



ELB E-BULLETIN

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Welcome to the sixth 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.

Notably, the Employees' Provident Fund Organisation (EPFO), through an order dated 2 June 2023, has formulated three committees to prepare draft schemes pertaining to employees' provident fund, employees' pension and employees' deposit-linked insurance, in accordance with Section 15 of the Code on Social Security, 2020. As per the order, the first draft of the schemes is proposed to have been submitted by the three committees to the Central Provident Fund Commissioner by 23 June 2023.

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. 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:

- (a) Joint request under Employees' Provident Funds Scheme, 1952 (EPF Scheme) allowed for employees above the wage ceiling: By way of a circular dated 2 June 2023, the EPFO has specified the procedural formalities for joint requests for higher employees' provident fund contributions under Paragraph 26(6) of the EPF Scheme. To clarify, this facility allows employees earning monthly pay exceeding INR 15,000 to join the EPF Scheme or, if already a member thereof, contribute on higher pay than the said statutory wage ceiling.

This request shall be made by the employer and the eligible employee to the jurisdictional regional office, and the employer will undertake to pay administrative charges as required

while complying with the statutory provisions. The employer is also required to submit the pro forma application – which will be duly signed digitally by the employee and the employer – to the concerned regional office. The joint requests shall be processed expeditiously within 7 days of receipt of such notice.

- (b) EPFO clarifies the computation methodology for pension: By way of a circular dated 1 June 2023, the EPFO has clarified the computation methodology for pension against the backdrop of the judgment of the Supreme Court of India in *Employees' Provident Fund Organisation and Another v Sunil Kumar and Others* [AIR 2022 SC 5634], which was examined by us in our [ERGO](#). Basis the said circular which is in accordance with the provisions of the Employees' Pension Scheme, 1995 (EPS), pension shall be calculated as per the following guidelines:
- (i) *Eligible cases for pension on higher wages where date of commencement of pension is prior to 1 September 2014*: Pension shall be calculated basis the average monthly pay drawn during the contributory period of service for the span of 12 months preceding the exit date from the membership of the pension fund.
- (ii) *Eligible cases for pension on higher wages where date of commencement of pension is post 1 September 2014*: Pension shall be calculated basis the average monthly pay drawn during the contributory period of service for the span of 60 months preceding the exit date from the membership of the pension fund.
- (c) EPFO releases further guidelines on filing joint requests for applications for validation of option / joint options: By way of a circular dated 14 June 2023,

the EPFO has relaxed guidelines in respect of the procedure to be followed for applicants who are otherwise eligible for pension on higher wages but do not have a joint request under the EPF Scheme readily available. The guidelines state that the field officers will verify that (i) employer's share of employees' provident fund contributions has been remitted on the employee's pay; (ii) administrative charges have been remitted on such higher wages; (iii) employees' provident fund account of the employee has been updated with relevant interest; and (iv) requisite documents, as specified in the circular, have been provided along with the applications for validation of option / joint options.

Additionally, such applicants can also submit their joint requests and undertaking of the employer at the time of the final claim settlement through their last employer. Such joint request can be submitted by pensioners / members any time before the grant of pension on higher wages, in the (pro forma) manner as prescribed.

- (d) 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 from 26 June 2023 to 11 July 2023, through a press release dated 26 June 2023.
- (e) Initiation of recovery action under Section 8F of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act): By way of a circular dated 25 May 2023, the EPFO has notified that the guidelines laid down in the case of *Bhiwandi Nizampur Municipal Corporation v The Regional Provident Fund Commissioner II, Regional Office, Thane* [WP No 7814/2022] shall be followed scrupulously. The circular relies on the fact that the judgment passed by the Bombay High Court has

not been interfered with by the Supreme Court of India and hence is in operation.

In the said case, the Bombay High Court held that no orders shall be issued directing the deposit of funds as per Section 7A of the EPF Act during the appeal period since it creates an embargo on the rights of the assessee to avail remedies available under the EPF Act. Therefore, as per the circular, the authorities are required to ensure that recovery steps under Section 8F of the Act shall not be initiated unless the appeal period as per Section 7I of the EPF Act has elapsed.

[Rights of persons with disabilities rules amended](#)

By way of notification dated 5 June 2023 published in the Official Gazette, the Government of India has notified the Rights of Persons with Disabilities (Amendment) Rules, 2023 (Amendment) which amends the Rights of Persons with Disabilities Rules 2017. The Amendment substitutes standard for public buildings as specified in the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons With Disabilities and Elderly Persons as issued by the Government of India, Ministry of Urban Development in March 2016 with standard for public buildings as specified in the Harmonised Guidelines and Standards for Universal Accessibility in India, 2021 ([notified on 18 October 2022](#)), in the existing rules of accessibility (Rule 15(1)) wherein every establishment is required to comply with certain standards relating to physical environment, transport and information and communication technology.

[ESIC clarifies the process of online registration through MCA portal for establishments with no employees](#)

By way of a notification dated 2 June 2023, the Employees' State Insurance Corporation (ESIC) has addressed the issue pertaining to the inability of accessing the 'dormant option' on the ESIC website, faced by establishments registered on the Ministry of Corporate Affairs

portal (MCA portal) with zero employees. With regard to the same, the ESIC has clarified that establishments that have registered on the ESIC website through the MCA portal are required to declare the status of their company as active / inactive within 6 months of the registration to avoid defaulter action. The company can further extend their 'inactive' mode for 6 months and continue the same as per the status of their coverage under the Employees' State Insurance Act, 1948. However, the option to declare 'inactive' shall not be available to the establishment after the expiry of 6 months.

03.

CASE UPDATES

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

[Gratuity will be payable on the date on which the gratuity becomes payable and not on the date on which sanction / payment was done: Kerala High Court](#)

In the case law of K Rajendra Prasad Regional State Engineer v State of Kerala and Others [Writ Petition (Civil) Number 19171 of 2012], the Kerala High Court dealt with a matter wherein the petitioner, an employee who had retired in 2002, had filed a writ petition seeking a maximum death - cum - retirement - gratuity (DCRG) up to INR 10,00,000 basis an amendment in 2010 under the Payment of Gratuity Act, 1972 (Gratuity Act). His DCRG amount was withheld along with his last pay on account of liabilities due to audit objections.

The court noted that the petitioner was governed by Kerala Service Rules (KSR) as well as the Gratuity Act. Further, the Gratuity Act had overriding effect on other related enactments including the KSR. Therefore, the court clarified that the petitioner could not claim gratuity under both the Gratuity Act and the KSR and cannot have gratuity under the KSR with the ceiling limit payable under the Gratuity Act and vice versa.

Further, the court opined that the gratuity payment to the petitioner will be determined basis the provisions of the statutes applicable at the time the gratuity became payable, rather than the date of sanction or disbursement of payment. Since the amendment increasing the

threshold of gratuity to INR 10,00,000 came after the date when the petitioner became eligible for payment of gratuity, the court accordingly dismissed the petition, while leaving avenue for the petitioner to claim interest in the delay of payment of DCRG.

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 encourages diversity by engaging more LGBTQIA+ talent

Indian companies are [increasingly](#) prioritizing diversity and actively promoting inclusivity for LGBTQIA+ individuals in the workplace. Leading companies are seen to be intensifying their endeavours to attract, retain, and cultivate a talented pool of lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+) professionals. By placing diversity and inclusion at the core of their organizational culture, these companies are striving to foster a progressive environment that appeals to exceptional talent and facilitates their growth and success. Key

initiatives in this regard include gender-neutral employment policies, inclusive insurance coverage, collaborating with organisations that assist in DEI-focused recruitment, institution of internal support groups / member resource groups, etc.

Work-life balance takes priority for employees

Work-life balance has become a key priority for employees of today and one of the most discussed topics in today's offices. A recent Randstad Employer Brand Research report 2023 surveyed numerous employees across different and concluded that the top priorities of employees in India today in terms of a workplace are three-fold; (a) work-life balance, (b) favorable reputation, and (c) appealing salary package.

Women have placed significant stress in achieving work-life balance. Many employees are ready to change their workplace if it means according to them an opportunity to have greater work life balance. Interestingly, the study also noted that employees in India consider the non-monetary benefits of the job as important as the monetary ones. A good relationship with one's superiors and colleagues is highly regarded by employees as a positive experience in the workplace. Notably, attrition is also increasing in the market with employees looking to change their jobs inter alia due to lack of opportunities in career advancement at their current role.

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.

AMBITION STATEMENT

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