



ELB E-BULLETIN

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Welcome to the seventh 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

## 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.

Recently, 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 Scheme, Employees' Pension Scheme and Employees' Deposit Linked Insurance Scheme, in accordance with Section 15 of the Social Security Code 2020. As per the order, the first draft of the schemes was 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

those relating to the upcoming labour codes), case law updates and insights into industry practices that impact businesses from a sector agnostic standpoint.

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.

#### [Haryana amends its labour welfare fund contribution limit for employees](#)

By way of a notification dated 27 June 2023, the Haryana Government has amended the contribution limit for employees (employed in Haryana) to the labour welfare fund, as provided under Section 9A of the Punjab Labour Welfare Fund Act, 1965. As per the notification, every employee employed in any establishment in the state of Haryana shall now contribute to the labour welfare fund each month an amount equal to 0.2% of his salary / wages / remuneration subject to a limit of INR 31, instead of the previous limit of INR 25. Accordingly, each employer in respect of such employees shall contribute to the labour welfare fund twice the amount contributed by such an employee.

#### [Haryana instructs the registration of employers under the Haryana State Employment of Local Candidates Act, 2020](#)

By way of a notification dated 17 July 2023, the Haryana Government has directed employers in the state to register on the [official portal](#), vis-à-vis the Haryana State Employment of Local Candidates Act, 2020 (Local Employment Act). This notification comes in the wake of only 1,092 registrations received on the portal, and

therefore, the Haryana Government has instructed all relevant authorities to take necessary action of ensuring the receipt of more registrations.

#### Chhattisgarh mandates Aadhaar authentication to avail benefits

By way of a notification dated 30 June 2023 published in the Official Gazette, the Government of Chhattisgarh has, in pursuance to the provisions of Sections 3 and 4 of the Chhattisgarh Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services and Protection of Information) Act, 2018, mandated Aadhaar authentication to avail benefits under various labour laws. Hence, an individual desirous of benefits such as registration and applicability of schemes, is required to furnish proof of possession of Aadhaar or undergo Aadhaar authentication for benefits under (a) Building and Other Construction Workers' Welfare Cess Act, 1996, (b) Chhattisgarh Labour Welfare Fund Act, 1982, (c) Chhattisgarh Unorganized Workers' State Social Security Board and, (d) schemes to be implemented in future which involves expenditure incurred from the Consolidated Fund of Chhattisgarh.

If an individual does not have an Aadhaar and is in process of obtaining the same, then benefits under the schemes shall be allotted to them subject to the production of the following documents: (i) a copy of Aadhaar enrollment / copy of request for Aadhaar enrollment and (ii) a copy of identification document such as voter identity card, ration card, PAN card, passport, driving license, etc.

#### Declaration of rate of interest for EPF contributions for the year 2022-2023

By way of a circular dated 24 July 2023, the EPFO has notified the revised rate of interest in respect of each member of the Employees' Provident Funds Scheme, 1952 (EPF Scheme). As per the same, the revised rate of credit interest on the deposits made under the EPF Scheme currently stands at 8.15% for the year 2022-2023.

#### Karnataka exempts certain classes of individuals from payment of professional tax

By way of a notification dated 13 July 2023 published in the Official Gazette, the Government of Karnataka has exempted certain classes of individuals from the payment of tax

under the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976. The classes of individuals who have been exempted include individuals who are engaged in any profession, trades, callings and employment and are physically challenged with a total permanent disability of not less than 40% of both upper and lower extremity deformities. However, the condition is subject to the production of a valid medical certificate.

#### Andhra Pradesh notifies safety guidelines for factories

By way of a notification dated 7 July 2023 published in the Official Gazette, the Government of Andhra Pradesh has noted that while production related operations in a factory fall under routine industrial activities, maintenance related activities including working in a confined space would fall under non-routine industrial activities. Further, it notes that some maintenance activities do have the potential for accidents being caused, as the safety measures become non-operational in a factory during maintenance time.

It has been reiterated that the Factories Act, 1948 along with the Andhra Pradesh Factories Rules, 1950 prescribe an obligation on the occupier and manager of the factory towards safety of workers working in 'confined space' and accordingly, various guidelines on safe entry and working in a confined space have now been issued to prevent accidents in factories including (a) defining confined space as an enclosed space with restricted means of entrance and exit; (b) identifying all confined spaces and the nature of hazards by an occupier and following a 'work permit system (pre-determined work procedures which integrate safety with work)'; (c) maintaining at least 2 copies of work permits; (d) ensuring that personnel engaged in connection with work in confined space are medically fit; (e) carrying risk-assessment of the activities; (f) testing all confined spaces before permitting entry and work, and (g) providing various protective equipment and following the safety procedures as outlined in the notification.

#### Punjab allows shops and establishments to operate 24\*7

By way of a notification dated 2 June 2023, the Government of Punjab has exempted all shops and establishments from the provision of Sections 9 and 10(1) of the Punjab Shops and Commercial Establishments Act, 1958 (Punjab

S&E Act), which deals with opening / closing hours of establishments and the requirement of a close day during a week in the state of Punjab. This exemption is valid for a period up to 31 May 2024.

The exemption has been made subject to certain conditions, including: (a) giving every employee a weekly off without making any deductions from their wages and adhering to the weekly hours provision under the Punjab S&E Act; (b) ensuring adequate safety of women employees, along with requiring written consent from the women employees to work on a night shift, i.e., after 8 PM on any day; (c) giving a compensatory holiday with wages in lieu of the employees working on a notified national / festival holiday; (d) providing overtime wages at the stipulated rates, to the employees for the extra hours of work beyond the normal working hours; and (e) adhering to all relevant provisions of the Punjab S&E Act, as applicable.

#### [Chhattisgarh formulates rules under the Rights of Persons with Disabilities Act, 2016](#)

By way of a notification in the Official Gazette, the Government of Chhattisgarh has recently passed the Chhattisgarh Rights of Persons with Disabilities Rules, 2023 (Chhattisgarh Rules), formulated under the Rights of Persons with Disabilities Act 2016. As per the Chhattisgarh Rules, all organisations are required to designate 1 employee as the nodal officer for the grievance redressal of individuals with disabilities. Further, establishments with a workforce of over 20 employees are required to take appropriate action as a response to the grievances received ensuring that the matter is resolved in 90 days.

Every establishment must publicly disclose their equal opportunity policy formulated for persons with disabilities on their website. For establishments with more than 20 employees, the policy should also include information about the facilities and services provided to persons with disabilities, a list of concerned personnel, and the preferences granted to individuals with disabilities during the selection process. All establishments must maintain comprehensive records containing details about persons with disabilities, the nature of their work and the facilities provided to them by the establishment. These records must be submitted to the social welfare department annually in January.

## 03.

### CASE UPDATES

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

#### [Person accused of sexual harassment cannot review appraisal report of the complainant: Calcutta HC \(Jalpaiguri Circuit Bench\)](#)

In the case of Anjali Kumari v Yamuna Kumar Chaubey [CPAN 24 of 2023 in Writ Petition Application 1935 of 2022], the Calcutta High Court held that the involvement of a person accused of sexual harassment in reviewing the appraisal report of the complainant taints the entire procedure.

In the present matter, the petitioner accused the respondent of sexual harassment at work and asserted that the accused allegedly took part in an evaluation procedure of the complainant while her case was still pending in the High Court. The defence taken by the respondent was that the appraisal report was reviewed by another office colleague as well and that he was not the sole decision-maker.

However, disregarding the above argument, the court held that under no circumstances may a person who has been accused of sexual harassment participate in the complainant's performance review and therefore, the same needs to be assigned to another person.

#### [Contract overriding a statutory contract per the standing orders cannot be entered into: Supreme Court](#)

In the case of Bharatiya Kamgar Karmachari Mahasangh v Jet Airways Limited [Civil Appeal Number 4404 of 2023], the Supreme Court reiterated that workmen and the employer cannot enter into a contract that would override a statutory contract per the certified standing orders.

The court, in this case, was deciding on whether a private agreement between the parties would override the certified standing orders. In particular, the workers in question were employed by the company on a fixed-term basis, and a settlement was executed between these workers and the company whereby the former gave up their right to claim permanency

in the company in return for certain benefits stipulated under the settlement. Thereafter, the workers, whose services were concluded by the company, raised a dispute before the Central Government Industrial Tribunal seeking permanency in the company with all consequential benefits, for the reason that the nature of their work was permanent, and the workers had completed 240 days in the organisation. Notably, the model standing orders under the Maharashtra Industrial Employment (Standing Orders) Rules, 1959, provides that the temporary worker who has put in 240 days of uninterrupted service in the aggregate in any establishment shall be made permanent in that establishment. The tribunal denied their contention on the basis that their services were concluded due to expiry of their fixed-term contract with the company. When the matter reached the Supreme Court, the company took recourse to the settlement agreement and claimed that the workers could not have raised a permanency claim basis the provisions of the standing orders.

The court accordingly held that the standing orders were specifically designed to define the terms of employment of workmen in industrial establishments and therein, exclusively deal with the service conditions of workmen in industrial establishments. Further, the court held that "the standing order implies a contract between the employer and the workmen. Therefore, the employer and workmen cannot enter into a contract overriding the statutory contract embodied in the certified standing orders." The Industrial Employment (Standing Orders) Act, 1946, being a beneficial legislation, provides that any agreement / contract / settlement wherein the rights of the employees are waived off would not override the standing orders.

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).

## 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 embraces gig economy: companies make a significant shift in hiring practices

In India, the demand for independent contractors has increased dramatically in several industries, including manufacturing, FMCG, professional services, healthcare, and BFSI. Companies are increasingly using gig workers to fulfil their talent needs. In comparison to the prior year, the number of freelancing projects on a gig platform has increased significantly between January and June. A survey revealed that more than half of the organizations adopted gig workers in the June quarter, substantially higher than last year.

Gig engagement is driven by factors like specialized skills access, quick hiring processes, variable cost advantages, and the shift towards flexible work environments post-pandemic. The top skills in demand are strategy, marketing, IT / technology, human resources, and finance, accounting for most of the projects in FY23. In the first quarter of FY24, technology became the most sought-after skill. Consultant sign-ups experienced a significant surge in FY23 compared to the previous year. The growing demand for gig workers highlights a significant shift in India's employment landscape, meeting the changing business needs and the preference of professionals.

## AMBITION STATEMENT

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