



ELB E-BULLETIN

VOL 4 | ISSUE 5
May 2022

- ▶ LABOUR CODES: STORY SO FAR
- ▶ REGULATORY UPDATES
- ▶ CASE UPDATES
- ▶ INDUSTRY INSIGHTS

Welcome to the fifth 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.

Uttar Pradesh requires consent of women workers for working on night shifts in factories

By way of a notification dated 27 May 2022, the Government of Uttar Pradesh mandated that, with effect from the date of publication of the notification in the Official Gazette, all factories situated in the state employing women workers shall be required to ensure that written consent is obtained from women workers if they are expected to work before 6 AM and after 7 PM. Such factories must also ensure that for working during such timings, women workers are provided with (a) free transportation from and to their place of residence, (b) food, and (c) access to washrooms and drinking facilities. For the security of women workers, employers must ensure that (a) at least 4 women workers work during the abovementioned timings, and (b) there is a complaint mechanism duly set up under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Employers shall be required to send monthly reports, electronically or otherwise, to the concerned Inspector of Factories, in relation to the women workers engaged during night shift.

Employees' Provident Fund Organisation (EPFO) draws up action plan for compliances by principal employers and contractors

In its circular dated 27 April 2022, the EPFO has drawn up an action plan to ensure that contract workers are appropriately covered within the regime of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. EPFO has directed its field officers to procure copies of principal employer registration certificates (from competent labour authorities) as obtained by establishments under the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), for engagement of contract labour

through manpower services providers (contractors). Based on the information contained in such certificates, field officers shall send letters to principal employers requiring them to ensure that the contractors mentioned in such certificates have obtained licenses under CLRA and complied with applicable labour laws vis-à-vis contract labour.

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's no-mandatory-vaccination mandate: what it means for employers](#)

In its recent judgment in the case of *Jacob Puliye v Union of India and Others* [Writ Petition (Civil) Number 607 of 2021], the Supreme Court of India held that restrictions imposed on individuals who have not fully vaccinated themselves against COVID-19 cannot be considered to be constitutional. In our [ERGO](#) dated 6 May 2022, we have set out the key takeaways from the judgment and also examined its implications, if any, on private sector employers.

[Withholding of gratuity and other retirement benefits justified till the continuation of judicial proceedings: Calcutta High Court](#)

In the case of *Milan Kumar Ghosh v Union of India and Others* [FMA 636 of 2019], the Calcutta High Court concluded that during the pendency of judicial proceedings against an employee, an employer can withhold gratuity and other additional retirement benefits till the conclusion of such proceedings. Such an action can be taken despite the Payment of Gratuity Act, 1972 (Act) having no provision for such withholding. The reasoning given by the court considers the scenario where any quantified monetary damage is caused by the employee to the employer, and in that case, post the conclusion of proceedings, gratuity can be adjusted from the loss caused to the employer.

Interestingly, the Supreme Court of India in the past has deliberated on a similar issue, under

which gratuity amount was to be payable only on the conclusion of proceedings, subject to the decision made, and held that till the acquittal of an employee, withholding of gratuity amount is justifiable (reference *Y K Singla v Punjab National Bank and Others* [(2013) 3 SCC 472]).

[Clarification on the 'relevant period' for deciding claim of wages to workman during pendency of appeal proceedings: Rajasthan High Court](#)

In the case of *State of Rajasthan and Others v Ram Niwas and Others* [DB Special Application Writ Number 512 of 2020], the Rajasthan High Court referred to Section 17-B of Industrial Disputes Act, 1947, which casts a duty on an employer to pay full wages last drawn by a workman during pendency of appeal proceedings before Supreme Court or High Courts arising out of a reinstatement order in favour of workmen. The proviso further states that in case the workman has been employed and receiving adequate remuneration during such period, such wages shall not be granted to him / her / them.

The High Court has clarified that the relevant period as envisaged in Section 17-B is the period commencing from the date of award made by Labour Court till the time the application for such grant is moved by the workman. In other words, any remuneration earned by the workman before passing of the award would not dis-entitle him to last drawn full wages during the pendency of appeal proceedings. It has also been clarified by the Rajasthan High Court that it is the duty of the employer, and not of the workman, to aver and prove that the workman was not employed and earning sufficient remuneration during the relevant period.

[Time has now come to revisit Section 27 of the Indian Contract Act, 1872: Calcutta High Court](#)

In the case of *Sudipta Banerjee and Others v LS Davar and Company and Others* [FMAT 735 of 2021], the Calcutta High Court reiterated that as far as breach of confidentiality is concerned, protection must be given to the party suffering from the breach basis the principle of



equity that “he who has received information in confidence shall not take unfair advantage of it.” Of course, the first step is to determine whether the information forming the subject-matter of the claim is confidential, and that depends on the extent to which it is known outside the business of the party, the value of the information to such entity and the competitors, and the ease with which such information could be properly acquired by others.

While making the above observations, the High Court also delved into non-compete covenants and noted that the Indian law has not advanced the way the laws of other jurisdictions have, considering that there is a complete embargo on post-termination non-compete covenants. It thereafter opined that “[t]he time has possibly come to have a re-look at Section 27 of the Indian Contract Act since times have changed and there is a necessity to impose some restrictions and recognize negative covenants in service contracts especially where it involves specialized knowledge as it must live up to the present needs.”

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.

Indian employers struggle to call employees back to office

As the COVID-19 positive numbers have begun to rise again in some parts of India, reports [suggest](#) that some employers are receiving pushbacks from their employees when they are being directed to report to office. These reports cite a November 2021 survey by NASSCOM and Indeed, as per which around 66% of respondent-employers noted a higher level of job satisfaction among employees working remotely. Consequently, and as noted by us in the [previous editions](#) of the ELB e-Bulletin, several employers are continuing to follow a complete work-from-home model or a hybrid work arrangement.

It may not be out of place to mention that while employers are accepting requests from employees to work remotely, from an employment and labour law standpoint, a refusal by an employee to report to office despite being called upon to do so is not sustainable. Courts have acknowledged and respected the prerogative of the employer to determine which location an employee should work in view of its business and operational needs.

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), Deeksha Malik (Senior Associate), and Mayank Jain (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.



AMBITION STATEMENT

"Our ambition is to be a respectable law firm providing efficient and courteous service, to act with fairness, integrity and diligence, to be socially responsible and to enjoy life. We should put greater emphasis on working in consonance with our aforesaid values than on maximizing earnings. Earn we should but with dignity and pleasure."

Khaitan & Co is a premier full-service Indian law firm with 25+ practice areas, over 850 lawyers, including 200+ partners. To know more about us, please visit www.khaitanco.com