographical area and level of skill required for working in different categories of work), hours of work, weekly off, calculation of wages for a part-time employee, and maintenance of registers (electronically or in physical form).

Similarly, the Government of Haryana has released its draft rules under each of the 4 labour codes. These draft rules were released through different notifications, each dated 16 September 2021, of the Labour Department, Government of Haryana. These would remain available for public consultation for a period of 45 days from the date of their publication in the Official Gazette (17 September 2021).

## 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.

#### Employees' Provident Fund Organisation (EPFO) grants limited relaxation in its Aadhaar-UAN seeding mandate

In our [June edition](#), we discussed about the circular dated 1 June 2021, whereby the EPFO had provided that the electronic challan-cum-return (ECR) for employees' provident fund contributions would be allowed to be filed only in respect of those employees whose Aadhaar numbers are seeded and verified with their respective Universal Account Numbers (UANs). In view of the concerns that it had been receiving from employers across industries, the EPFO had later extended the timeline for such seeding till 1 September 2021.

On 11 September 2021, the EPFO issued another circular for providing limited extension of the timeline for the above-mentioned requirement. This is particularly done in view of the low Aadhaar penetration in the EPFO's administrative zone in the North-East region of India, comprising the states of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura. Now, the timeline for mandatory seeding of Aadhaar with UAN is extended till 31 December 2021. Similarly, for certain classes of establishments viz. beedi making, building and construction, plantation industries, etc. where there is frequent change in work sites and other constraints, the timeline for mandatory Aadhaar-UAN seeding is extended till 31 December 2021.

The new circular also states that, for areas and class of establishments other than as listed above, any delay in filing ECRs by members for the wage months of August 2021 and September 2021 due to non-seeding of Aadhaar, should not be presumed as employer's default for the purpose of levy of damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act).





### Important amendments to labour laws tabled in Tamil Nadu's Legislative Assembly

To keep up with the upcoming industry trends and to facilitate the ease of doing business, the following bills were introduced in the Legislative Assembly of Tamil Nadu on 6 September 2021 to amend certain state-specific labour laws:

(a) Tamil Nadu Labour Welfare Fund Act, 1972 (TLWF Act): The proposed amendments to the TLWF Act increase the rates of labour welfare fund contributions to be made by employers on behalf of themselves and their employees. If brought into effect, every employee will be required to contribute a sum of up to INR 50, per year, to the state labour fund, as opposed to the earlier monetary contribution of up to INR 10 per year. Similarly, in respect of each such employee, every employer is required to contribute a sum of up to INR 100 per year and the state government is required to contribute a sum of INR 50 per year, as opposed to the earlier monetary contributions of INR 20 and INR 10, respectively.

(b) Tamil Nadu Shops and Establishments Act, 1947 (TN S&E Act): The proposed amendment provides that the premises of every establishment will be required to have suitable seating arrangements for all employees such that they can make use of any opportunity to sit in their course of work and accordingly avoid 'on their toes' situation throughout their working hours. Another amendment to the TN S&E Act requires that on and from the commencement of such amendment, the employer of every establishment employing 10 or more workers is required to apply for registration and procure a registration certificate in that regard. Such application is required to be made in the prescribed form and manner and within a period of 6 months from the date of commencement of the business. Notably, the proposed amendment provides that upon receipt of the application for registration of the establishment, the jurisdictional inspector is required to issue a registration certificate in the prescribed form within 24 hours from the date of receipt of such application, else the registration certificate shall be deemed to have been granted after the expiry of the 24-hour timeline. Similar to the initiative taken by other states, Tamil Nadu also proposes to

have no requirement for renewal of the registration certificate so obtained.

### West Bengal issues guidelines for payment of statutory bonus and ex-gratia to employees

By way of a notification dated 15 September 2021 (WB Notification), the Governor of West Bengal put forth certain guidelines for all employers covered under the Payment of Bonus Act, 1965 (Bonus Act), while determining the legitimate dues of the employees for bonus payments. The WB Notification has been issued in view of the ensuing festival of Durga Puja for the year 2021 and to facilitate industrial peace and harmony. The WB Notification *inter alia* states that employers should adopt a flexible attitude while determining the amount of bonus payable to eligible employees. Where an employee is not covered under the Bonus Act, employers should consider payment of an ex-gratia amount to such employee. Bonus should be paid to all employees, including casual employees, and to workers engaged through third-party contractors, if these personnel have worked for at least 30 days in the year.

### Maharashtra sets up online mechanism for notification of accidents in factories

By way of a notification dated 26 August 2021, the Government of Maharashtra has introduced an online portal to ensure receipt of information regarding occurrence of accidents in factories situated within the state in a time bound manner. In the event of fire, air leak, explosion or such other incidents, factory managers are advised to fill in the relevant details in Form 24 or Form 24A of the 'Accident Reporting System', which may be accessed on the Directorate's website, i.e., [www.mahadish.in](http://www.mahadish.in). The said documents are required to be duly authorised by the occupier or manager of the factory and are required to be submitted with the competent authorities within the prescribed time under the law.

## 03.

### CASE UPDATES

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





### No coercive action on account of non-seeding of Aadhaar with UAN: Delhi High Court

In the case of Association of Industries and Institutions v Union of India [Writ Petition (Civil) 5952/2021], the Delhi High Court has given a temporary relief to employers as regards EPFO's mandate to seed the employees' Aadhaar with their UAN for the purpose of filing ECRs for employees' provident fund contributions. In the partly heard matter (the remainder to be heard on 10 November 2021), the Delhi High Court has noted that the legal validity of EPFO's direction will have to be examined in view of the judgment of the Supreme Court of India in Justice KS Puttaswamy (Retired) v Union of India [(2019) 1 SCC 1]. It then observed that until the said issue is determined, the Central Government cannot exclude the benefits to which the employees are entitled under the EPF Act. Accordingly, the court has ordered that as regards employees in respect of whom the seeding exercise is yet to commence, the date for completion of the same would stand extended until 30 November 2021.

### Limited judicial review in disciplinary matters, standard of proof to be balance of probabilities: Supreme Court of India

In the case of Union of India v Dalbir Singh [Civil Appeal Number 5848 of 2021], the Supreme Court of India has once again observed that a writ court cannot substitute its judgment against that of an internal disciplinary authority that has determined a case of misconduct involving an employee. The scope of judicial review in such cases would be limited to assessing *inter alia* whether (a) the inquiry is held by a competent authority, (b) there is violation of the principles of natural justice in conducting the proceedings, (c) the disciplinary authority has placed reliance on irrelevant or extraneous considerations while determining the case, and (d) the conclusion *prima facie* is of such nature that no reasonable person could have arrived at such conclusion.

On the question of standard of proof in internal inquiries, the court reiterated that one does not have to determine whether a case of misconduct has been established beyond reasonable doubt; instead, the standard should be of balance of probabilities. Therefore, even if there is no conclusive evidence of misconduct against the employee, statements of staff could be placed reliance on, and it is open to the

accused-employee to lead evidence to rebut the same.

### Strict observance of guidelines on hearings in sexual harassment matters necessary: Bombay High Court

In a much talked about order (P v A and Others [Suit Number 142 of 2021]), the Bombay High Court noted that there are no established guidelines on protection of the identities of the parties involved in a sexual harassment case under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The court then went on to set certain guidelines for future orders, hearings, and case file management in such kind of matters.

The court has *inter alia* directed that the order sheets of cases will not set out the names of the parties and will instead read as "A v B", "P v D", and so on. Similarly, there will be no reference to any information which can potentially identify the parties involved in the matter (such as email addresses and mobile numbers). Notably, the court instructed that orders and judgments on merits will not be uploaded for general public display. A specific order of the court would be necessary to release an order for public access; even so, such order must be an anonymised version. Further, hearings will be in-camera and the order / judgment will be delivered in private and not pronounced in an open court.

## 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.

#### Exploring a 4-day work week

When a company conducting operations in the information technology sector recently [announced](#) a 4-day work week, it made headlines, for it is not often that we hear employers in India exploring a 4-day work week concept. The company's representatives indicated that 80% of the workforce had expressed its interest to work for longer hours in order to get a longer weekend whereby they can not only spend time with family but





also invest in programmes for personal learning and development.

The idea of having a 4-day work week has not been tested to a great extent in India. This emanates from the general thought process that equates more working days with greater productivity. Note that the labour laws in India do not mandate any minimum number of working days - the legal framework typically sets out the maximum limits on daily and weekly working hours and requires the employer to give a weekly off to employees (with a general provision allowing better terms to be agreed upon between the employer and the employee).

Against the backdrop of COVID-19 pandemic, few companies (such as [Ola](#) and [Swiggy](#)) did implement a 4-day working week policy, stating that they had taken cognizance of the burnout that the working class in the country had generally been experiencing due to long and erratic working hours. However, these measures were mostly temporary and implemented at a time when the COVID-19 crisis in India had peaked in its intensity and ramifications. As of now, the 5-day / 6-day working week policy continues to be the predominant model of working in India.

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](mailto:elbebulletin@khaitanco.com).*





## AMBITION STATEMENT

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