



ELB E-BULLETIN

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Welcome to the eleventh 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.

[Andhra Pradesh issues additional conditions for women employees to work at night in factories](#)

By way of a circular published in the Official Gazette dated 25 October 2022, the Government of Andhra Pradesh has issued additional conditions to ensure safety of women workers engaged in night shifts. These additional conditions include, (a) obtaining consent in writing of women workers to be engaged in such shifts, (b) compliance with the Maternity Benefit Act, 1961, (c) provision of adequate transportation facilities to and from residence of women employees, (d) provision of facilities such as washrooms, drinking water, etc. near the workplace, and (e) compliance with provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act).

This circular has been issued in furtherance of the circular of the Government of Andhra Pradesh dated 4 April 2015, wherein it was clarified that women workers may be employed in factories in night shifts, i.e., from 7 PM to 6 AM subject to certain conditions.

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

By way of a notification published on 27 October 2022, the Lieutenant Governor of Puducherry has exempted establishments employing 10 or more persons from the provisions of Sections 10(1) and 16(1) of the Puducherry Shops and Establishments Act, 1964, which deal with opening and closing hours of shops and establishments. The Lieutenant Governor of Puducherry has



accordingly allowed such establishments to remain open on all days of the year, for a period of 3 years from the date of publication in the next issue of the Official Gazette (2 November 2022).

The exemption has been made subject to certain conditions, including (a) providing weekly holidays to all employees on rotation basis, (b) providing details of every employee in 'Form IX' of the Puducherry Shops and Establishment Rules, 1964 which shall be exhibited by the employer in establishments, (c) duly crediting wages including overtime wages of the employees, (d) not engaging women employees beyond 8 PM in normal circumstances (unless their consent has been obtained in this regard), (e) providing basic amenities, washroom, etc. to employees, and (f) constituting internal committee as per the PoSH Act.

[Dadra and Nagar Haveli and Daman and Diu reiterate applicability of Payment of Bonus Act, 1965 \(Bonus Act\)](#)

By way of a circular published in the Official Gazette dated 28 October 2022, the Government of Dadra and Nagar Haveli and Daman and Diu has reiterated that the Bonus Act is in force in Dadra and Nagar Haveli, which is applicable to all employees, irrespective of status, drawing a salary/wage (defined to cover basic wages and dearness allowance, if any) not exceeding INR 21,000 per month.

The circular additionally mentions that contract workers are also entitled to bonus from their employers (contractors), and if contractors fail to pay bonus, their principal employers (meaning entities procuring the services of contract workers through contractors) shall be held liable to pay bonus and recover it from the contractors. Notably, the Bonus Act does not contain express provisions imposing any responsibility on the part of the principal employers to pay bonus to contract workers in the event of default of the contractors.

[Madhya Pradesh releases draft amendment to the Madhya Pradesh Factories Rules, 1962](#)

By way of a notification published in the Official Gazette dated 23 November 2022, the Government of Madhya Pradesh has

released draft amendment to the Madhya Pradesh Factories Rules, 1962, for public consultation. The draft amendment will be taken into consideration on the expiry of 45 days from the date of its publication.

The amendment proposes several changes, in particular substituting the validity of the shops and establishments registration certificate with 1-10 years, a shift from the validity period being limited to the 31st of December of the year for which the registration is granted / renewed.

03.

CASE UPDATES

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

[EPS 2014 Amendment constitutional, but cut-off and higher contribution by employee not palatable: Supreme Court](#)

In its much-awaited ruling in the case of Employees' Provident Fund Organisation and Another v Sunil Kumar and Others [Special Leave Petition (C) Numbers 8658-8659 of 2019], the Supreme Court of India has upheld the constitutional validity of the Employees' Pension (Amendment) Scheme, 2014 (EPS Amendment), with certain caveats. The judgment has been rendered against the backdrop of the appeals filed by the Employees' Provident Fund Organisation against the judgments of the Kerala High Court, the Rajasthan High Court, and the Delhi High Court, each setting aside the EPS Amendment as unconstitutional. Having said that, the apex court struck down as unconstitutional, the cut-off date included by the EPS Amendment for the purpose of allowing higher contributions by employees (i.e., contributions on the monthly pay exceeding INR 15,000 per month), on the basis that beneficial statutes should not entail a deadline for seeking benefits therein. Further, the Supreme Court of India struck down the part of the EPS Amendment that required additional contribution of 1.16% of the monthly pay in respect of the employees who wanted to contribute at higher



wages, for the reason that employees ordinarily do not contribute directly to the Employees' Pension Scheme 1995. However, the court has suspended the operation of this aspect of the order for 6 months during which time the legislature has been allowed to bring in amendments to the legal framework to generate additional source of funds in the employees' pension fund.

In our [ERGO](#) dated 9 November 2022, we have analysed the ruling and set out the key takeaways from the judgement.

Employees' State Insurance Court (ESI Court) cannot reduce the period of interest: Supreme Court

In the case of the Regional Director/ Recovery Officer and Another v Nitinbhai Vallabhai Panchsara [Special Leave Petition (Civil) Number 16380 of 2022], the Supreme Court observed that ESI Court was not justified in reducing the period (to 2 years) during which interest on arrears towards employees' state insurance fund contributions was leviable. As per the apex court, the respondent was liable to pay interest under Section 39(5)(a) of the Employees State Insurance Act, 1948 (ESI Act) from the date on which the contributions became due and payable and till the date of their actual payment.

The ESI Court had relied on the judgement of Supreme Court in the case of Employees State Insurance Corporation v HMT Limited and Another [(2008) 3 SCC 35]. The Supreme Court clarified that the said decision, which dealt with Section 85-B of the ESI Act, shall not be applicable while construing the provision under Section 39(5)(a) of the ESI Act.

Forfeiture of gratuity is not automatic on dismissal from service: Chhattisgarh High Court

In the case of Siyaram Basanti v Chhattisgarh Rajya Gramin Bank and Others [WPS Number 503 of 2020] the Chhattisgarh High Court dealt with the issue whether the petitioner whose services were dismissed after a

departmental inquiry against him was entitled to payment of gratuity. The High Court observed that Section 4(6) of the Payment of Gratuity Act, 1972 (Gratuity Act), which deals with forfeiture of gratuity, is restricted to commission of offence involving moral turpitude in the course of employment, or any act causing any damage or loss to, or destruction of, the property of the employer, neither of which was shown in the present case. Further, no show cause notice was issued to the petitioner for forfeiture of gratuity, nor was any assessment done to ascertain the extent of damages or loss caused to the employer, which is in violation of the provisions of the Gratuity Act. In view of the above, the respondent was directed to directed to release gratuity of the petitioner.

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.

Hybrid work model preferred by Indian employees

While most of the offices have reopened and working from the office is becoming mandatory, at least few days a week, the debate of virtual versus physical working model continues.

A global survey shows that employees [prefer](#) the hybrid work model for reasons of better productivity, work life balance, and cost savings. While the COVID-19 pandemic had made remote working/hybrid working a necessity, it has gradually become a preferred choice for majority of the employees.

In view of the above, employers are re-assessing their work arrangements and considering a flexible workplace which offers engagement and inclusivity and promotes well-being.



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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