



ELB E-BULLETIN

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- ▶ LABOUR CODES: STORY SO FAR
- ▶ REGULATORY UPDATES
- ▶ CASE UPDATES
- ▶ INDUSTRY INSIGHTS

Welcome to the tenth 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 s

tate 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.

[EPFO extends date for submission of wage details of applicants for higher pension](#)

By way of a press release dated 29 September 2023, the Employees' Provident Fund Organisation (EPFO) has extended the date for submission of wage details of the applicants who were allowed to opt for higher pension by 11 July 2023. The earlier timeline for this was 30 September 2023, which has now been extended to 31 December 2023.

[EPFO releases standard operating procedure for management and regulation of EPF exempted establishments](#)

By way of a circular dated 6 October 2023, the EPFO released a Standard Operating Procedure (SOP) for management and regulation of establishments that are permitted to operate an exempted private provident fund trust under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act).

The SOP outlines the responsibilities of various stakeholders, the specific procedures and timelines vis-à-vis the exempted establishments that are managing their own provident fund trust, and mechanism for monitoring compliance by EPFO through regional, zonal, and head offices in respect of such establishments. We have analysed this update in our ERGO dated 16 October 2023, available [here](#).

[Tamil Nadu releases draft amendments to the Tamil Nadu Shops and Establishments Rules, 1948 \(Rules\)](#)

By way of a notification dated 9 October 2023, the Government of Tamil Nadu has released

draft amendments to the Rules under the Tamil Nadu Shops and Establishments Act, 1947 (Act).

As per this notification, new establishments are required to file an application in Form Y to the concerned area inspector for registration under the Act. The inspector may issue a registration certificate, pursuant to the application, in Form Z within 24 hours. For existing establishments, employers must inform the area inspector about details of the establishment through the Tamil Nadu Labour Department's official website in Form ZB. Further, an application for amending a registration certificate has also been made online and the area inspector is required to issue a fresh certificate in Form Z, upon receiving an amendment application. The notification also requires establishments to provide first-aid facilities at their premises. The penalty for non-compliance with any provisions under the Rules has also been increased from INR 50 to INR 2000.

However, please note that these draft amendments are still at consideration stage and the Government of Tamil Nadu has opened the forum for public consultation till 9 December 2023.

[ESIC increases the limit for non-claiming of interest for delayed payment of contribution](#)

By way of a circular dated 11 October 2023, the Employees' State Insurance Corporation (ESIC) has enhanced the limit for non-claiming of interest for delayed payment of contribution. The notification shall come into force from 1 November 2023.

As per the circular, the threshold to claim interest for delayed payment of contribution has been increased from INR 100 to INR 300. As a result, field offices will not be able to claim interest on a delay in any contribution payment if the interest value due to the delay does not exceed INR 300.

03.

CASE UPDATES

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

[Company fined for omitting compliance under the POSH Act from board report](#)

In a [recent matter](#), the Registrar of Companies, Bengaluru, Karnataka (ROC) passed an order of adjudication of penalty on a company for failing to disclose its compliance relating to constitution of an internal committee (IC) under the POSH Act. It may be noted that pursuant to Rule 8(5)(x) of the Companies (Accounts) Rules, 2014, every company is required to include a statement in their annual report confirming that they have complied with the provisions of constituting an IC. The ROC determined that the company's board report in FY 2019 and FY 2020 failed to disclose company's compliance with such rule and in turn contravened the provisions of Section 134(3) of the Companies Act, 2013 (pertaining to disclosures in the board report). Accordingly, a penalty as per Section 134(8) of the Companies Act, 2013 has been imposed on the company for the said non-compliance. In addition to same, the key managerial personnel of the company, i.e., Managing Director, Chief Financial Officer and Company Secretary were also individually penalized with fines of INR 50,000 each.

[Advocates are not entitled to legal representation under the Industrial Disputes Act: Supreme Court](#)

In the case of *Thyssen Krupp Industries India Private Limited and Others v Suresh Maruti Chougule & Others* [Civil Appeal Number 6586 of 2019], the Supreme Court has held that an advocate cannot claim the right of legal representation under the Industrial Disputes Act, 1947 (ID Act).

In the present matter, the central issue at hand was whether the provisions under the ID Act regarding legal representation required reconsideration, in light of the Advocates Act, 1961. The Supreme Court ruled that the Advocates Act, 1961 is a broad legislation and is superseded by the ID Act, which focuses on labour welfare. Furthermore, the Supreme Court emphasized that the restriction on employing a legal practitioner was imposed on the party implicated and not on the legal

practitioner's rights. In cases brought under the ID Act, the rights of employers and workers are of the primary consideration, and legal practitioners' rights are ancillary to the underlying issue between these parties.

[Two institutes can be clubbed for the purpose of employees' provident fund \(EPF\) contributions if there is financial integrity: Supreme Court](#)

In the case of *M/S Mathosri Manikbai Kothari College of Visual Arts v The Assistant Provident Fund Commissioner* [Civil Appeal Number 4188 of 2013], the Supreme Court held that if there is a strong financial connection between two institutions, they can be linked and combined for the purpose of EPF coverage.

The matter concerned two educational institutes which were being run by a fine arts society within the same campus. Both of these institutes had 8 and 18 employees, respectively. They did not comply with the provisions of the EPF Act, as they considered themselves independent establishments managed by the same society. Following such non-compliance, an order was passed by the Assistant Provident Fund Commissioner assessing the amount of EPF contributions that were due to be made by the entities.

The main issue before the Supreme Court was whether two institutes can be clubbed for the coverage of EPF Act. After the perusal of documents, the Supreme Court opined that the appellant is not an independent establishment but an arm of the society that oversees its operation and that there is a strong financial connection between both. The Supreme Court even noted that the society has provided significant funds to support the functioning of both the institutes and both institutes operate from the same location or premises. Hence, the presence of financial integrity may be considered as a ground to combine the contributions / eligibility criteria under the EPF Act.

[Supreme Court issues directions to the Union and State governments to ensure effective implementation of the POSH Act](#)

In the case of *Initiatives for Inclusion Foundation v Union of India* [Writ Petition (Civil) Number 1224 of 2017], the Supreme Court heard a writ petition seeking issuance of appropriate orders under the POSH Act for the proper implementation of all the provisions of the POSH Act.

As a result, the Supreme Court has made it mandatory for the state governments to appoint a district officer, emphasizing their role in workplaces where there is no IC. The Supreme Court also highlighted that every district officer is required to fully comply with the POSH Act while obtaining annual compliance reports and IC reports from employers. The district officers have also been directed to identify non-governmental organisations working with women and take proper action to create more awareness about the POSH Act.

[No further appeal lies to a departmental authority once a report by IC has been prepared: Madhya Pradesh \(MP\) High Court](#)

In the case of *Mukesh Khampariya v State of Madhya Pradesh* [Writ Petition Number 21852 of 2018], the MP High Court has held that there is no enabling provision under the POSH Act that allows for filing an appeal with a departmental authority.

In this instance, the petitioner underwent an inquiry conducted by the IC and was subsequently acquitted of all allegations. However, later as per the direction by higher officials, a second departmental inquiry was carried out where the petitioner was found guilty of the allegations levelled against him. The High Court held that after the IC established under the POSH Act has prepared a report, there is no recourse of an additional appeal to a departmental authority. Further, the High Court observed that the report of the local committee / IC comes within the ambit of a "service matter", and in such cases, the appropriate recourse would be to approach the relevant labour court or industrial tribunal notified as the appellate authority under the POSH Act.

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 focuses on inclusion and diversity for roles at the top of the hierarchy](#)

According to a news [report](#), it has been found that Indian companies are exhibiting a higher degree of inclusivity and gender diversity within their upper management ranks compared to their non-managerial workforce, i.e., the

number of female employees at the higher ranks are more than the number of female employees at the lower levels. Similarly, such a pattern can be found in the inclusion and recruitment of differently abled individuals at various levels as well. As per the statistics, approximately 23% of permanent employees in listed companies for the fiscal year 2022-2023 were women, in comparison to the employment of only 11% women as permanent workers. With respect to persons with disabilities, the permanent employee population had a 0.58% share, whilst the permanent worker population had a 0.46% share. Some employers have identified job retention as the main challenge behind such a scenario in the job market.

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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