



ELB E-BULLETIN

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Welcome to the second edition of the e-Bulletin (Volume VI) 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.

[Employees State Insurance Corporation \(ESIC\) extends medical benefits to superannuated insured persons with relaxed norms](#)

By way of a press release dated 10 February 2024, the ESIC has decided to expand medical benefits for retired workers with relaxed norms. In this regard, the ESIC has approved a plan to offer medical benefits to retired workers who were previously covered under the ESIC regime but exceeded the wage limit upon retirement. To qualify under the scheme, the retired worker must have been in insurable employment for at least 5 years before superannuation / voluntary retirement. This new scheme applies to individuals who were employed for at least 5 years after 1 April 2012, and retired on or after 1 April 2017, earning monthly wages up to INR 30,000.

[Employees' Provident Fund Organization \(EPFO\) updates format and guidelines for making a joint request and permission](#)

By way of a circular dated 30 January 2024, the EPFO has implemented amendments regarding the process to be followed for contributions exceeding the statutory limit under Paragraph 26(6) of the Employees' Provident Funds Scheme, 1952 (EPF Scheme).

The EPFO has approved a digital format for filing joint requests under the above provision. This transition aims to streamline processes and reduce paper consumption for all new cases moving forward. For cases where employees have left employment or where they passed away prior to 31 October 2023, and who have already contributed beyond the statutory limit, it is deemed that such contributions were allowed. Existing members

currently contributing beyond the statutory limit, with corresponding administrative charges paid by employers, are exempt from immediately filing for joint requests in the new format. It is important to note that this exemption solely applies to cases governed by Paragraph 26(6) of the EPF Scheme.

[EPFO issues guidelines on pension calculation for members with multiple employment](#)

By way of a circular dated 29 January 2024, the EPFO has issued guidelines for members with multiple employment under the Employees' Pension Scheme, 1995 (EPS), outlining procedure for calculation of pension.

According to the guidelines, the pension calculation for an EPS member who possesses multiple account numbers will be determined based on the amount of actual pension computed at the date of exit, provided that the total pension from all establishments combined, remain within the wage ceiling. In case the amount exceeds the wage ceiling the contribution received on such excess amount shall be sent to the employees' provident fund account.

If a member joins another establishment without exiting the first one, the Regional Office (RO) overseeing the subsequent establishment is tasked with ensuring that the total contribution into EPS does not exceed the contribution payable on a wage ceiling of INR 15,000. The guidelines also mentions that members whose wages exceed INR 15,000 in a single establishment or cumulatively across establishments will be ineligible for EPS membership, with their full employee provident fund contributions being retained.

[Republic of India enters into a social security agreement \(SSA\) with Federative Republic of Brazil](#)

By way of a notification dated 13 February 2024, the EPFO has notified that the SSA between India and Brazil, has entered into force effective from 1 January 2024.

This SSA allows for detachment, totalization, and portability of social security benefits between the two countries. Under the detachment clause, employees deputed from one country to the other for short-term assignments are exempted from social security contributions for up to 36 months, subject to obtaining a certificate of coverage (COC).

Employers and concerned employees can apply for the COC through the regional EPFO offices. The EPFO has provided consolidated guidelines for issuing the COC, ensuring compliance with the SSA.

03.

CASE UPDATES

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

[Workman cannot be accorded the status of 'protected workman' if proven guilty in the disciplinary proceedings: Karnataka High Court](#)

In the case of *M/s Armstrong Design and Acmite India Manufacturing Private Limited v The Assistant Labour Commissioner* [Writ Petition Number 1049 of 2024], the Karnataka High Court held that if disciplinary proceedings establish that a worker is guilty of the allegations against them or if they are charged in a criminal case by the police, then they cannot be considered as a 'protected workman'.

In the present matter, the respondent trade union submitted a letter to the petitioner company to declare a concerned workman as a 'protected workman' after the disciplinary authority dismissed him from his services. The primary issue was whether the concerned workman should be recognized as a 'protected workman' under the Industrial Disputes Act, 1947 (ID Act).

The High Court expressed concerns about the timing of the respondent trade union's application for 'protected workman' status, which was submitted 2 weeks after the concerned workman had been found guilty. In this case, the High Court underscored the significance of designating a workman as a 'protected workman', emphasizing that such designation is not automatic but rests within the discretion of the employer. The High Court noted that even minor offences could result in the denial of this special status. Furthermore, the High Court highlighted the privileged status conferred by law on 'protected workmen' to ensure the smooth functioning of trade unions. Granting such status to a workman facing disciplinary action could establish a precedent potentially encouraging others to engage in similar misconduct, seeking protection under the label of 'protected workman'.

Project leader's responsibilities exclude clerical, manual or technical work: Karnataka High Court

In the case of *Mphasis Limited v Sri Ashok S. Narayanpur* [Writ Petition Number 5443 of 2021], the Karnataka High Court held that an employee serving as a project lead in an information technology services and consulting firm shall not fall within the category of 'workman' as defined in Section 2(s) of the ID Act.

In the present matter, the primary issue under consideration was whether a project lead in a software company can be considered as a workman under the ID Act. The High Court emphasized that determination of whether an employee qualifies as a 'workman' hinges on the nature of their primary duties and responsibilities. The High Court stressed that this determination must be made based on the specific circumstances and matter of record of each case.

The High Court observed that the evidence indicated that the employee's role did not involve manual, clerical, or technical work but rather fell within the managerial category, primarily focused on decision-making. The High Court concluded that being appointed as a project leader did not imply engagement in clerical, manual, or technical tasks, thus excluding the individual from being classified as a 'workman' under the law.

Only labour unions can raise disputes regarding absorption or regularization on behalf of employees: Karnataka High Court

In the case of *Management of M/s Tata Advanced System Limited v The Secretary, The Department of Labour and Others* [Writ Petition Number 7674 of 2023], the Karnataka High Court held that individual workmen seeking absorption and regularization in a company must file their claims before the industrial tribunal through a labour union representing them.

In the present matter, the central issue at hand was whether an individual worker seeking regularization could initiate an industrial dispute as defined under Section 2(k) of the ID Act. The High Court distinguished between Section 2(k) and Section 2A of the ID Act, asserting that, matters falling under Section 2(k) would not constitute an industrial dispute

if they were solely individual grievances, not taken up by a workers' union.

Ultimately, the High Court concluded that while an individual worker could raise a dispute concerning removal, termination, or dismissal under Section 2A of the ID Act, matters regarding absorption and regularization could only be raised by a union representing the worker.

Employer's right to punish errant employee cannot be circumscribed by passing a blanket order: Bombay High Court

In the case of *The Indian Express Private Limited v Dinesh Rane and Others* [Writ Petition Number 10814 of 2023], the Bombay High Court held that employers naturally have the authority to take disciplinary action against employees who engage in misconduct, and this authority cannot be limited by issuing a blanket order.

In the present matter, petitioners challenged an order from the industrial court restraining them from terminating respondents' services without due process. The High Court observed that the industrial court's order sought to constrain the employer's autonomy in penalizing or transferring an employee without clear evidence of imminent threat or proven misconduct.

Criticizing the order, the High Court highlighted the potential injustice of granting every employee who files a complaint, interim protection from termination and transfer without due consideration of the circumstances. Despite acknowledging the need for temporary safeguards for employees, the High Court underscored that employers have an inherent right to take disciplinary action against its employees if any misconduct is committed and they must retain their inherent prerogative to initiate disciplinary proceedings or transfer employees when warranted by the situation.

Voluntarily retired employees not considered 'workmen' under Section 2(s) of ID Act: Karnataka High Court

In the case of *Triveni Turbine Limited v Government of Karnataka And Others* [Writ Petition Number 18857 of 2022], the Karnataka High Court held that employees who choose voluntary retirement and receive benefits should be excluded from the definition of 'workman' under Section 2(s) of the ID Act.

In the present matter, the primary issue under consideration was whether an employee who has voluntarily retired from service and accepted the benefits of voluntary retirement can be treated as a 'workman' as defined under Section 2(s) of the ID Act.

The High Court observed that an industrial dispute can only be entertained if the individual can be deemed as a 'workman' under Section 2(s) of ID Act. According to the ID Act, the term 'workman' encompasses individuals currently employed, and those who have been dismissed, discharged, or retrenched from service. The High Court added that the legal relationship between an employer and an employee ceases upon retirement, voluntary retirement, or resignation. Once an employee chooses voluntary retirement and accepts all benefits provided under the voluntary retirement scheme (VRS), they forfeit the right to later claim that the decision was made under duress or undue influence.

Furthermore, the High Court held that individuals who have availed themselves of the full benefits offered by the VRS cannot subsequently challenge the amount received under the scheme.

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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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.

Companies looking for empathy among its key senior personnel

In contemporary leadership, [empathy](#) has become increasingly important, replacing the outdated idea of authoritarian management styles. As a result, companies are now looking for leaders who can handle difficult situations with sensitivity, as highlighted by leadership search firms and management experts. The way companies recruit leaders has changed significantly, with boards now giving priority to managers who are both results-driven and empathetic. In today's challenging business environment, which includes widespread workforce restructurings in some industries, employees often feel a lot of uncertainty and stress, which can affect their performance negatively. Companies now believe that it is essential to take these challenges into account when evaluating performance and to communicate this approach to prevent disengagement within the organization during tough times.

AMBITION STATEMENT

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