



ELB E-BULLETIN

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Welcome to the fourth 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, Tamil Nadu, and Karnataka released draft rules under some or all of the labour codes for public consultation. Few states such as Andhra Pradesh 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 issues a circular in respect of coverage of contractors under the regime](#)

In its circular dated 27 April 2022, the Employees' Provident Fund Organisation (EPFO) directed its field offices to adopt a more proactive approach in terms of coverage of contractors and their contract labour under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It further stated that the offices should obtain copies of principal employer registration certificates and contractor licenses from the competent authorities under the Contract Labour (Regulation and Abolition) Act, 1970, within 15 days of the present circular. Based on this, instructions will be issued to principal employers in the respective jurisdictions to register the contractors (manpower service providers) engaged by them on the EPFO employer's portal within a prescribed time limit and monitor the employees' provident fund contributions in respect of the contract workers engaged through such contractors.

[West Bengal issues guidelines for payment of bonus for the year 2022](#)

By way of a circular dated 22 April 2022, the Labour Department, Government of West Bengal, issued guidelines to covered establishments regarding payment of bonus under the Payment of Bonus Act, 1965. Among these guidelines is the advisory to pay ex-gratia in lieu of statutory bonus to all employees who have crossed the wage threshold for coverage of employees under the statute (which is INR 21,000 per month). The guidelines also clarify that an employee employed on a casual basis shall also be covered under the statute and be paid statutory bonus if he / she / they are otherwise eligible to receive the same in view of the period of service rendered by him / her / them. Further, statutory bonus should be

disbursed to employees by 23 September 2022 and before Eid-ul-Fitr in case of Muslim employees.

Gujarat revises professional tax rates for employees

By way of a notification dated 8 April 2022, the Government of Gujarat has revised the schedule appended to the Gujarat State Tax on Professions, Trades, Callings and Employments Act, 1976, as regards the professional tax rates payable by employees under the statute. For private sector employees, earlier, the professional tax rates were as follows:

- a) Monthly salary of up to INR 2,999 – Nil;
- b) Month salary ranging between INR 3,000-INR 5,999 – Nil;
- c) Month salary ranging between INR 6,000-INR 8,999 – INR 80 per month;
- d) Month salary ranging between INR 9,000-INR 11,999 – INR 150 per month;
- e) Month salary of INR 12,000 or above – INR 200 per month.

As per the latest notification, the professional tax rates for private sector employees shall be as follows effective 1 April 2022:

- a) Monthly salary of up to INR 12,000 – Nil;
- b) Month salary above INR 12,000 – INR 200 per month.

Karnataka mandates online registration for professional tax

The Office of the Commissioner of Commercial Taxes (Karnataka), Bengaluru, issued a notification dated 31 March 2022, directing that, effective 1 April 2022, every employer liable to be registered under the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976, will be required to apply for registration electronically by making an application at <http://pt.kar.nic.in>.

03.

CASE UPDATES

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

Conveyance allowance not covered in 'wages' under ESI Act: Supreme Court of India

In the case of Talema Electronic India Private Limited v Regional Director, ESI Corporation [Civil Appeal Number 3175 of 2022], the Supreme Court of India observed that 'conveyance allowance' is equivalent to 'traveling allowance' and, therefore, since 'travelling allowance' is excluded from the definition of 'wages' under the Employees' State Insurance Act, 1948 (ESI Act), any conveyance allowance will also stand excluded from the said definition.

Interestingly, in the past, few High Courts including Karnataka High Court and Bombay High Court had taken the view that payment of conveyance allowance on a uniform basis regardless of whether the employee concerned had or had not incurred any expenditure on his / her / their journey to the place of work was not synonymous to travelling allowance as envisaged in the list of excluded components in the definition of 'wages' under the ESI Act (reference Employees State Insurance Corporation v Universal Medikit Private Limited [2019 (4) BomCR 223]). These factors were, however, not examined by the Supreme Court of India in the above-cited case.

Burden of proof of gainful employment on the employer once workman pleads absence thereof: Supreme Court of India

In the case of Allahabad Bank and Others v Avtar Bhushan Bhartiya [SLP (Civil) Number 32554 of 2018], the Supreme Court of India reiterated that in order for a workman to claim back-wages in case of wrongful termination of services, it must be pleaded by him that he is not gainfully employed elsewhere; it is upon such pleading that the burden would shift upon the employer to make an assertion and establish that the workman is, in fact, gainfully employed. The court, however, did not make an observation about the workman actually



discharging such burden of proof and only specified about the workman making an assertion about absence of gainful employment.

Interestingly, another Division Bench of the Supreme Court had, in the case of *Talwara Cooperative Credit and Service Society Limited v Sushil Kumar* [(2008) 9 SCC 486], observed seemingly to the contrary that *"this court in a large number of cases noticed the paradigm shift in the matter of burden of proof as regards gainful employment on the part of the employer holding that having regard to the provisions contained in Section 106 of the Indian Evidence Act [1872], the burden would be on the workman"*.

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.

As COVID-19 cases rise again, employers and employees emphasise upon hybrid model of working

As per a report of [The Economic Times](#), several employers are treading the path towards complete work from office with caution, considering the increasing number of COVID-19 positive cases in certain regions including Delhi. In several organisations, the mandate is to have a two-day or a three-day office working model, wherein employees in a business function or department can report to office in rotation, subject to their roles including frequent interaction with clients / customers.

Employees, particularly female employees, have also indicated their preference for [hybrid working model](#). In a recent [report](#), the findings revealed that more than 90% participants in a group of 700 female respondents preferred to work in a hybrid mode or completely from home.

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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