



ELB E-BULLETIN

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Welcome to the first edition of the e-Bulletin (Volume IV) 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.

Broadly speaking, the labour codes, which aim to consolidate and consequently replace 29 Central labour laws, are yet to be brought into force, barring provisions relating to (a) Central Advisory Board on minimum wages, and (b) identification of workers and beneficiaries through Aadhaar number for social security benefits. Moreover, even if the codes are fully brought into effect, the same would require issuance of rules, schemes, and notifications of the relevant governments so as to have a comprehensive revised compliance regime.

Under the labour codes, the 'appropriate government' for an establishment can be the Central Government or the state government, depending on the nature of its operations or the existence of multi-state operations. Such appropriate government has the power to inter alia issue rules detailing some of the substantive aspects broadly set out under the codes and also prescribing procedural compliances such as filings, maintenance of registers, etc. In the last one year, several key industrialised states such as Haryana, Delhi, Maharashtra, Gujarat, Telangana, and Karnataka released draft rules under some or all of the labour codes for public consultation. Few states such as Tamil Nadu and West Bengal are yet to release their draft rules under any of the codes.

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 releases rules and notifications under the local candidates' reservation law

By way of its notification dated 10 January 2022, the Government of Haryana released the Haryana State Employment of Local Candidates Rules, 2021 (Haryana Rules). The rules came into force on 15 January 2022, the same day when the Haryana State Employment of Local Candidates Act, 2020 also came into force. We have examined the salient provisions of the law [here](#).

The Haryana Rules define a 'domiciled person' to mean a bona fide resident of Haryana satisfying the conditions specified by the state government from time to time and having Parivar Pehchan Patra (PPP) issued under the Haryana Parivar Pehchan Act, 2021. It may be noted that the [user manual](#) released by the state government specifies that while registering for the benefits under the statute, the local candidate must upload his / her Haryana Resident Certificate, which is issued if he / she has been a resident of the state for 5 years.

The Haryana Rules additionally provide that every employer using its Haryana Udhyaam Memorandum Identification Number must register, on the [designated portal](#), all its employees who receive gross monthly salary or wages up to INR 30,000. Further, apart from submission of quarterly reports in respect of the local candidates employed, the Haryana Rules require every employer to maintain records in digital form as regards (a) the number of employees (regular, temporary, contractual, casual, and fixed term employees) as on the last date of every quarter, (b) the occupational / post-wise details of employees as on the last date of every quarter, (c) the number of local candidates recruited / appointed during every quarter, (d) the record of exemptions obtained

by the employer during the quarter due to non-availability of suitable candidates, and (e) the record of trainings for skill development organized by the employer for local candidates.

Notably, the Government of Haryana also issued a notification dated 17 January 2022, through which it granted exemption to certain kinds of establishments from the requirement of hiring local candidates. These establishments *inter alia* include IT / ITes establishments, which need not hire local candidates for a period of 2 years from the date of commencement of business.

Karnataka reiterates its stance on mandatory workforce vaccination

The Government of Karnataka issued an order dated 5 January 2022, directing the Labour Department to ensure that the employees working in industries, IT sector, etc. are vaccinated with two doses of COVID-19 vaccine and follow COVID-19 appropriate behaviour at the workplace. Even prior to this, by way of the order dated 26 August 2021, the Chief Commissioner, Bruhat Bengaluru Mahanagara Palike (Municipal Corporation of Bengaluru), mandated that every employer must ensure 100% vaccination of its workforce and that at least 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.

Karnataka clarifies rates of contribution towards labour welfare fund

The Karnataka Labour Welfare Board issued a press note dated 14 January 2022, through which it has clarified that all covered establishments have to deposit employer's and employee's shares of labour welfare fund contributions at the rate of INR 40 and INR 20, respectively. These contributions can be made through an online mode only (<https://klwb.karnataka.gov.in/>).

It may be noted that the Karnataka Repealing of Certain Enactments and Regional Laws Act, 2020 had repealed the Karnataka Labour Welfare Fund (Amendment) Act, 2017 (which had increased the labour welfare fund contribution rates to INR 40 and INR 20 for employers and employees, respectively). This had led to confusion as to whether the older

rates of contributions had been restored. It is in this context that the recent press note was issued, clarifying the rates.

District Officer, Gurugram, specifies 30th day of April every year for annual report filing on sexual harassment complaints

The Deputy Commissioner cum District Officer, Gurugram, has issued a clarification as per which the internal committee of every establishment can submit the annual report under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by the 30th of April of every year, for the cases received and dealt with by the committee in the previous calendar year. Notably, the statute and the rules framed thereunder do not specify a date for submission of such annual reports, and therefore, employers and their internal committees often face confusion as regards the timeline to be followed for the compliance requirement.

03.

CASE UPDATES

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

Technicalities of criminal proceedings not required in disciplinary proceedings: Supreme Court

The case of Indian Overseas Bank v Om Prakash [Civil Appeal Number 267 of 2022] pertained to termination of the services of an employee on the ground of misconduct. The case of the employer was that the principles of natural justice were complied with in the course of the disciplinary inquiry against the employee, while the employee's submission was that for the charge of forgery, the employer should have called upon a handwriting expert before confirming the finding of guilt. The Supreme Court backed the contention of the employer, opining that the depositions of the complainant and the cross-examination of the parties brought out a clear case against the employee. By emphasizing on the confirmation of the signature by a handwriting expert, the High Court (which had ruled in favour of the employee) committed an error, as the standard of proof in departmental proceedings is



mere preponderance of probabilities and not proof of the charges beyond reasonable doubt.

Declaration of completion of probation cannot be delayed on account of maternity leave: Madras High Court

In the case of *C Selvi v The Director of Government Examination and Others* [Writ Petition Number 19426 of 2016], the Madras High Court held that the Maternity Benefit Act, 1961, being a welfare registration, intends to extend benefits to the employees who avail maternity leave, without loss of any service benefits. In the present case, the employer had failed to consider the maternity leave period for declaration of completion of the promotion period by the woman employee and, therefore, promotion was denied to the petitioner. The court held the same to be breaching the spirit of the statute and accordingly quashed the belated order of completion of the probation period and directed the employer to grant promotion to the petitioner.

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.

India Inc re-embraces work from home amidst the third wave of the pandemic

Upon the onset of the third wave of COVID-19 pandemic, employers began pushing their plans to call upon employees to their tagged offices. As per a [report](#) of The Economic Times, several employers that had resumed working on a 100% physical working model have now limited the staff strength to 30-50% in the office. State

governments, too, have placed restrictions on staff strength and advised staggered working hours for the employees who are required to work from office.

Notably, a recent study titled [Talent Tech Outlook 2022](#), which has analysed inputs from more than 100 C-suite and human capital leaders, has revealed that 82% of the respondents preferred working from home to working from the office. Moreover, many HR managers have also stated that hiring employees on a full-time physical working basis has become difficult, as more and more candidates have indicated their preference to work from home.

New age companies introduce childcare benefits over and above the statutory mandate

As per a [report](#) of The Economic Times, several new age employers are introducing childcare leaves which go beyond the extent and the duration of leaves provided under the law. While the law requires 26 weeks of paid maternity leave for pregnant mothers (pre- and post-delivery), employers are providing childcare leave that extends to both male and female employees (although the duration of the leave varies for the two genders). Further, women employees are being allowed more than 26 weeks of maternity leave in case of pregnancy, such additional leave being available on half / full pay, depending on the organisation.

Employers are also going beyond the traditional notion of childcare benefit which has been limited in its purpose to enable bonding of the parent with the child in the initial years of growth, by providing childcare reimbursement benefit and subscription to paediatric services (especially in the context of the COVID-19 pandemic, which saw children being infected as well).

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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