



ELB E-BULLETIN

**VOL 4 | ISSUE 12**  
December 2022

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Welcome to the twelfth 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.

#### [ESIC provides instructions to employers registered through MCA portal](#)

By way of a circular published in the Official Gazette dated 1 December 2022, the Employees' State Insurance Corporation (ESIC) has addressed companies registered through the portal of the Ministry of Corporate Affairs, Government of India (MCA). To set out some background, the Government of India notified a new web-based form called SPICe+ that inter alia offers mandatory issuance of registration of the establishment under Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Employees' State Insurance Act, 1948 (ESI Act) and Maharashtra State Tax on Profession, Trades, Callings and Employments Act, 1975. Notably, the ESI Act mandates registration of an establishment only when it employs 10 or more persons (although such persons need not be eligible to receive benefits under the law). Nevertheless, in view of the one-stop facility provided by MCA, some companies would register themselves under the ESI Act through the MCA portal at the time of incorporation notwithstanding that they may not have crossed the employee headcount threshold for application of the law. The ESIC's circular is aimed at such companies.

As per the circular, companies should start compliance with the ESI Act from the date of reaching the aforesaid threshold. For companies outside of purview of the ESI Act at present, compliance is not required for the next 6 months or till the threshold is reached, whichever is earlier. If after 6 months, the threshold is still not reached, the concerned company will have to extend its dormant



mode by logging in to its ESIC account. If a company fails to extend its dormant mode, its registration under the ESI Act will automatically become active, and the company will have to comply with the ESI Act accordingly.

### Tamil Nadu amends labour welfare fund rules

By way of a notification published on 2 December 2022, the Governor of Tamil Nadu has made amendments in the Tamil Nadu Labour welfare Fund Rules, 1973. The notification also clarifies that the amendment would come into force from the date it is published in the Official Gazette of the state. Subsequently, the amendment was published in the Tamil Nadu Government Gazette on the same date i.e., 2 December 2022, and it has come into force accordingly.

The amendment has made changes in Rule 11A which provides the rate of contribution for the labour fund. As per the amendment, employees will now have to contribute INR 20 for every year, and every employer will have to contribute INR 40 for each such employee every year.

## 03.

### CASE UPDATES

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

#### Regularisation of service for contract labour does not arise where there is lack of notification under CLRA Act: Supreme Court of India

In the case of Kirloskar Brothers Limited v Ramcharan and Others [Civil Appeal Number 8446-8447 of 2022], the Supreme Court of India has observed that in the (a) absence of any notification under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act), and (b) the absence of any findings that the contract between the principal employer and the contractor deploying contract labour was sham, the directive to the principal employer to absorb or regularise the services of the contract

labour does not arise. Hence, both factors are pertinent for regularisation of contract workers.

The court was dealing with an appeal against absorption of contractual workers as employees. The court held that where there is no abolition of contract labour under Section 10 of the CLRA Act, but it is contended by the contract workers that the contract between the principal employer and the contractor is sham and nominal, the remedy is available under the Industrial Disputes Act, 1947 (ID Act), and not under the CLRA Act.

The court further observed that the relief under the ID Act can be sought when (a) the contract between the principal employer and the contractor is sham, (b) there is a camouflage to deny employment benefits to one's own workers, and (c) there is a direct employment established on the basis of determinants such as the paying entity, the entity having the power to dismiss personnel from service, the entity having the ability to initiate disciplinary action and exercise control over the personnel.

#### Employer can revoke early retirement after being privy to employee's misconduct: Bombay High Court

In the case of Chanda Kochhar v ICICI Bank Limited [Suit Number 114 of 2022], the Bombay High Court made important observations regarding revocation of retirement in its interim order concerning the issue whether the employer bank could treat employee's services as having been ended by way of termination for cause, especially when the bank had previously accepted request for an early retirement.

The court accepted the contention of the employer bank that at the time of the request for early retirement (and the acceptance thereof), it did not have knowledge of all facts regarding the employee's misconduct and breaches. Therefore, the revocation of the early retirement acceptance by the employer was valid in the present case.

The court placed reliance on the fact that since an inquiry was ongoing at the time early retirement was offered, the employer bank could not have asked the employee to



resume her duties as the MD and CEO. Equally, the employer bank could not have terminated the services of the employee as MD and CEO pending the inquiry. Hence, the only option available to the employer bank was to accept employee's request for early retirement without being aware of the full facts regarding the employee's conduct.

A related issue was whether employee could demand reinstatement of her ESOPs on the basis that her employment had ended by way of early retirement and not by way of termination for cause. The court observed that the ESOP contract and the employment contract are two separate contracts and the purpose of the ESOP contract, being an independent contract, is very specific, which is to reward good performance of employees and to give them a stake in the future success of the company. As such, it would not be proper to say that 'good conduct' is to be given a narrow meaning such that if the misconduct of an employee is discovered after their retirement, such employee would nevertheless be entitled to retain their ESOPs.

## 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. increases hiring of persons with disabilities

In view of the International Day of Persons with Disabilities Day which falls on 3 December of every year, we analyze Indian industries' role in making their workplace more inclusive. In the last few years, a significant number of companies have [started](#) hiring / engaging persons with disabilities through inclusive hiring and internships programs to provide them the support and chance, they truly deserve. However, unfortunately, disability-based discrimination exists in several workplaces due

to lack of infrastructure, bias of colleagues, lack of training and support, etc. To combat this, some companies are trying to educate their employees about the struggles faced by persons with disabilities. Despite this, it is incredibly [difficult](#) for a person with a disability to get employed.

Companies are increasingly providing facilities beyond physical infrastructure such as work-related accommodation, assistive technologies, sessions for staff members to learn sign language, emergency features on flashcards, among others. According to [Quess General Staffing](#), growth in hiring of persons with disabilities increased to 4% in the second quarter of financial year 2023 from 1% in the fourth quarter of financial year 2022. While this is a positive sign, organizations still have a long way to go to provide digital accessibility along with physical accessibility, which can pave the way for social inclusivity for persons with disabilities.

#### India Inc. aims to strengthen ESG skills among employees

Environmental, social and governance (ESG) responsibilities have been abuzz among corporations for a while. Indian industries are also actively seeking to [increase](#) ESG skillset among their employees. Different companies have adopted different measures for their employees. Some of these measures include upskilling employees by way of external partnerships as well as internal learning resources, certification courses, and spreading awareness among employees on sustainability measures. There is also an increase in hiring resources for ESG-related profiles.

Prioritizing ESG as part of business planning and employee training has several benefits including holistic growth, investor traction, trust building among various stakeholders including customers, recruitment of resources from a more diverse set resulting in better and conscious decision making, and employee retention.



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](mailto:elbebulletin@khaitanco.com).



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