



ELB E-BULLETIN

VOL 4 | ISSUE 7
July 2022

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Welcome to the seventh 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 a clarification statement was issued as a response by the Union Labour Minister of State to questions on the status of implementation of labour codes, in Lok Sabha on 18 July 2022. It discussed salient features of the new codes in brief and a list of states which have pre-published the draft rules for public consultation.

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.

[Punjab allows establishments to open on all days of the year](#)

By way of a notification published in the Official Gazette on 8 June 2022, the Government of Punjab has exempted establishments employing 10 or more persons from the provisions of Section 9 and Section 10(1) of the Punjab Shops and Commercial Establishments Act, 1958, which deal with opening and closing hours of shops and commercial establishments and close day. The state government has accordingly allowed such establishments to remain open on all days of the year, for a further period of one year (i.e., up to 31 May 2023).

The exemption has been made subject to certain conditions, including (a) giving every employee one day off in a week and list of timetable of such off for a month placed on notice board in advance, (b) giving every employee rest period of one hour after 5 hours of continuous work, (c) not requiring any employee to work for more than 9 hours a day or 48 hours in a week, (d) adequate safety and security arrangements for

employees as well as visitors if the establishment remains open after 10 PM, (e) separate locker, security and rest rooms required to be provided to female employees, (f) compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, (g) not requiring women employees to work beyond 8 PM on any day unless they give their written consent for working during night shifts, (h) providing adequate safety and security arrangements to female employees working at night shifts and ensuring that they reach home safely, and (i) compliance with other relevant laws.

It may also be noted that a similar notification dated 7 June 2021 was published by the Punjab Government and the present notification is a continuation of the same.

Delhi allows services for online labour welfare fund contribution

By way of a notification published in the Official Gazette on 1 July 2022, the Government of NCT of Delhi has, effective immediately, allowed online contribution from employers and employees towards labour welfare fund, and online submission / deposit of unpaid accumulations / fines by the employer.

Work from home guidelines notified for special economic zones (SEZs)

By way of a notification published in the Official Gazette dated 14 July 2022, the Government of India has made rules to further amend the Special Economic Zones Rules, 2006. These rules pertain to work from home arrangement for employees. A unit may allow its employees including contract workers to work from home or any place outside the SEZs. The kinds of employees in respect of whom such facility is available are (a) employees of the IT / ITES SEZs units, (b) temporarily incapacitated employees, (c) travelling employees and, (d) employees working offsite. The amended rules provide a detailed procedure for submission and approval of a work from home proposal.

The unit needs to submit its work from home proposal to the Development Commissioner through email or physical application, including terms and conditions of such arrangement, and details of the employees.

The proposal may be accepted subject to the satisfaction of the Development Commissioner who can grant permission for a period of one year. This may be extended on receipt of an application, not exceeding one year at a time. It may also be noted that applications for extension of permission are to be submitted at least 15 days in advance, except for temporary incapacitated or travelling employees.

The proposal for work from home shall cover a maximum of 50% of the total employees, including contractual workers, and the attendance record for work from home needs to be maintained and submitted to the Development Commissioner from time to time. A higher number may be approved by the Development Commissioner for any bona-fide reason in writing.

03.

CASE UPDATES

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

Once employee discharges their burden, burden on employer to show that the employee was gainfully employed elsewhere: Bombay High Court

In the case of *Aadiwasi Vividh Karyakari Sahakari Sanstha Limited v Gajanan Bhanayya Bitpalliwar and Others* [Writ Petition Numbers 1027 of 2013 and 2912 of 2013], the Bombay High Court (Nagpur Branch) held that once the burden placed on the petitioner is discharged that they were not gainfully employed anywhere else after termination, it was on the employer to place on record that the petitioner was indeed gainfully employed. The court also discussed that back wages need to be granted to the employee once it is established that the service of the employee was illegally terminated, and the employer fails to prove that the employee was gainfully employed after the termination.



The retirement age of workmen set out in the standing orders must be complied with by the employer: Karnataka High Court

In its recent judgment in the case of *Grasim Industries Limited v Employees Union and Others* [Writ Appeal Number 100250 of 2021] (Grasim Industries), the High Court of Karnataka held that the retirement age of 60 years for workmen as set out in the certified standing orders of the appellant (which, in turn, were modified pursuant to a similar stipulation made in the model standing orders by the state government) must be complied with by the employer. The judgment holds relevance because employers in the private sector generally have been able to retain flexibility as regards determination of the retirement age for their employees.

In our [ERGO](#) dated 13 July 2022, we have set out the key takeaways from the judgment and also examined its impact, if any, on private sector employers.

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.

Emerging policies and practices in the post pandemic workplace

The post-pandemic workplace is notably different from workplace before pandemic. With remote and flexible workplace becoming the new norm, we look at some other practices which have emerged in these new times.

Hybrid workplaces which offer flexibility to employees to work from both office and home are becoming a popular choice. Even when the COVID-19 pandemic is largely controlled in the country, we might see work from home as being a preferred option (at least in a hybrid form) while discussions and negotiations regarding resumption of office continue. The hybrid model allows flexibility to both employer as well as employees and is being adopted by several

companies. Companies are also introducing measures which will help employees adjust in the post-pandemic world while ensuring productivity. Companies are providing better leave and wellness policies in respect of employees' physical health, mental health as well as health of their family members.

Talking of benefits, the employee stock option plans (ESOPs) have slowly and steadily emerged as a popular choice by employers to incentivise employees from a retention standpoint. Recently, a food delivery aggregator company and a ready-to-cook packaged food company announced grant of ESOPs to their employees to honour their employees' contribution, effort, and work towards the respective companies.

Companies increase hiring of women

In what can be termed as an interesting trend, several small companies have started hiring more women employees as per an [article](#) in The Economic times. This may be attributed to heavy production scheduled in manufacturing industries, amid upcoming festivals in India which have resulted in a hectic production schedule coupled with huge order backlogs.

Another industry which sees a similar [trend](#) is the automotive industry, wherein several key companies such as Tata Motors, MG Motor India, Hero Motocorp, Bajaj Auto, etc. are planning to hire more women workforce. It may be noted that these companies already have a significant women workforce percentage in the factory workforce or even the overall workforce. These women workers are employed in critical manufacturing units as companies are actively trying to make the manufacturing workplace gender-balanced with support to women employees through various initiatives such as "Kaushalya" in Tata Motors wherein women employees are offered 2-3-year training and formal education such as diploma in manufacturing, etc. In Hera MotoCorp, an initiative called "Project Tejaswini" has resulted in an increase in female employees.



Diversity in workforce has become an important goal for companies in recent times. In our experience working with clients across industries / sectors, we have seen a

remarkable increase in pursuance of policies which help the work environment to become holistic and inclusive.

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 Ajeta Anand (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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