



ELB E-BULLETIN

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Welcome to the fifth 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) employees' pension fund, (b) Central Advisory Board on minimum wages, and (c) 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 few years, 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.

[Notable developments in relation to employees' provident fund and pension fund related contributions](#)

In relation to employees' provident fund and pension fund related contributions, following are some notable developments that have occurred over the past one month:

- (i) [Enactment of certain provisions of the Code on Social Security, 2020 \(SS Code\) basis the implementation of the apex court ruling:](#) By way of a notification dated 3 May 2023, the Ministry of Labour and Employment (Ministry of L&E) has enacted certain provisions of the SS Code pertaining to employees' pension fund contributions, to bring the Employees' Pension Scheme, 1995 (EP Scheme) within the realm of the code effective 3 May 2023. Further, in another notification dated 3 May 2023, the Ministry of L&E has notified the manner of pension fund contributions under the SS Code in respect of employees who were members as of 1 September 2014 and who have exercised joint option for higher pensionary benefits. In our [ERGO](#) dated 9 May 2023, we have highlighted further details as provided in both the notifications and included our observations in this regard.
- (ii) [EPFO introduces a 'delete application' option for employees:](#) The Employees' Provident Fund Organisation (EPFO), on 3 May 2023, introduced a facility in the online portal for opting for higher pensionary benefits which allows for a 'delete application' option so that the employees can file for a fresh application for validation of option / joint option with correct details / uploads. This notification has been released on 

account of many representations requesting for the provision of a facility to correct errors in the application for validation of option / joint options. However, such a functionality can be used only if the employer has not acted on the application for validation of option / joint options. In case there are errors in the application even after the employer has acted on the application, employees will be provided with an opportunity to rectify the errors, after the scrutiny of the application by the field offices.

- (iii) EPFO extends date for filing applications regarding pension on higher wages: EPFO has extended the date to file applications for validation of option / joint option for higher pensionary benefits, till 26 June 2023.
- (iv) EPFO notifies the process and further details to be considered for applications for validation of options / joint options: Through a circular dated 11 May 2023, EPFO, in pursuance to the ruling of the Supreme Court of India in Employees' Provident Fund Organisation and Another v Sunil Kumar and Others [AIR 2022 SC 5634, has released a detailed circular providing further clarity on calculation of dues, classification of applications for validation / joint options, information on dues and its deposit and the of payment by the pensioners / members.

Tamil Nadu allows establishments to remain open for 365 days

By way of a notification dated 23 March 2023 published in the Official Gazette, the Government of Tamil Nadu has exempted all establishments from the provisions of Section 11(1) of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu S&E Act), which deals with a mandatory close day during the week for establishments in the state, thus permitting the employer to keep their establishments open on all 365 days of the year. This exemption is valid up to three years from the date of the notification.

The exemption is subject to compliance with certain conditions, including: (a) giving every employee a weekly off on a rotation basis and adhering to the daily and the weekly working

hours' limits of 8 hours and 48 hours, respectively; (b) ensuring adequate safety of women employees, along with obtaining written consent from the women employees to work on a night shift and providing transport arrangements for them; (c) providing details of every employee in 'Form S' of the Tamil Nadu Shops and Establishments Rules, 1948, along with additional details relating to their availability to work, and display of the same in a conspicuous place in the establishment; and (d) providing basic amenities to employees such as rest room, wash room, safety lockers.


Tamil Nadu introduces bill to amend the Tamil Nadu S&E Act

By way of a notification dated 13 April 2023 published in the Official Gazette, the Government of Tamil Nadu has introduced a bill to amend the Tamil Nadu S&E Act. Through this bill, the Government of Tamil Nadu has proposed the insertion of the following provisions pertaining to the grant of certain facilities to the employees employed in a shop / establishment located in Tamil Nadu.

- (i) Section 22 - B: sufficient supply of wholesome drinking water;
- (ii) Section 22 - C: sufficient number of latrine and urinal accommodation, which is accessible to the employees at all times, during their working hours;
- (iii) Section 22 - D: setting up of an adequate and suitable rest room and lunch room, which shall be sufficiently ventilated and lighted, along with being maintained in a clean and tidy condition; and
- (iv) Section 22 - E: arrangements to be made relating to the provision of first aid facilities, as may be prescribed.

These provisions have not yet been notified and await the assent of the Governor. Once the assent is received, the Tamil Nadu S&E Act will be amended to include the aforementioned provisions, therefore bringing the same into force.

Delhi clarifies process for exemption application

By way of a public notice dated 9 May 2023, the office of the Labour Commissioner of Delhi has clarified the process to be followed for 

filing an exemption application under Sections 14, 15 and 16 of the Delhi Shops and Establishments Act, 1954. Per the same, applicants are required to file their exemption application through the [online portal](#). Further, as per the notice, applicants are required to ensure that the establishment details provided in the exemption application correspond to the details provided during the registration of the concerned shop / establishment, which may be accessed at www.labourcis.nic.in. If there are any discrepancies between the two, the exemption application shall be kept in abeyance, until the particulars provided for the registration of the establishment have been duly updated through Form D / fresh application is received from the establishment.

[Puducherry makes application under various statutes online](#)

By way of a notification dated 24 April 2023 published in the Official Gazette, the Government of Puducherry has mandated online application for principal employer registration / amendment of establishments engaging contract labour under Contract Labour (Regulation and Abolition) Act, 1970 and registration of establishments employing migrant workmen under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

Further, by way of a notification dated 26 April 2023 published in the Official Gazette, the Government of Puducherry, as a part of reducing compliance burden, mandated online intimation of national and festival holidays in Form V under the Puducherry Industrial Establishments (National and Festival Holidays) Act, 1964 by factories. On approval, the final certificate can be downloaded from the online portal.

[Telangana allows establishments to remain open for 365 days](#)

By way of a notification dated 18 May 2023 published in the Official Gazette, the Government of Telangana has permitted shops and establishments in the state to remain open on all 365 days of the year for a period of 3 years from 16 June 2022.

This exemption is subject to compliance with certain conditions including (a) limiting the working hours to 8 hours daily and 48 hours weekly; (b) providing weekly holiday to

employees on rotation basis; (c) making working hours between 9 AM and 11 PM; (d) providing transport arrangements to women employees working after 8:30 PM; (e) providing appointment letters to employees and copies of the same to the jurisdiction inspector; (f) maintaining visit book exhibiting a copy of the exemption; (g) complying with the welfare provision under various labour statutes and implementing social security deductions and (h) crediting wages of employees in their savings bank account.

[Andhra Pradesh amends its labour welfare fund rules](#)

By way of a notification dated 4 May 2023 published in the Official Gazette, the Government of Andhra Pradesh amended the Andhra Pradesh Labour Welfare Fund Rules, 1988 (LWF Rules). The amendment has added new Rules 22A and 22B, wherein under Rule 22A, the government can notify the officers of the labour department to exercise power under Sections 25(3) and 30(3) of the Andhra Pradesh Labour Welfare Fund Act, 1987. Further, Rule 22B has been introduced which sets out the procedure to be followed by the appellate authority on appeal on fines.


Rule 25 has also been added which provides for penalty for violation. Any employer contravening the provisions of LWF Rules may be penalised with a fine up to INR 25,000, which may extend to INR 1,00,000 for a second or subsequent contravention. Lastly, after Form-G in the LWF Rules, a new Form-H has been added which provides for the register of appeals on fines.

03.

CASE UPDATES

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

[Supreme Court issues directions for better enforcement of POSH Act](#)

In the case of Aureliano Fernandes v State of Goa and Others [Civil Appeal Number 2482 of 2014], the Supreme Court considered a matter wherein an appeal was filed by a university lecturer regarding the decision of the 

internal committee in a sexual harassment enquiry. Owing to the appellant's various requests for postponement of proceedings, the standing committee had proceeded ex-parte against the appellant establishing sexual harassment and consequently terminating his services.

While deciding on the matter, the court opined that it is counterproductive to have an ill prepared internal committee (IC) conduct a half-baked inquiry that can lead to serious consequences. Further, the court expressed concern on the serious lapses in the enforcement of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) even after a long passage of time since the enactment of the law, as many establishments still have not constituted an IC or, even if constituted, the IC usually lacks the stipulated number of members or a mandatory external member. This lacuna affects the self-esteem of women, and as a result, often when women face sexual harassment at the workplace, they are reluctant to report such misconduct due to the lack of confidence in the process and its outcome.

In view of the above issues, the court issued directions including, (a) taking immediate and effective steps by the authorities / managements / employers to familiarize members of the IC with their duties and the manner in which an inquiry ought to be conducted, i.e., on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the report is submitted, (b) conducting orientation programmes workshops, seminars and awareness programmes by the authorities / management / employers which shall upskill the members of the IC and, (c) educating women employees about the provisions of the POSH Act.

Further, the Central Government and state governments have been directed to file their affidavits within eight weeks for reporting compliances.


Once a contractor has been established as employer under the BOCW Act, other contracting / sub-contracting parties cannot be employers: Madras High Court

In the case of *Sain Singh Rawat and Others v Government of Tamil Nadu* [Criminal Original

Petition Number 22336, 22343, 17778, 16249, 16251 of 2019], the Madras High Court dealt with a matter wherein multiple petitions were filed challenging the violation of the provisions of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act).

The matter concerned workers who were engaged in the construction work through a subcontractor and unfortunately, one of them sustained severe injuries and succumbed due to injuries on the spot. The court, after going through the factual matrix of the case, found that the contract was given to a contractor for doing certain work by a company, and the contractor had, in turn, subcontracted the work to another entity (sub-contractor I), which again sub-contracted a part of the work to a different entity (sub-contractor II), in whose place of work the accident took place. Separate prosecutions were initiated against all the parties. Further, there were separate complaints against the directors of the parties in respect of the same violation.

The court opined that there cannot be more than one employer in relation to an establishment. Once sub-contractor II was identified as an employer for the workers, including the deceased, as they were supplied by sub-contractor II for construction purposes, the other parties cannot be called as 'employer'. Further, Rule 26 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Central Rules, 1988 provides conditions of registration, which make it apparent that registration under the BOCW Act is only required if a building worker is directly employed by the employer, which was not done by the contractor in the present matter.

In the instant matter, 4 different complaints were filed showing 4 parties as employers. The court observed that if the prosecution case was to term all of them as employers, then they should have been prosecuted in a single complaint, in which case, the exact role played by each of the parties in the alleged violations would have revealed. However, filing 

independent complaints showing each of them as an 'employer' alleging the same violation is inappropriate.

Further, the court also opined that the director of the company who is in charge of and responsible to the company for the conduct of its business is vicariously liable. Hence, there cannot be two separate complaints for the company as well as the director as done in the instant case. A joint trial will avoid multiplicity of trials, besides preventing conflicting decisions against different accused in respect of the same offence.

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.

Payment of higher stipend to apprentices

Recently, it has been [reported](#) that employers in various states of India have been willing and are seen to be paying higher stipends to apprentices than the industry mandate.

Establishments have noted that payment of higher stipends results in bridging the skill crisis and the creation of a sustainable talent supply chain. It has also further been noted that the stipend growth in India has exceeded salary growth in various establishments and industries, i.e., many industries are paying higher than the minimum notified stipend. Industries including apparel and textiles, FMCG, handicrafts and jewelry, infrastructure and capital goods, have seen a sharp increase in the payouts made in the form of stipends. Companies, therefore, seem to be focusing more towards payment of higher stipend to apprentices, to incentivize maximization of the talent and skill of the apprentices.

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.



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