



ELB E-BULLETIN

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Welcome to the eighth 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.

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.

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.

[Guidelines released for special verification of certain establishments availing ABRY scheme benefits](#)

By way of a notification dated 27 July 2023, the EPFO has laid down guidelines (July Guidelines) for special verification of establishments that have availed Aatmanirbhar Bharat Rozgar Yojana (ABRY) scheme benefits. Notably, ABRY was launched against the backdrop of COVID-19 to cover the cost of employees' provident fund contributions for those establishments that gave employment to new eligible employees and re-employed eligible persons who had lost their jobs during the pandemic. The EPFO allowed registration under the scheme until 31 March 2022.

As per these July Guidelines, the establishments availing ABRY benefits shall undergo a desk review process at the concerned regional offices (RO), where a standard operating procedure would be followed. The concerned RO will have the duty to notice inconsistencies and communicate them to the establishments. Based on the reply received from the concerned establishment, the compliance team will assess if a special verification is necessary to validate the genuineness of the ABRY benefits availed.

[EPFO develops a standard operating procedure \(SOP\) for conducting inspections of establishments](#)

By way of a circular dated 31 July 2023, the Central Analysis and Intelligence Unit (CAIU) of the EPFO released instructions laying down the mechanism for the implementation of SOP to be adopted for conducting inspections of establishments in a transparent and accountable manner under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act).

These instructions were based on a previous [circular](#) dated 21 March 2023 which, in turn, was derived from another older [circular](#) issued on 26 June 2014. The collective impact of the July and the March Circulars came into effect on 1 August 2023. The mechanism for the implementation entails certain tasks prescribed under SOP including periodic desk review, nudge and watch, physical inspection, etc. Our detailed update on the SOP is available [here](#).

[EPFO issues SOPs for processing joint declarations for member profile updation](#)

By way of a notification dated 23 August 2023, the EPFO has prescribed the SOP as regards the receipt of joint declarations (JD) for the purpose of making corrections in the universal account number (UAN) profiles of employee-members, along with the procedures that are required to be followed by field offices.

The SOP outlines the procedure for submitting a JD application by a member, the subsequent approval process by the employer, the receipt of the JD application in the regional office, and its subsequent approval / rejection by the competent authority within a timeframe. Additionally, it specifies the necessary documents to be attached when requesting changes or additions to different parameters through the JD process. The SOP also sets a specific timeline for the entire process of handling JD requests.

[Telangana appoints Appellate Authority for cases with respect to sexual harassment at workplace](#)

The Government of Telangana, by way of a notification dated 11 August 2023, has appointed eight Labour Courts and Industrial Tribunals under Section 7 of the Industrial Disputes Act, 1947, as Appellate Authority for cases related to workplace sexual harassment emanating from the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act).

It may be noted that the PoSH Act allows the parties to a complaint of sexual harassment to appeal against the recommendation of the internal committee constituted thereunder or against the failure of the employer to implement the said recommendation. Both the industry and the judiciary have expressed concerns over non-appointment of the Appellate Authority under the PoSH Act by several state governments, and in this context, this update assumes significance.

[EPFO releases guidelines on filing of complaints with EPFO vigilance](#)

The Vigilance Division of the EPFO has, by way of a circular dated 27 July 2023, adopted the complaint handling mechanism guidelines as issued by the [Central Vigilance Commission](#). The guidelines inter alia emphasize that complaints from employees should be specific, based on factual evidence, and must not be malicious or anonymous. It states that that the grievances can be lodged through [EPFIGMS](#) and [Umang Portal](#). The circular overall highlights that ensuring authentic and verifiable complaints is crucial for effective resolution.

[Notification of amendments with the Factories \(Karnataka Amendment\) Act, 2023](#)

The Karnataka government has, by way of notification dated 7 August 2023, notified the amendments to the Factories Act 1948, in its application to the state of Karnataka. The said amendment was passed earlier by the Karnataka legislature and received the assent of the President on 10 July 2023. The amendment inter alia brings a change in certain provisions relating to working hours, intervals for rest and additional wages for overtime. We had examined the amendment bill in our [ERGO](#) dated 6 March 2023.

[Inclusion of accessibility standards for health care under the Rights of Persons with Disabilities Rules, 2017 \(Disabilities Rules\)](#)

The Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, by way of its notification dated 9 August 2023, has issued the Rights of Persons with Disabilities (Amendment) Rules, 2023 (Amendment Rules) to amend the Disabilities Rules.

The Amendment Rules, which is effective immediately, inserts a new rule 15(1)(g) which prescribes for the compliance by

establishments with accessibility standards for health care as specified in the [notification](#) dated 4 May 2023 released by the Ministry of Health and Family Welfare. The Accessibility Standards for HealthCare are prescribed for compliance by Government and private hospitals, and other health care institutions and centres.

[Establishments in Meghalaya permitted to remain open 365 days a year](#)

By way of a notification dated 3 August 2023, the Government of Meghalaya has extended the authorization for all establishments registered under Meghalaya Shops and Establishments Act, 2003 to remain operational throughout the entire year, spanning 365 days, for an additional year until 31 December 2023. Such extension is subject to certain specified conditions set out under the notification.

03.

CASE UPDATES

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

[Principal employer cannot be saddled with additional liability to pay interest and penalty in case of no failure to comply with the statutory obligations: Bombay High Court](#)

In the case of Chief Executive Officer, Zilla Parishad, Ahmednagar and Another v Suraiyya Rafik Khalifa and Others [Civil Application No. 8433 of 2023], the Bombay High Court considered a matter wherein it was dealing with an appeal under Section 30 of the Employee's Compensation Act, 1923 challenging the award of compensation under Section 4(1)(a) of the Employee's Compensation Act.

In the context of the facts, amongst other issues framed by Bombay High Court, the substantive question was whether the liability of payment of interest and penalty under Section 4-A(3)(b) of Employee's Compensation Act can be imposed against the principal employer who have been held liable to pay compensation.

The Bombay High Court, while placing reliance on a judgment cited by the counsel for appellants, answered the above question in the negative by stating that the employer cannot

be saddled with the additional liability to pay interest and penalty on account of failure to comply with the statutory obligations.

['Basic wages' under the EPF Act is not the same as 'minimum wages' under the Minimum Wages Act 1948 \(MW Act\): Supreme Court](#)

In the case of Assistant Provident Fund Commissioner v G4S Security Services (India) Limited and Another [Civil Appeal Number 9284 of 2013] (G4S Ruling), the Supreme Court of India was dealing with the tenability of scrutiny of the division of employees' salaries within the framework of the EPF Act.

In response to this question, the Supreme Court supported the view that there is no direct connection between the definition of 'basic wages' as set out in the EPF Act and the definition of 'minimum wages' as provided under the MW Act. The court also emphasized that it is not appropriate to refer to the MW Act in order to expand the scope or alter the meaning of 'basic wages'.

[Maternity benefits can travel beyond the term of contractual employment: Supreme Court](#)

In the case of Kavita Yadav v The Secretary, Ministry of Health and Family Welfare Department [Civil Appeal No. 5010/2023], the Supreme Court was hearing an appeal against a Delhi High Court judgment where it had limited maternity benefits to only 11 days, stating that the contractual agreement of the concerned employee had ended. The matter concerned a pathology doctor who had applied for maternity leave 11 days before the end of her contractual period.

In its ruling, the Supreme Court directed employers to honour maternity benefits outlined in Sections 5 and 8 of the Maternity Benefit Act, 1961 (MB Act), regardless of the end of contractual employment. The court noted that the entitlements under Section 5 of the MB Act go beyond the length of work and that the legislation itself contemplates the continuance of benefits after the time of employment.

The court also highlighted as per Section 27 of the MB Act, the law gives an overriding effect to itself vis-à-vis any agreement or contract of service found inconsistent with the provisions of the Act.

[Failure of the employer to assign work to the employee will be considered retrenchment: Jammu & Kashmir and Ladakh High Court](#)

In the case of Managing Director JK Handicrafts v Aga Syed Mustafa [OWP No. 1319/2016], the High Court was considering an appeal by the petitioner corporation against the Industrial Tribunal's decision that had reversed the employee's termination, instructing the corporation to immediately reinstate the employee. The High Court, after going through the factual matrix of the case, found that the respondent was engaged by the petitioner as an assistant craftsman for a fixed term and was later transferred. The petitioner claimed that the respondent voluntarily abandoned his position while the respondent argued that despite enrolling, he never received new posting orders.

The court, after reviewing the information, observed that the respondent was not adjusted into the work, despite his repeated requests. According to the court, this circumstance could not be characterized as wilful abandonment of services. Instead, the petitioner corporation's action or inaction in failing to provide the directives for his adjustment hindered him from performing his duties. In view of this, the bench determined that this amounted to 'retrenchment' despite the lack of a formal termination letter and noted that the Tribunal was within its jurisdiction to direct reinstatement of respondent.

[Government should recognise right to paternity leave to biological or adoptive parents: Madras High Court](#)

In the case of B Saravanan v DIG Tirunelveli [Writ Petition (MD) No. 19561 of 2023], the Madras High Court has highlighted the pressing need for policymakers to acknowledge paternity leave or parental leave as an inherent human right for biological or adoptive parents, considering it a fundamental entitlement of the child during the prenatal and postnatal phases. Furthermore, the court has stressed the significance of both parents' involvement in prenatal and postnatal care, underscoring its importance from the child's perspective for survival. The responsibility of a welfare state

extends to providing dignified prenatal care for the foetus and ensuring adequate health, hygiene, and sanitation for the child in the postnatal period.

The court also noted that while paternity or parental leave falls within the realm of labour law benefits, it has originated from the child's right to protection under Articles 14, 15(3), and 21 of the Constitution of India.

It may, however, be noted that the court did not make any specific observations in respect of employers in the private sector.

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.

[Significant increase in the number of sexual harassment complaints in FY23 due to greater awareness](#)

There has been a [noticeable surge](#) in the number of cases relating to reported sexual harassment at workplace during the past financial year, surpassing the figures of the preceding year. A news report confirms that this increase can be attributed to shifts in work patterns following the COVID-19 pandemic and a heightened awareness of the anti-sexual harassment laws. The report further highlights that the rise in sexual harassment related complaints does not inherently indicate an escalation in instances of sexual harassment. Instead, it indicates a rise in the number of individuals stepping forward to register grievances, a consequence of increased awareness and sensitivity.

Prominent IT firms have been swift in re-evaluating their existing policies concerning sexual harassment, effectuating necessary revisions to align with evolving dynamics at work.

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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