



ELB E-BULLETIN

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Welcome to the twelfth 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 December 2021, setting out the draft Maharashtra Industrial Relation Rules, 2021. The said draft rules, available for public consultation for a period of 45 days, *inter alia* set out the manner of recognition of a trade union as a negotiating union or a member of a negotiating council, the matters on which a negotiating union or a negotiating council may negotiate with the employer, and the manner of making contributions towards the worker re-skilling fund in the event of retrenchment.

Importantly, the draft rules provide that (a) any employee or worker shall not be engaged on a fixed-term basis for the same work for a total period exceeding 3 years, and (b) the total number of fixed term employees or workers shall not exceed 20% of the overall employee / worker headcount in the relevant category.

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.

[Haryana proposes amendments to labour welfare fund rules](#)

The Government of Haryana issued a notification, published in the Official Gazette on 21 December 2021, releasing the draft Punjab Labour Welfare Fund (Haryana Amendment) Rules, 2021. The draft rules, available for public consultation for 45 days, seek to make changes in the manner of depositing labour welfare fund contributions in the state by providing that the employer shall deposit such contributions before the 31st day of December every year through online mode in favour of the Welfare Commissioner. At present, the rules provide such contributions to be made in cash or by money order / postal order / demand draft / cheque drawn in favour of the Welfare Commissioner.

03.

CASE UPDATES

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

RT-PCR test for unvaccinated employees reasonable: Bombay High Court

In its judgment in *Deepak Kumar Radheshyam Khurana and Others v Mumbai Port Trust and Another* [Writ Petition (L) Number 17132 of 2021], the Bombay High Court has observed that it is reasonable for an employer to require and observe a higher degree of checking and monitoring in the case of employees who have not been vaccinated against COVID-19 virus. Accordingly, the court upheld the circular issued by Mumbai Port Trust requiring unvaccinated employees to submit a negative RT-PCR test report periodically (i.e., every 10 days) and bear the cost of such tests for attending office. For a detailed analysis of this judgment, click [here](#).

Freedom of employer to transfer an employee to another location not to be ordinarily interfered with: Delhi High Court

In the case of *Naresh Kumar v Scholastic India Private Limited* [Writ Petition (Civil) 2886 of 2019], the Delhi High Court has reiterated that a transfer of employee to another location could be declared unlawful only where the workman has alleged and shown a *mala fide* act on the part of the employer. Placing reliance on judicial precedents that have taken the stance that employees cannot choose their place of posting, the court observed that *"the freedom of the management to transfer a particular employee, until and unless the same is due to stigma or in a mala fide manner, ought not to be usually interfered with by the court, especially in the case of private employment."* The court also observed that the consequences of the transfer are also to be seen, and in the present case, the transfer did not result in any adverse impact on the employee's terms and conditions of service.

GST not applicable on payment in lieu of unserved notice period: Madhya Pradesh Appellate Authority for Advance Ruling

In its recent ruling, the Madhya Pradesh Appellate Authority for Advance Ruling (MPAAAR) has reversed the ruling of Authority for Advance Ruling that had held that goods and services tax (GST) is applicable on payment made by the employee in lieu of their unserved notice period. In this case, Bharat Oman Refineries Limited (employer) had sought an advance ruling from Authority for Advance Ruling, Madhya Pradesh, on the question whether GST is applicable on payment made by an employee to the employer in lieu of the notice period not served by them, by virtue of Clause 5(e) of Schedule II of the Central Goods and Services Tax Act, 2017, which states that '*agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act*' would be considered as a supply of services.

In this regard, MPAAAR made the following observations:

"Any employee leaving the employment of the applicant is required to serve minimum 30 days' notice as per the terms of the appointment. But if any employee is not able to serve the full 30 days' notice period there is an option to the employee to pay an amount equal to his monthly salary for the number of days [for] which [he] is not able to serve the notice period. This option to pay an amount instead of serving the 30 days or less notice period facilitates the employee where he desires to quit immediately by giving compensation to the employer for his sudden and unexpected exit... Merely because the employer is being compensated does not mean that any services



have been provided by him or that he has 'tolerated' any act of the employee for premature exit."

Applying the above rationale, MPAAAR held that GST is not applicable on any payment made by an employee to the applicant-employer in lieu of the unserved notice period.

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.

[Gender diversity a priority for India Inc. in 2021: Report](#)

A [report](#) by JobsForHer shared by The Economic Times indicates that several employers placed importance on recruitment of female employees in the year 2021. As per the report, which is based on a survey comprising more than 300 companies and over 2,000 female job seekers, there has been a 300% increase in job postings for women this year. This, to some extent, is attributable to the flexibility in the working model that India Inc. observed and adopted against the backdrop of COVID-19 outbreak. Organisations are also investing in skilling interventions to promote female hirings at senior levels.

Earlier this year, The Economic Times had [reported](#) that several organisations in the information technology sector are ramping up recruitment of women at entry levels. Notably, the sector currently has a gender diversity ratio of 33%.

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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