

The cover features a background of several white paper boats on a light grey surface. One boat in the foreground is red. 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'.

ELB E-BULLETIN

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

Welcome to the twelfth 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.

[Tamil Nadu extends the manual workers' law to gig workers.](#)

By way of a notification dated 30 November 2023, the Government of Tamil Nadu has extended the applicability of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Service) Act, 1982 (TN Manual Workers Act) to platform-based gig workers, through an inclusion in the Schedule of the TN Manual Workers Act. The TN Manual Workers Act regulates the employment of manual workers employed in certain employments specified in the Schedule of the TN Manual Workers Act, along with prescribing the conditions of their work and security of their employment.

[Employees' Provident Fund Organisation \(EPFO\) releases standard operating procedure \(SOP\) for freezing and unfreezing of accounts](#)

By way of a circular dated 22 December 2023, the EPFO has prescribed an SOP to outline a timeline for freezing the member IDs / universal account numbers, as a measure of due diligence to secure the funds and protect from subsequent de-freezing, upon completion of verification of genuineness. According to the SOP, the freezing of such accounts is limited to a maximum of 30 days, with the provision to extend it by an additional 14 days for due diligence purposes.

## 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' state insurance (ESI) fund dues not on par with provident fund, pension fund or gratuity dues: National Company Law Tribunal (NCLT) Ahmedabad

In the case of *Regional Director, Employees' State Insurance Corporation (ESIC) v Manish Kumar Bhagat* [Interlocutory Application Number 184 of 2021], the Ahmedabad bench (Bench) of the NCLT has ruled that the ESI dues should not be treated on par with provident fund, pension fund and gratuity fund while undertaking the process of liquidation of a defaulter company.

In the present matter, a certain company, failing to deposit their ESI contributions, underwent a corporate insolvency resolution process (CIRP) and was eventually ordered for liquidation by the NCLT in 2019. In the liquidation process, the ESIC claimed priority in payment to stakeholders above other creditors while the liquidator argued that Section 36(4) of Insolvency and Bankruptcy Code, 2016 (IBC) does not include any insurance corporation fund.

The Bench interpreted that Section 36(4)(iii) of IBC does not expressly categorize ESI dues as workmen dues, except for those related to provident fund, pension fund, and gratuity fund. Consequently, the Bench asserted that ESI dues do not fall within the scope of workmen dues and are not entitled to priority payment. Moreover, the Bench rejected ESIC's claim for inclusion as secured creditors, emphasizing that the Employees' State Insurance Act, 1948 lacked provisions conferring any charge or special status to ESI contributions. Further, the Bench underscored that ESI contributions operated as insurance, and its nature as coverage based on premiums, distinguishes it from other benefits protected under the IBC and cannot be equated with other benefits.

### Employer cannot deduct wages without holding an inquiry or investigation: Bombay High Court

In the case of *General Manager, Mutha Founders Private Limited v Kamal Balu Kurane and Others* [Writ Petition Number 41 of 2013], the Bombay High Court held that an employer is not permitted to withhold wages without first conducting a proper inquiry or investigation.

In the present matter, the worker had suffered injuries and had obtained a medical certificate recommending that he should be provided with

light work. The employer had refused the request and deducted the said employee's salary.

The High Court emphasized that deducting wages without conducting an inquiry or some form of investigation is impermissible. Additionally, the High Court deemed the deduction of wages from an employee, who was willing to undertake alternative work in the company, as entirely unlawful. Furthermore, the High Court stated that the deceased worker should receive a full refund of the deducted amounts from his wages in accordance with the law. It was also determined that the legal heirs and dependents of the deceased are entitled to any amounts that were due and payable to him.

### Employee deemed to have accepted transfer order by not challenging it: Supreme Court

In the case of *UP Singh v Punjab National Bank* [Civil Appeal Number 5494 of 2013], the Supreme Court of India held that an employee's failure to challenge a transfer order means that he had accepted the order and was duty-bound to comply with the same.

The Supreme Court emphasized that an individual dissatisfied with a transfer order cannot simply reject it unilaterally by staying at home and deeming it illegal or erroneous. Further, the Supreme Court highlighted that if the concerned employee had any grievances regarding the transfer, there were established remedies available for redressal. Failing to pursue such remedies would imply acceptance of the transfer order, making it a duty for the employee to comply with it. The Supreme Court emphasized that the employee cannot argue, at a later stage, that the order being perceived as erroneous should not have consequences for non-compliance.

### Freedom of speech and expression cannot be allowed to be transgressed beyond reasonableness for an employee: Bombay High Court

In the case of *Hitachi Astemo Fie Private Limited v Nirajkumar Prabhakar Rao Kadu* [Writ Petition Number 13192 of 2023], the Bombay High Court overturned an employee's termination for two provocative Facebook posts against the employer company.

The High Court scrutinized two defamatory Facebook posts written in Marathi, noting the intent of the employees to incite hatred against

the petitioner company's management. The High Court underscored the importance of limiting freedom of speech and expression within reasonable bounds, highlighting the potential disastrous consequences if allowed to exceed such limits.

Further, the High Court observed that the act of posting and the subsequent comments on these Facebook posts were clear attempts to provoke animosity and strong emotions against the management. Emphasizing the impact, the High Court noted that the likes and comments on the posts had successfully stirred up considerable hatred among the audience. This analysis formed the basis for the High Court's judgment, recognizing the potential harm arising from inflammatory online content.

## 04.

### INDUSTRY INSIGHTS

In this section, we delve into interesting human resources related practices and / or initiatives

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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as well as industry trends across various sectors in the past one month.

[India Inc charts a bold path towards inclusive excellence, spearheading a future of opportunities for people with disabilities](#)

On the International Day of Persons with Disabilities, India Inc spearheaded a [transformative](#) approach to inclusivity in the software and IT sector. Companies are dismantling barriers, addressing biases, and actively promoting leadership opportunities for employees with disabilities. While there are challenges relating to hiring, companies are making a conscious effort by exploring roles and locations which are more accessible.

The above effort is the need of the hour in the backdrop of low representation of people with disabilities in the workplaces. This commitment goes beyond symbolic gestures, signalling a big step to create a sustainable and inclusive future for people with disabilities in the corporate realm and provide them with the requisite support to advance to senior roles.

## AMBITION STATEMENT

*"Our ambition is to be a respectable law firm providing efficient and courteous service, to act with fairness, integrity and diligence, to be socially responsible and to enjoy life. We should put greater emphasis on working in consonance with our aforesaid values than on maximizing earnings. Earn we should but with dignity and pleasure."*

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