

The background of the cover features several white paper boats on a light grey surface, with one prominent red paper boat in the foreground on the right. Overlaid on the right side are the letters 'E', 'L', and 'B' in a large, white, outlined font. A red horizontal bar is positioned behind the 'E' and 'L' letters, containing the text 'ELB E-BULLETIN' in white.

ELB E-BULLETIN

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Welcome to the eleventh 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 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.

Manipur releases new shops and establishment legislation

By way of a notification in the Official Gazette of the Government of Manipur dated 6 November 2023, the Government of Manipur has published the Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2021 (Manipur S&E Act), pursuant to receipt of the assent of the President of India on 13 October 2023. The Manipur S&E Act shall be deemed to have come into force with effect from 29 June 2021. The Manipur Shops and Establishments Act, 1972 and the Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Ordinance, 2021 accordingly stand repealed with the enforcement of the Manipur S&E Act. The Manipur S&E Act appears to have been modelled on the Model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016 that was released by the Ministry of Labour and Employment, Government of India (available [here](#)), which also forms the genesis for the shops and establishments legislation enacted by Maharashtra and Gujarat in recent years.

Government extends work from home option for information technology establishments in special economic zones

By way of a notification published in the Official Gazette on 7 November 2023, the Government of India published the Special Economic Zones (Fourth Amendment) Rules, 2023 to further amend the Special Economic Zones Rules, 2006. These rules pertain to hybrid work model for certain employees employed in an establishment in a special economic zone (SEZ).

A unit may allow its employees to work from any place outside the SEZs. The kinds of employees in respect of whom such facility is available are (a) employees of the information technology (IT) / information technology-enabled services (ITeS) units, (b) temporarily incapacitated employees, (c) travelling employees, and (d) employees working offsite. The permission granted to work from home will be applicable up to 31 December 2024.

'Employee' is defined to include both direct employees as well as personnel deployed at the unit through another organisation. The amended rules provide that a unit permitting its employees to work from home needs to intimate the same to the Development Commissioner through an email on or before the date on which work from home is expected to be undertaken. The unit can, in this regard, provide an employee working from home duty-free equipment such as laptop which can then be taken outside the SEZ, subject to such articles being duly accounted for in the appropriate records.

03.

CASE UPDATES

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

[Failure to issue a notice under Section 25F of the Industrial Disputes Act, 1947 is not sufficient grounds for a worker to claim reinstatement with back wages: Supreme Court](#)

In the case of *District Rural Development Agency v Mukeshkumar Gandhal Jadav* [Special Leave Petition (Civil) Number 15480 of 2022], the Supreme Court has held that breach of Section 25F of the Industrial Disputes Act, 1947 (ID Act), to the extent the same pertains to failure on the part of an employer to issue notice to the competent labour authority about the retrenchment, does not result in automatic reinstatement with back wages for the worker.

In the present matter, the primary issue under consideration was if a 'workman' (non-managerial employee) is entitled to seek reinstatement with back wages in the event of the employer's failure to furnish the above-mentioned notice under Section 25F of the ID Act, prior to the retrenchment of said workmen.

The Supreme Court noted that the only issue in the present matter was the non-issuance of notice under Section 25F of the ID Act and that other conditions under the provision had been met by the employer. Accordingly, the Supreme Court held that even if there was an apparent non-compliance of Section 25F of the ID Act due to notice not being furnished, the same does not automatically grant the worker right to reinstatement with back wages.

[75% quota for Haryana residents in private sector jobs unconstitutional: Punjab and Haryana High Court](#)

In the case of *IMT Industrial Association and Another v State of Haryana* [Civil Writ Petition Number 26573 of 2021], the Punjab and Haryana High Court has pronounced the Haryana State Employment of Local Candidates Act, 2020 (Act) as unconstitutional.

The matter concerned the validity of the Act which had mandated private sector employers in the state to reserve 75% of certain posts for candidates domiciled in the state of Haryana. The Act applied to various entities, including companies, societies, trusts, limited liability partnership firms and partnership firms, situated in the state of Haryana and employing 10 or more persons. We have examined and analysed the ruling in detail in our legal update (as available [here](#)).

[Inclusion of LGBTQIA+ persons in the definition of 'aggrieved woman' would dilute and denude the principal objective of prevention of sexual harassment law: Supreme Court](#)

In the case of *Binu Tamta and Another v High Court of Delhi* [Miscellaneous Application Number 2308 of 2023 in Writ Petition (Civil) Number 162 of 2013], the Supreme Court has held that Gender Sensitization and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013 (Regulations), as formulated under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, cannot be made gender neutral to include LGBTQIA+ members.

The applicants in the present matter were seeking gender neutralization of these Regulations and they sought for the amendment of the term 'aggrieved woman' to 'aggrieved persons' under these Regulations. The Supreme Court, considering the intent and purpose of these Regulations, emphasized that

the primary goal of these Regulations is to promote the safeguard of aggrieved women identified under the Regulations. The Supreme Court further highlighted that such amendments to the existing regulations would undermine the original purpose and effectiveness of these Regulations.

[Authorities should not be swayed by hyper-technicalities but must consider the broader context in sexual harassment cases: Supreme Court](#)

In the case of *Union of India and Others v Dilip Paul* [Civil Appeal Number 6190 of 2023], the Supreme Court held that in sexual harassment cases, judicial authorities should not be swayed by little discrepancies and technicalities.

In this instance, a female employee had filed two separate sexual harassment complaints consecutively pertaining to the same alleged incident. A Central Complaints Committee (Committee) was formed to conduct an inquiry after two initial inquiries had failed to substantiate the allegations. Eventually, the Committee found the respondent guilty. However, the Guwahati High Court ruled that the Committee overstepped its jurisdiction by considering the second complaint.

The Supreme Court, upon addressing the case in hand, noted that there was no legal bar on the Committee to look into the allegations levelled in the second complaint. The Supreme Court also reiterated that there is no statutory prohibition or rationale to constrain the Committee's power to interrogate witnesses, as applicable during an inquiry. Further, the Supreme Court opined that while dealing with sexual harassment cases, judicial authorities should have a broader perspective and should not get swayed by insignificant discrepancies or hyper-technicalities.

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.

[Industries embrace apprentice engagement to address skilled labour shortage](#)

According to a recent news [report](#), organisations are adopting an innovative approach in addressing the notable deficit of skilled labour across industrial sectors such as manufacturing, electrical / electronics, NBFCs, retail, ecommerce, and FMCG. Establishments are actively engaging apprentices with Class X/XII qualifications and delivering tailored training to them to make them ready for non-managerial positions. Recent insights indicate that approximately half of these enterprises aspire to integrate 10% of apprentices into their total workforce within the next 6 months.

Another recent [report](#) also highlights a considerable increase in apprentice engagement within the IT/ITeS industries. Many employers in these sectors anticipate a rise in apprentice intake in the coming months. The banking, financial services, and insurance (BFSI) sector is actively involved in apprentice engagement, driven by the growth of NBFCs. According to the latest findings, BFSI and IT/ITeS were the top industries in apprentice engagement over the past year. This trend is credited to the high return on investment these sectors provide, particularly amidst ongoing uncertainties and global challenges. Significantly, almost three-fourths of apprentices in the BFSI and IT/ITeS sectors successfully complete their training and are subsequently considered for full-time employment, indicating a markedly higher rate compared to other industries.

[India Inc spearhead 'returnship' programs to bolster gender diversity and bridge talent gap](#)

According to a news [report](#), in response to a talent shortage and with the aim of boosting gender diversity, numerous Indian organisations are launching "returnship" initiatives, specifically designed for women seeking to re-enter the workforce after a career hiatus. Industries engaged in pharmaceuticals, insurance, technology, financial services, and renewable energy are intensifying their efforts in second career programs to leverage the untapped pool of experienced female professionals. These programs, which include training and mentorship, tailored to various skills such as engineering, traditional and digital marketing, sales, and data analytics, culminate in offering some participants full-time employment opportunities, while others gain valuable project experience to enhance their employability. This innovative approach has resulted in nearly 5,00,000 women securing jobs this year, presenting a mutually beneficial

solution for both organisations and female professionals looking to bridge the skills and age gap.

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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