



ELB E-BULLETIN

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Welcome to the second 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.

[EPFO releases circular clarifying the status of NEEM trainees](#)

The Employees' Provident Fund Organisation issued a circular dated 24 February 2022 clarifying that the trainees engaged by an establishment under the All India Council for Technical Education [National Employability Enhancement Mission (NEEM)] Regulations, 2017 will not be exempted from the definition of 'employee' under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act), meaning that the concerned establishment will be required to make contributions on behalf of such trainees as well. We are analysing the development separately and will share our thoughts through an ERGO.

[Himachal Pradesh increases the threshold for application of provisions relating to contract labour](#)

The Government of Himachal Pradesh has issued a notification in the Official Gazette publishing the Contract Labour (Regulation and Abolition) Himachal Pradesh Amendment Act, 2020. The said amendment to the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) is deemed to have come into force on 9 July 2020 and increases the threshold for application of CLRA from 20 to 30 contract workers.

[Gujarat releases its new IT/ITeS policy](#)

The Government of Gujarat has released the Information Technology (IT) / Information Technology-Enabled Services (ITeS) Policy 2022-27. Among other notable features, the said policy introduces an incentive called Atmanirbhar Gujarat Rojgar Sahay, pursuant to which eligible IT / ITeS units may be able to claim reimbursement on the employer's contribution under the EPF Act for a period of

5 years. Such reimbursement may be claimed up to 100% of the employer's contribution as regards female employees covered under the regime and up to 75% in case of covered male employees. Separately, the policy provides that the state government will support eligible IT / ITeS units whose Gujarat-based employees are currently working from home within Gujarat. Such units can receive an Employment Generation Incentive, whereby they will be entitled to a one-time support for every new and unique job created in the state.

03.

CASE UPDATES

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

[Supreme Court of India sets aside interim order on stay of operation of Haryana local candidates' law](#)

The Supreme Court of India, by way of its order dated 17 February 2022, has set aside the interim stay ordered by the Punjab and Haryana High Court over the implementation of the Haryana State Employment of Local Candidates Act, 2020. Broadly speaking, the court has not commented on the merits and has instead observed that the same should be done by the High Court as expeditiously as possible and within 4 weeks. Further, the court has directed that in the interim, no coercive steps should be taken by the state government as against employers.

Pursuant to this, the matter has moved back to the Punjab and Haryana High Court. The matter is scheduled for hearing on 4 March 2022.

[Mere supervision over contract labour does not create employer-employee relationship: Andhra Pradesh High Court](#)

In the case of *Gannina Srinivas v Secretary to the Government* [Writ Petition Number 15008 of 2019], the petitioners sought a writ of mandamus to declare the action of the respondents as illegal as regards continuing all the petitioners in the regular posts as contract labour for a long period of time and to direct the respondents to regularise the services of the petitioners by making them permanent

employees with all attendant benefits applicable for the regular post. Notably, the nature of work entrusted to the contractor was to attend operation and maintenance work at the respondents' sub-station on a contract basis subject to certain terms and conditions of work.

The Andhra Pradesh High Court dismissed the petition with prima facie finding against the petitioners, while granting the liberty to the petitioners to raise all contentions before an appropriate Labour Court or Industrial Tribunal (which would be obligated to decide the issue notwithstanding such prima facie finding). The court noted that in deciding the existence of employer-employee relationship, the twin tests of (a) supervision and control over the work, and (b) economic control, need to be satisfied. In the present case, the court noted, the respondents were dealing with a dangerous trade i.e., supply of electricity, and therefore, the persons working in the establishment were under constant supervision to avoid untoward incident. However, the same was not sufficient to prove existence of employment relationship, and test (b) was not fulfilled at all.

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 calls back employees to office at \(nearly\) full capacity](#)

As per the [report](#) of The Economic Times and our own assessment of the recent approach taken by several employers, India Inc is gearing up for calling upon employees to resume office at a larger scale and on full capacity in certain cases.

This emanates from the declining COVID-19-positive cases in several parts of the country coupled with the recent orders of state governments whereby they did away with several restrictions on business operations that have been hitherto imposed. Notably, there are several employers who are looking to continue with the hybrid working model for some time, considering that the need to observe



social distancing at the workplace continues and several employees are recording their

preference for such model as part of internal surveys

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.



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