



ELB E-BULLETIN

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Welcome to the third 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.

Maharashtra makes amendments to its shops and establishments statute

By way of a notification published in the Official Gazette on 17 March 2022, the Government of Maharashtra notified the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Amendment) Act, 2022. As per the said amendment, the name board of every establishment must be in Marathi language in Devnagari script (although other languages are also additionally allowed). This requirement would also apply to establishments having less than 10 workers, which establishments are otherwise exempted from compliance with the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017.

Punjab allows women in commercial establishments to work in night shifts

By way of a notification dated 3 March 2022, the Department of Labour, Government of Punjab, has allowed exemption from Section 30 of the Punjab Shops and Commercial Establishments Act, 1958, which provides that no woman shall be allowed to work in an establishment during the night. That said, the exemption is not an omnibus one, and each establishment seeking an exemption would have to make an application to the state government.

The exemption comes with certain terms and conditions, as set out below:

- a) Existence of a valid and subsisting shops and establishments registration certificate;
- b) Normal working hours to not exceed 9 hours in a day and 48 hours in a week;

- c) Total number of overtime hours to not exceed 50 hours in a quarter;
- d) Presence of adequate security measures and compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;
- e) Availability of a transport facility to all women workers including women workers of the manpower service provider(s) engaged by the establishment, along with computerised records pertaining to such transportation;
- f) Conduct of annual self-defence workshop for women workers; and
- g) Engagement of at least 5 women workers during night shift.

03.

CASE UPDATES

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

[Give opportunity of hearing to workers before withholding wages for go slow: Supreme Court of India](#)

The Supreme Court of India, by way of its order in *Bata Limited Limited v Workmen of Bata India Limited* [Civil Appeal Number 6794 of 2010], noted the significance of giving an opportunity of hearing to workmen before reducing / withholding their wages on account of a "go slow" strike. In this case, the workmen adopted "go slow" tactics and failed to generate the minimum agreed production as per the settlement with their employer. As a result, the employer decided to pay pro-rata wages to those not meeting the mutually agreed target. The workmen, however, did not accept such payment and went for a stay-in strike.

After taking note of the above fact situation, the Supreme Court of India observed that the company should have heard the union or the workmen before it proceeded to deduct the pro-rata wages for "go slow" work. Given

absence of such opportunity, the court directed that the company make payment of the reduced / deducted wages within one month.

[Work from home cannot be claimed as a maternity benefit in every case: Karnataka High Court](#)

In the case of *Prachi Sen v Ministry of Defence and Others* [Writ Petition Number 22979 of 2021], the Karnataka High Court referred to Section 5(5) of the Maternity Benefit Act, 1961, which states that where the nature of work assigned to a woman is of such nature that she may work from home, the employer and such woman may agree upon an appropriate work-from-home arrangement. The court then observed that the employee in question, as a Senior Executive Engineer at Semi-conductor Technology and Applied Research Centre, could not have claimed work from home as a maternity benefit as the organisation was involved in research work, which was both sensitive and complicated, for the benefit of the Government of India.

[Woman entitled to maternity benefit beyond the contractual term, if pregnancy occurred during such term: Delhi High Court](#)

In the case of *Dr Baba Saheb Ambedkar Hospital Government of NCT of Delhi v Dr Krati Mehrotra* [Writ Petition (Civil) 1278/2020], the Delhi High Court was dealing with a situation where a woman was offered an appointment on an ad hoc basis as Senior Resident in the organisation of the petitioner. The woman's tenure with the organisation ended on 27 June 2017. However, before that, on 17 April 2017, the woman applied for emergency maternity leave as there were some complications in her pregnancy. Nevertheless, the organisation terminated her services on the basis that her ad hoc tenure expired on 27 June 2017, and therefore, the maternity leave could not be granted beyond the said date. However, the court did not agree with the said position. It noted as follows:

"Pertinently, the 1961 Act does not tie in the grant of maternity benefit to the tenure of the woman employee...Therefore, linking the tenure of employment, in this case, a contractual employee, with the period for which maternity benefits can be availed by a woman employee, is not an aspect that emerges on a plain reading of the provisions of the 1961 Act...Thus, as long as conception occurs before the tenure of



the contract executed between a woman-employee and her employer expires, she should be entitled to, in our opinion, maternity benefits as provided under the 1961 Act."

Higher maternity benefit to a woman in the event of lack of custody of existing children: Madras High Court

In the case of *K Umadevi v Government of Tamil Nadu and Others* [Writ Petition Number 22075 of 2021], the Madras High Court has held that the provision under the Maternity Benefit Act, 1961, as per which a woman having 2 or more than 2 surviving children will get 12 weeks of maternity leave instead of 26 weeks, would not apply to a situation where a woman does not have custody of the existing children. In other words, such woman would be entitled to 26 weeks of maternity leave. In the words of the court:

"When the provisions of the M.B. Act, 1961...speak about not more than two or three surviving children, as the case may be, the rule of construction ought to be oriented towards advancing the object, spirit and purpose of the Act/Rules. More particularly, with reference to the expression used in the provision of Section 5(3) of the M.B. Act, 1961 that maximum period of entitlement of maternity leave benefit for a woman having two or more than two surviving children must mean that the mother having children in her custody, literally and factually."

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.

Employers retain work from home as an option in their return to office plan

As per a report of [The Economic Times](#), complete work from office, although desired by several employers, is not a mechanism that can be widely adopted, considering that employees have witnessed and embraced 2 years of work-from-home model. As per the report, at least 6 out of every 10 employees surveyed are of the view that they would leave their services instead of returning to office.

In view of the significantly high attrition rates in several industries, employers are now offering work from home / work from anywhere as options to retain and attract talent. In several organisations, while few roles are completely subject to a work-from-home structure, other roles entail reporting to office on certain days during a defined timeframe (week, month, and so on). Yet an equally noticeable trend is a complete shift towards work from home with a requirement to report to office if the business / work so requires.

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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