



ELB E-BULLETIN

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Welcome to the tenth 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, Andhra Pradesh, Telangana, Tamil Nadu, and Karnataka released draft rules under some or all of the labour codes for public consultation (with Gujarat, Karnataka, and Uttar Pradesh also releasing final rules under certain labour codes). 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.

[Telangana allows women employees to work at night in establishments](#)

By way of a notification published in the Official Gazette dated 13 October 2022, the Government of Telangana has exempted all establishments covered under Telangana Shops and Establishments Act, 1988 from the provisions of Section 23, which deals with working hours of women employees. It has allowed women employees to work in night shifts i.e., from 8:30 PM to 6 AM.

The exemption has been made subject to certain conditions including (a) obtaining consent in writing from women employees, (b) providing transport facilities from the residence with adequate security and GPS for tracking and monitoring, (c) providing shelter, rest rooms, lunch rooms, night crèches, and adequate protection of their privacy, dignity, honour and safety, (d) employing at least 5 women employees together, (e) posting adequate number of security guards during night shift, and (f) taking safety measures for transport such as collection of biodata of drivers, careful selection of routes, non-disclosure of personal details of women employees to unauthorized persons etc.

Having said the above, we note that the exemption shall be in effect from the date of its publication in the official gazette.

[Gujarat provides employees' provident fund reimbursement to MSMEs/ large mega industries](#)

The Government of Gujarat has released Aatmanirbhar Gujarat Schemes 2022 for Assistance to Industries. The scheme



provides that MSMEs shall be able to claim reimbursement of employer's contribution under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for their new employees working in Gujarat for a period of 10 years. Certain large thrust industrial undertakings and eligible mega industrial units shall also be able to claim similar reimbursement from the state government.

The reimbursement shall be made subject to few conditions i.e., (a) 100% of employer's statutory contribution being paid and, (b) ceiling of incentive amount per employee being limited to 12% of employee's basic salary plus applicable dearness allowance and retaining allowance or INR 1,800 per month, whichever is lower.

03.

CASE UPDATES

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

[When fixed period appointment is not made with mala fide intention or colourable exercise of power, provisions of Section 2\(oo\)\(bb\) and Chapter VA of Industrial Disputes Act, 1947 \(ID Act\) would not be applicable: Bombay High Court](#)

In the case of Lokmat Shramik Sanghatana v Member, Industrial Court, Nagpur and Another [Writ Petition Number 4206 of 2009], the Bombay High Court held that if the contract of employment is for a fixed period, the appointment is terminable at the end of the period of the contract, and such appointment is not made with mala fide intention or colourable exercise of power, then in view of Section 2(oo)(bb) of the ID Act, the provisions of Chapter VA of ID Act would not be applicable, even if a workman has completed one year of service as on the employment termination date.

Section 2(oo)(bb) of the ID Act provides that 'retrenchment', which is termination of employment by employer, does not include termination of the services of a workman as a result of the non-renewal of the contract of

fixed-term employment between the employer and the workman upon its expiry. Further, Chapter VA of the ID Act sets out provisions related to compliances required to be undertaken by an employer in cases of retrenchment and layoff.

In this case, individuals were employed on a contract basis for a fixed period of one year or less at a time, which contract was extended or renewed year on year. These employees were given grades/pay scales different from similarly situated permanent employees. The requisite pleadings concerning the permanent nature of employment were not found in the statement of claim. Accordingly, the court opined that a mala fide fixed-term employment arrangement cannot be assumed. The situation might have been different had the individuals pleaded misuse of power on the part of the employer; in such case, the burden to prove otherwise would have fallen on to the employer.

[Appeal under prevention of sexual harassment law is not maintainable in absence of any recommendation made by the internal committee: Delhi High Court](#)

In the case of Lakhwinder P Singh v IIMHR and Others [Writ Petition Civil 844/2017], the Delhi High Court was approached by a former employee of the respondent for quashing of the report of the internal committee (IC) constituted by employer under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act). While the IC had conducted an inquiry and held that the former employee cannot be cleared from the charges of sexual harassment (leaving an inconclusive finding in this regard), the termination order by the management did not mention any recommendation made by the IC.

The court held that on a joint reading of Section 13 (provisions related to inquiry report) and Section 18 (provisions related to appeal) of the PoSH Act, it would be clear that an appeal can be filed only if the allegation against the employee has not been proved or if the IC arrives at the conclusion that the allegations have been proved and recommends disciplinary action on account of proven. The report can also be challenged if any direction is made to make any deduction from salary or wages. In the



present case, as there were no recommendations submitted by the IC, there existed no right to prefer an appeal. This was because the termination did not seem to be an outcome of any recommendation made by the committee. Accordingly, the court noted that an appeal under Section 18 of the PoSH Act is not maintainable in absence of any recommendation made by the IC under Section 13 of the PoSH Act.

[Employer not justified in denying wages to the employee during pendency of appeal against his acquittal on the principle of 'no work no pay': Bombay High Court](#)

In the case of *Abhimanyu Laxman Kumbhar v The Maharashtra State Electricity Distribution Company Limited and Others* [Writ Petition Number 14327 of 2021], the Bombay High Court discussed if an employer is justified in denying wages to the employee during pendency of appeal against his acquittal on the principle of 'no work no pay'. The court held that as the employer was responsible for prolonging the period of wages by not immediately reinstating the employee on his acquittal, which was delayed without any justification, they cannot deny paying the wages.

The court also said that mere pendency of appeal against the acquittal would not entitle the employer to continue the penalty of removal from service. Till the judgement of acquittal was reversed in appeal, all the effects of acquittal would continue to apply with respect to the employee.

[Criminal proceedings cannot be initiated as an alternate method to arm twist the employer: Karnataka High Court](#)

In the case of *Samiulla B v State of Karnataka* [Writ Petition Number 9520 of 2022], the Karnataka High Court held that criminal proceedings, when initiated as an alternate method to arm twist the employer instead of hitting the doors of a court for an appropriate relief, cannot be allowed to continue, as it results in abuse of the process of law and miscarriage of justice.

In the present case, the employee's services were terminated due to lack of work and funds to run the organization with an assurance that they would be hired back when the organization became financial capable to resume the operations. The court acknowledged that the termination in this case happened pursuant to financial losses incurred by the employer and after following due process under the law. As such, institution of criminal proceedings on the allegations of criminal breach of trust and cheating (the existence of which was not even remotely shown in the case) could not be maintained.

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.

[India Inc. advocates employee wellness](#)

With most of the companies resuming work from office, employers are making an effort to take care of the wellbeing of their employees, in order to help them to adjust in this shift. An [article](#) published in The Economic Times reveals that several companies have introduced as well as increased financial assistance in the form of mental wellness and stress management programmes. These measures include medical insurance, paid time-off, home relocation assistance, etc.

The budgets for employee wellness programmes are being increased in the wake of rising mental health issues such as depression and anxiety among employees. The stress of additional commute hours, expensive cost of living, managing new methods of work, and physical health issues have been some of the contributory factors in employees' ailment.



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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