



ELB E-BULLETIN

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Welcome to the sixth 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.

It may be noted that several [news reports](#) are indicating 1 July 2022 as the date when the labour codes will come into effect. However, we clarify that the Central Government has not assigned any conclusive date or timeline for such implementation as of 30 June 2022. Therefore, readers are requested to exercise caution when reading and placing reliance on any of these reports that are confirming or speculating an immediate enforcement of the new labour 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, Andhra Pradesh, Telangana, Tamil Nadu, and Karnataka released draft rules under some or all of the labour codes for public consultation. Among the industrialised states, notably, West Bengal is 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.

[Tamil Nadu allows shops and establishments to operate 24x7 for 3 years](#)

By way of a notification published in the Official Gazette on 2 June 2022, the Government of Tamil Nadu has exempted all shops and establishments employing 10 or more persons from the provisions of Section 7(1) and Section 13(1) of the Tamil Nadu Shops and Establishments Act, 1947, which deal with opening and closing hours of shops and commercial establishments. The state government has accordingly allowed such establishments to remain open on all days of the year, for a period of 3 years with effect from 5 June 2022. The exemption has been made subject to certain conditions, including (a) giving every employee one day off in a week on a rotation basis, (b) not allowing any person to work for more than the daily and the weekly hour limits specified in the statute, (c) not requiring women employees to work beyond 8:00 PM on any day unless they give their written consent for working during night

shifts, and (d) providing transport arrangements to women employees working in shifts.

[Haryana introduces stringent security related conditions for employing women in night shifts in establishments and factories](#)

By way of a notification published in the Official Gazette on 7 June 2022, the Government of Haryana has laid down certain conditions for obtaining permission for employing women in night shifts in establishments in the information technology sector, banking establishments, 3-star or above hotels, 100% export oriented establishments, and logistics and warehousing establishments in the state.

These conditions include (a) taking appropriate action in accordance with the penal law in case of any potential criminal case pertaining to sexual harassment and ensuring that the victims or the witnesses are not victimised or discriminated while dealing with the complaints of sexual harassment, (b) obtaining declaration or consent from each woman worker for the purpose of working during night shifts, that is, between 7:00 PM and 6:00 AM, and forwarding a copy of such declaration or consent to the Labour Commissioner, Haryana, (c) ensuring that women workers are employed in the night shift in a batch not less than 10, and the total of the women workers employed in the night shift is not less than two-thirds of the total strength, (d) providing sufficient women security during the night shift at the entry as well as the exit points, (e) providing a separate canteen facility for female employees if the number of female employees is more than 50, (f) providing transportation facility to women workers from their residence to office and vice-versa, such transportation vehicles having CCTV cameras, and (g) sending a half yearly report to the Labour Commissioner, Haryana, about the details of employees engaged during night shifts.

It may be noted that a similar notification was issued by the Government of Haryana on 17 June 2022 in respect of women working in factories.

03.

CASE UPDATES

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

[Salary can be denied from the date of dismissal till reinstatement on account of misconduct / involvement in a criminal case: Madhya Pradesh High Court](#)

In the case of Chandra Bhushan Bajpai v The State of Madhya Pradesh and Others [Writ Petition Number 6166 of 2015], the Madhya Pradesh High Court held that salary can be denied from the date of dismissal till reinstatement in service on account of misconduct or involvement in a criminal case of an employee. The court noted that employer is in no way responsible for keeping the employee away from duties as the absence of the employee is not a deliberate or voluntary action on the part of the employer. It may be noted that the employee's services were reinstated through an order of the disciplinary authority which modified its earlier order of dismissal to censure after the employee was exonerated in the criminal case. The court based its decision on the principle of 'no work, no pay'.

[Absence of opportunities to the employee to cross-examine witnesses will vitiate the entire inquiry proceedings: Bombay High Court](#)

In the case of Tanaji Shankar Anuse v Maharashtra Rajya Doodh Sahakari [Writ Petition Number 5356 of 2021], the Bombay High Court held that denial of an opportunity to cross examine management witnesses as well as non-furnishing of the witness statements to the delinquent employee is of highest perversity and is a breach of the principles of natural justice at the hands of the inquiry officer and the disciplinary authority.



The court elaborated the illegalities wherein, firstly, the record did not indicate a chargesheet being issued and secondly, witnesses were made to give statements by the inquiry office in the absence of the employee which then formed the basis of the inquiry report. The latter conduct was considered to have vitiated the entire inquiry proceedings. Interestingly, time and again, courts across the country have emphasised on the fairness of procedure to be followed in the inquiry proceedings including but not limited to issuance of an unambiguous chargesheet, fair opportunity to be heard, cross-examination of the witnesses, etc.

[An adverse transfer to another location may attract Section 9-A of the Industrial Disputes Act, 1947: Karnataka High Court](#)

In the case of *BM Veena v The Divisional Controller, BMTC Volvo Division* [Writ Appeal Number 460 of 2022 (L-KSRTC)], the Karnataka High Court examined if transfer could result in an adverse change in the conditions of service. The court held that a transfer that entails (a) failure to justify the transfer, (b) sudden movement to another location, (c) movement to a distant location, (d) movement towards the end of one's career, and (e) conversion of the status of the impacted employees from that of 'workman' (which is a protected category under the industrial relations regime) to 'non-workman', would result in an adverse change in service conditions.

The court noted that the concerned employees were 'workmen' under the purview of Section 2(s) of the Industrial Disputes Act, 1947. Hence, considering not only the transfer but also the consequences of transfer which resulted in an adverse change in service conditions, the court held that Section 9A of the Industrial Disputes Act, 1947 and Fourth Schedule thereof shall attract. Section 9A stipulates a notice of change to be given by all employers who proposes to bring any adverse change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule.

04.

INDUSTRY INSIGHTS

In this section, we delve into interesting human resources related practices and / or initiatives as well as industry trends across various sectors in the past one month.

[Report examines India Inc.'s focus on diversity and inclusion measures from the standpoint of LGBTQIA+ community](#)

According to a [report](#) of The Economic Times, India Inc is still far from completely embracing the concept of diversity and inclusion when it comes to LGBTQIA+ community. Around 55% of the respondents surveyed by TimesJobs said that they still experience bias in the workplace, including on account of gender identity, and sexual orientation.

Having said that, employers have made some headway in terms of recognising the benefits of having a more inclusive workplace and the prejudices faced by transgender workforce and have taken some active steps towards making the workplace more gender-diverse. Companies, for instance, have started collaborating with NGOs dealing with gender and sexual orientation related issues so as to hire persons from LGBTQIA+ community. Some companies have commenced the process of revisiting their human resources policies so as to make them more gender neutral, including policies around parental / child-care leave. From our experience too, we note that several employers are now revisiting their group medical insurance policy terms so as to ensure that the partners of LGBTQIA+ employees are also covered as beneficiaries. Further, special provisions are now being made in group medical insurance policies to cover the cost of gender re-assignment procedures. 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.

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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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