



ELB E-BULLETIN

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Welcome to the ninth 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 Code on Social Security, 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.

[Punjab exempts factories from certain provisions of the Factories Act, 1948 \(Act\)](#)

By way of a notification dated 20 September 2023, the Government of Punjab has exempted factories in Punjab from certain provisions of the Act. The said exemption shall be in force till further orders of the Government of Punjab. As per the notification, factories in Punjab are now exempted from Section 51 (weekly hours), Section 52 (weekly holidays), Section 54 (daily hours) and Section 56 (spread over) of the Act, provided the following conditions are complied with:

- a. The total number of hours of work in any day should not exceed 12, and the total number of hours of work in a week (including overtime) shall not exceed 60;
- b. The spread-over, inclusive of interval for rest, should not exceed 13 hours in any day;
- c. No worker shall be allowed to work overtime for more than 7 days at a stretch, and the total number of overtime working hours in a quarter shall not exceed 115 hours;
- d. A proper logbook is required to be maintained to capture the overtime hours worked; and

- e. Payment of wages for overtime should be made in accordance with applicable law.

Uttar Pradesh exempts IT and ITeS establishments from opening and closing hours

By way of a notification dated 7 August 2023, the Uttar Pradesh government exempted Information Technology and Information Technology Enabled Services Establishments (IT and ITeS establishments) from certain provisions of Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhinyam, 1962 (Act), by including the IT and ITeS establishments under Schedule II of the Act. Through such inclusion, the IT and ITeS establishments are exempted from complying with Section 5 (hours of business) and Section 8 (closed days) of the Act.

Rajasthan notifies Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023

The Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 (Act) received the assent of the Governor on 12 September 2023 and shall come into effect on such date as notified by the State Government in the Official Gazette. With this update, Rajasthan became the first Indian State to pass a law specifically meant for gig workers. Through its provisions, the Act aims to provide the concerned class of workers with crucial social security and essential benefits, such as accident and health insurance. The Act covers two important stakeholders in the gig economy, i.e., primary employers, that are organizations that directly hire platform-based gig workers for a specific activity in exchange for payment, and aggregators, that act as digital intermediaries between buyers and sellers.

EPFO releases further guidelines for periodic review of establishments and regulation of inspections

By way of a circular dated 4 September 2023, the Central Analysis and Intelligence Unit (CAIU) of the EPFO released further guidelines laying down the mechanism for the implementation of standard operating procedure (SOP) to be adopted for inspections under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The SOP lays down certain guidelines for periodic desk review, physical inspection where nudging phase is not required, emergency physical inspection, etc.

These instructions were based on previous circulars dated 31 July 2023, 21 March 2023 and 26 June 2014.

Ministry of Labour and Employment allows investment of proceeds from sale or redemption of investment in equities, in permissible categories

By way of a notification dated 1 September 2023, the Ministry of Labour and Employment (MOLE) amended the notification dated 29 May 2015 and allowed proceeds arising out of sale or redemption of investment in equities and related investments to be invested in the permissible categories. Prior to this amendment, the MOLE allowed only the proceeds arising out of exercise of put option, tenure or asset switch or trade of any asset before maturity to be invested in any of the permissible categories. This notification holds relevance in respect of the pattern of investments that must be maintained by the EPFO and the exempted trusts.

03.

CASE UPDATES

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

Employees of private establishments entitled to 5 festival holidays annually on weekdays: Madras High Court

In the case of *Maiva Pharma Employees Union v Joint Director Industrial Safety and Health and Another* [Writ Petition Number 2247 of 2023], the Madras High Court held that employees of a private establishment should have the right to enjoy 5 festival holidays annually and therefore be granted the same on weekdays.

In the present matter, the High Court heard an employees' union writ petition regarding the announcement of 5 festival holidays out of which 3 holidays coincided with Sundays. The High Court ruled that employees working in private establishments should have the choice to use these festival holidays on weekdays and not be restricted to have festival holidays coinciding with their regular weekly offs.

Furthermore, the High Court stated that a weekly off cannot be re-designated as a

holiday, irrespective of its categorization as a festival holiday or special holiday, except for the 4 national holidays. The High Court also stressed on the importance of consulting the employer as well as the employees, before finalising the list of festival holidays.

Situs of workman's place of employment vital to confer territorial jurisdiction on labour court: Delhi High Court

In the case of *J Balaji v The Hindu, New Delhi and Another* [Letter Patent Appeal Number 640 of 2022], the Delhi High Court held that the situs of workman's place of employment shall be considered crucial to determine the territorial jurisdiction of labour courts to hear matters.

The High Court in this case heard an appeal against the single judge's order dismissing a journalist's claim petition on the ground that courts in Delhi have no territorial jurisdiction since the situs of his employment had shifted from Delhi to Chennai. The High Court held that while the employer of the petitioner had a functioning office in Delhi, the same did not vest territorial jurisdiction on the Delhi courts to hear such matters. It further noted that though the employee was posted in the Delhi office for some time, his services were eventually transferred to the Chennai office and the termination order was also issued to him from such office, thus leading to the conclusion that the cause of action arose entirely in Chennai.

Working under a contract for an extended duration does not automatically establish a right to become a regular employee: Supreme Court

In the case of *Ganesh Digamber Jambhrunkar v State of Maharashtra* [Special Leave to Appeal (Civil) Number 2543 of 2023], the Supreme Court held that ongoing engagement on a contractual basis does not establish legal entitlement for the contractual employees to claim regularisation of employment.

In the present matter, the Supreme Court heard an appeal from petitioners who were claiming regularisation of services, while being appointed on a contractual basis in an educational institute, since 2011. The Supreme Court concluded that their ongoing employment did not establish any legal entitlement for them to be permanently hired or absorbed by their employer, as the same was not agreed between the parties prior to their engagement on a contract basis. Further, the

Supreme Court also noted that had there been any official program or process for regularizing such employment, the petitioners could have made use of the same, but since there was no such scheme in place, the petitioners' claim failed.

Burden of proof depends on nature of charge and explanation put forward by employee in a disciplinary proceeding: Supreme Court

In the case of *State Bank of India v AGD Reddy* [Civil Appeal Number 11196 of 2011], the Supreme Court held that the burden of proof in disciplinary proceedings initiated against an employee shall be determined on the basis of the allegations and the explanation provided by the concerned employee.

In this case, the Supreme Court was hearing an appeal against the judgment of the Karnataka High Court which penalised the employee as an outcome of the disciplinary proceedings initiated against him. The Supreme Court held that in a disciplinary proceeding, the allocation of the burden of proof hinges on the specific allegations and the defence provided by the respondent, and the burden of proof may accordingly shift on the basis of the explanations provided.

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.

Global banks with operations in India enhance maternity benefits

As per reports, global banks with business presence in India are increasing [maternity benefits](#) to attract and retain female employees. The measures taken in this regard include a work-from-home facility for up to one year for new mothers, cost sharing in respect of cab rides for female employees in their last trimester (so that they are able to avoid travel in crowded public vehicles), mentorship programmes for women who have reintegrated into the workforce post child delivery, etc.

IT and ITeS establishments reinstate a 5-day work-from-office model

As per reports, leading IT and ITeS establishments are now [requiring](#) employees to physically report to office on some or all of the working days of the week. The requirement has been fuelled in part by requests from the

clientele of these establishments for such working arrangement to allay concerns in respect of security of the information exchanged with such establishments as well as potential moonlighting by employees in breach of exclusivity requirements in their employment contracts.

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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