



ELB E-BULLETIN

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Welcome to the third edition of the e-Bulletin (Volume V) 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.

[Coverage of Gandhinagar district under Employees' State Insurance Act, 1948 \(ESI Act\)](#)

By way of a notification published in the Official Gazette on 13 March 2023, the Central Government notified that from 1 April 2023, few sections of the ESI Act shall be extended in all areas of Gandhinagar district in the state of Gujarat.

The notification extends several sections of the ESI Act including (i) Sections 38 to 43 relating to deposit of employees' state insurance fund contributions, (ii) Sections 45A to 45H relating to functions and duties of social security officers, (iii) Sections 46 to 73 relating to provision of benefits to covered employees, (iv) Sections 74 to 75 relating to constitution of employees' insurance court and matters under its jurisdiction, (v) Sections 76(2) and 76(4) relating to institution of proceedings, and, (vi) Sections 82 and 83 relating to appeals and stay of payments pending appeals.

[Karnataka amends its professional tax statute](#)

By way of a notification published in the Official Gazette on 14 March 2023, The Government of Karnataka notified the Karnataka Tax on Professions, Trades, Callings and Employments (Amendment) Act, 2023 (New Amendment), pursuant to the Governor's assent to the same on 13 March 2023. The New Amendment amends the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 (Karnataka Professional Tax Act), and the same will be effective from 1 April 2023.

In our [ERGO](#) dated 23 March 2023, we have outlined the key changes brought about by the New Amendment from an employment law perspective and have also examined its significance. Broadly speaking, these



amendments include a revised salary threshold for coverage of employees under the Karnataka Professional Tax Act, inclusion of the concept of self-assessment of payment of professional tax, and revision to the penalty for non-payment of professional tax.

[Maharashtra proposes amendments to its professional tax statute](#)

With an intention to give effect to the proposals incorporated in the FY 2023-24 budget speech, the Maharashtra Government introduced the Maharashtra State Tax on Professions, Trades, Callings and Employments (Amendment) Bill, 2023 (Proposed Amendment) on 20 March 2023 to amend the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (Maharashtra Professional Tax). The Proposed Amendment was sought to be brought into effect on 1 April 2023, subject to its clearance by the legislative assembly and the legislative council of Maharashtra and the subsequent assent by the Governor of Maharashtra.

The Proposed Amendment seeks to amend Section 27-A and Schedule 1 of the Maharashtra Professional Tax Act. In Section 27-A, which relates to exemptions under the Maharashtra Professional Tax Act, Section 27(c) is substituted to incorporate, (a) any person with benchmark disability as defined in the Rights of Persons with Disabilities Act, 2016 (RPD Act), and (b) parents or guardians of a child with a benchmark disability who holds the certificate of disability. Further, the aforesaid certificate is required to be produced before the appropriate authority by the employer or the individual. However, an individual or an employer, that has produced a certificate on the above-mentioned lines immediately before 1 April 2023, is not required to produce it again.

Further, Section 2(e), which exempts parents or guardians for a person suffering from mental retardation, and Section 3(g), which exempts parents or guardians of a child suffering from a physical disability, will be deleted upon enforcement of the amendment. Hence, the Proposed Amendment seeks to align the coverage of disabled people as per the RPD Act instead of the outdated bifurcation provided in the present Maharashtra Professional Tax Act.

Lastly, Schedule 1, Entry 1 will also be substituted to apply different tax rates for salaried men and women as opposed to the

previous common tax rate for all salary earners. Upon enforcement of the amendment, male employees whose monthly salary does not exceed INR 7,500 are exempted from paying any tax. For male employees earning monthly salary more than INR 7,500 but earning less than INR 10,000, the applicable tax rate will be INR 175 per month. Also, for male employees earning more than INR 10,000 as monthly salary, INR 2,500 per annum is required to be paid as tax in the following manner viz. (a) INR 250 per month except for the month of February, and (b) INR 300 for the month of February.


As for female employees earning salary up to INR 25,000 per month are exempted from paying any tax. For women employees earning salary more than INR 25,000 per month, a sum of INR 2,500 per annum is required to be paid as tax in the following manner viz. (a) INR 250 per month except for the month of February, and (b) INR 300 for the month of February.

[EPF Act compliance mandatory for CBSE schools](#)

By way of a circular published on 16 March 2023, the Employees' Provident Fund Organization (EPFO) has requested the in-charge field officers to use the website link provided by the Central Board of Secondary Education (CBSE) detailing list of schools affiliated with CBSE and verify their coverage status under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) and take necessary action to ensure compliance by such schools.

Earlier, through letters dated 10 January 2023 and 18 January 2023, CBSE had informed EPFO that as per the provisions of affiliation under the bye laws of CBSE, all schools affiliated with CBSE are required to ensure compliance with the statutory requirements under labour laws such as EPF Act, ESI Act etc. with respect to the employees of the schools. CBSE had given due instructions in this regard to all school heads to register themselves on *Shram Suvidha Portal* for deposit of statutory contributions by way of a circular published on 17 November 2022.

[Haryana government revises conditions for women to work at night](#)

By way of a notification published in the Official Gazette on 21 February 2023, the State of Haryana revised conditions for granting 

exemption to employers for employing women employees during night shifts (that is, between 8 PM and 6 AM), under the Punjab Shop and Commercial Establishments Act, 1958 in its application to Haryana (Punjab S&E Act).

The exemption has been made subject to certain revised conditions. For instance, as per the previous notifications, the detailed conditions relating to security of female employees became applicable the moment they would be engaged beyond 7 PM. However, considering that the rules framed by the state government under the Punjab S&E Act define night shift to mean the period between 8 PM and 6 AM, the new notification also revises the timeline for application of the conditions for night shift working from 8 PM to 6 AM. Further, certain conditions for night shift working which were previously imposed on IT / ITeS establishments are no longer made applicable to them, including (a) ensuring that at least 1/3rd of the total strength of the personnel working in night shift (including supervisor or shift in-charge) are women, and (b) maintaining separate canteen facility for female employees if the number of such employees exceeds 50.

03.

CASE UPDATES

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

[Maternity benefit and childcare leave are mutually exclusive: Allahabad High Court](#)

In the case of Saroj Kumari v State of Uttar Pradesh and Others [Writ Application Number 2211 of 2023], the Allahabad High Court considered a matter wherein application of proceeding for entire maternity leave of 180 days by the petitioner after birth of her child was turned down by the the district basic education officer. This was done basis the grounds that after childbirth maternity leave is not allowed and a woman can only apply for childcare leaves.

The court also discussed the recent case of Smt Anupam Yadav v State of Uttar Pradesh and Others [Writ Application Number 9535 of 2022], wherein grant of maternity leave was rejected as the required period of 2 years under

the Uttar Pradesh Fundamental Rules in Financial Handbook Volume-II (UP Financial Handbook) had not passed from the last date of the last maternity leave granted to the petitioners, but the court had held that the provisions of the Maternity Benefit Act, 1961 (MB Act) would prevail over the provisions of the UP Financial Handbook.

Drawing consonance from the aforesaid case, the court in the present matter observed that the MB Act confers entitlement on a woman for payment of maternity benefits for the period after her delivery and specifies the maximum period in this regard. The court opined that this confirms that childbirth does not impede a woman's entitlement, and maternity benefit can be extended after the birth of the child. However, this is to be read with the only restriction that maternity leave may not be granted for entire 180 days or 26 weeks after childbirth. Further, regarding childcare leaves, the court observed that availability / grant of childcare leaves cannot disentitle the petitioner from availing maternity benefit. These benefits concern distinct areas and are mutually exclusive with each other.


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.

[Emergence of fractional CXOs](#)

With new trends developing in workplaces in tune with the changing modes of working, the leadership roles are also evolving. An [article](#) in The Economic Times explores the increase in fraction CXOs across India Inc.

Fractional CXOs refer to personnel with specialised skills working in specific functions (such as strategy or marketing), who choose to work with several organizations instead of one. Some argue that such arrangements bring benefits for both the professionals as well as the organisations, in that these specialist CXOs are accorded flexibility in terms of allocating their time across different ventures and gaining from a diverse set of experiences, while organisations are able to manage their acquisition and 

retention costs for leadership positions more efficiently and engage these individuals as per the specific time-based or project-based needs of the business instead of retaining them on a full-time basis.

Without disregarding these potential benefits, arrangements like these bring along certain issues and challenges such as lack of accountability and commitment in roles where full-time involvement in day-to-day affairs of the business is required, limited opportunities for team development and synergies, potential breach of confidential information such as business plans and knowhow, etc.

[Women choose career growth instead of flexible hours as per recent studies](#)

The COVID-19 pandemic era ushered in a preference for flexible work hours, especially for women employees, primarily due to the expectations from them as the primary caregiver in a family. A lot of women often leave

their jobs due to marriage, childcare etc., and even while working, the time spent by them in caregiving is usually more than their male counterparts. Unfortunately, there still exists a wide gender pay disparity, especially in [leadership roles](#) across industry.

However, a new [study](#) conducted by Harappa reveals that things are slowly but steadily changing. Women have started placing more value to increased compensation and career growth. They also prefer having an encouraging environment which shall help them achieve these goals. In a surprising result, most of the women did not pick flexible work hours or work life balance as their key choices. The study also showed parenthood as the major reason for women taking break from their career as opposed to education, which is the major reason for career break in men. Building an inclusive workplace with commitment towards pay equality will go a long way in providing due platform to women employees' ambitions and talent.



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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