



ELB E-BULLETIN

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Welcome to the third 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.

[Karnataka notifies the social security legislation for motor transport workers](#)

By way of a notification dated 7 March 2024 in the Official Gazette, the Government of Karnataka has published the Karnataka Motor Transport and Other Allied Workers' Social Security and Welfare Act, 2024 (Karnataka Act). The Karnataka Act introduces a framework aimed at enhancing the social security provisions for motor transport and allied workers by *inter alia* envisaging collection of cess from establishments engaged in the business of motor transport undertaking in the prescribed manner. Further, the Karnataka Act establishes a welfare board tasked with overseeing fund management and benefit distribution. We have examined the Karnataka Act in detail in our [ERGO](#) dated 15 March 2024.

[Maharashtra revises its labour welfare fund contribution rates](#)

Through a notification dated 18 March 2024 in the Official Gazette, the Government of Maharashtra amended the Maharashtra Labour Welfare Fund Act, 1953 (Maharashtra LWF Act) thereby increasing the labour welfare fund contribution rates for employers and employees.

Previously, such contribution rates stood at INR 6 and INR 12 for employees earning salary up to and above INR 3,000 respectively, to be payable every 6 months. Likewise, for

employers, such rates existed at INR 18 and INR 36, respectively. By way of this amendment, Section 6BB of the Maharashtra LWF Act (which deals with the contribution rates) has been amended and the labour welfare fund contribution rate for an employee now stands at INR 25, payable every 6 months. As regards the employer, such contribution rates have been increased to thrice the amount of contributions payable by an employee.

[Gujarat exempts information technology \(IT\) and information technology enabled services \(ITeS\) and financial services sector from certain provisions of the Gujarat S&E Act](#)

As per a notification dated 5 February 2024, the Government of Gujarat has introduced exemptions under the Gujarat Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2019 (Gujarat S&E Act), effective for a period of 2 years from the date of the issuance of the notification in the Official Gazette, applicable to IT and ITeS establishments and establishments engaged in the financial services sector.

Through this notification, applicability of Section 12 (hours of work) and Section 14 (spread over of hours of work) on all IT, ITeS and financial services establishments has been nullified, i.e., employers engaged in these sectors are no longer required to ensure compliance with these provisions vis-à-vis their employees based in the state of Gujarat. However, this exemption is subject to the employer ensuring compliance with the health and safety of workers, prohibiting discrimination against women in recruitment practices, ensuring adequate payment of overtime (as applicable and prescribed), providing sufficient leaves and holidays (as prescribed) and implementing welfare measures *inter alia* in the form of provision of creche facilities and access to potable drinking water, etc.

[Haryana prescribes guidelines for employment of female employees in night shifts under the Factories Act, 1948 \(Factories Act\)](#)

The Government of Haryana through a notification dated 14 March 2024 in the Official

Gazette has revised guidelines to be adhered by the factories who employ female employees during the night. The said notification shall be in force for a period of one year.

The notification prescribes that the occupier of the factory must adhere to the provisions outlined in the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act). Instead of filing declarations with the Labour Commissioner, establishments are now obligated to provide specified details of employees engaged during the night in the annual report prepared under the POSH Act, along with submitting a copy to the Labour Commissioner of Haryana. Security measures are also mandated, such as sufficient lighting, CCTV coverage, and batches of at least 10 female employees being engaged at once, along with transportation facilities equipped with female security guards and trained drivers. Additionally, the notification asserts that the provisions of the Factories Act and other relevant statutory provisions concerning hours of work, rest intervals, holidays, separate canteen or rest room facilities for women workers, and the provisions of the Equal Remuneration Act, 1976 must be followed by the occupier of the factory.

03.

CASE UPDATES

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

[Working journalists are ineligible as "employees" under the MRTU & PULP Act: Bombay High Court](#)

In the case of *Shri Indrakumar Jain v Dainik Bhaskar and Others* [Writ Petition Number 9112 of 2019], the Bombay High Court held that "working journalists" cannot file complaints of unfair labour practices as they are not employees under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act).

The primary issue before the High Court was whether working journalists, who are covered under the special provisions of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Working Journalists Act) can be considered employees under the MRTU & PULP Act.

The High Court highlighted that the MRTU & PULP Act does not extend to conflicts involving journalists, emphasizing their unique status and protections within the realm of employment law landscape. The High Court observed that working journalists constitute a distinct class with specific privileges and safeguards under the Working Journalists Act. The High Court underscored the distinction between working journalists and regular workmen, noting the retention of special privileges for the former. Further, the High Court added that if there was no differentiation between working journalists and other workmen, including non-working journalists, then the retention of special privileges would be unjustifiable.

[Workman using abusive language on several occasions can be dismissed from employment: Karnataka High Court](#)

In the case of *Jayapal KM v the Management of Shakti Precision Components (India) Limited* [Writ Petition Number 149 of 2022], the Karnataka High Court held that a workman using abusive language on multiple occasions can be dismissed from employment.

In the present matter, the Labour Court reinstated a workman despite instances of undisciplined conduct, citing unfairness in the domestic inquiry process. The High Court emphasized that any actions leading to the breakdown of discipline would be considered “act subversive of discipline” encompassing misconduct such as negligence, illegal strikes, insubordination, and disorderly behaviour. Additionally, the High Court observed that the repeated use of abusive language by the workman could not be disregarded and the imposition of dismissal as punishment is justified due to the seriousness of the workman’s misconduct.

[Avoiding pre-deposit obligation of gratuity payment via appeal is impermissible under the Payment of Gratuity Act, 1972 \(Gratuity Act\): Jammu & Kashmir \(J&K\) High Court](#)

In the case of *Cooperative Market Society Limited Bishnah v Assistant Labour Commissioner* [Writ Petition (Civil) Number 1483 of 2020], the J&K High Court has ruled that the statutory remedy of appeal against an award passed by a Controlling Authority under the Gratuity Act cannot be bypassed by approaching the High Court directly.

The High Court observed that Section 7(7) of the Gratuity Act (which lays down the appeal procedure and mandates the deposit of gratuity payment due) is both statutory and mandatory, meaning that it cannot be avoided to evade the requirement of making a pre-deposit. This pre-deposit requirement is crucial for ensuring timely payment of gratuity to employees. It serves to secure the amount that may ultimately be owed to the employee during the appeal process against an order of the Controlling Authority directing gratuity payment.

Furthermore, the High Court highlighted that employers cannot sidestep the procedure outlined in Section 7(7) of the Gratuity Act by seeking relief directly from the High Court under Article 226 of the Constitution of India, 1950. This provision aims to prevent such circumvention, ensuring that employees are protected and their rightful entitlements are secured during the appeal process.

[Employer cannot treat a worker as contract labour when employed to perform a perennial / permanent nature of work: Supreme Court of India](#)

In the case of *Mahanadi Coalfields Limited v Brajrajnagar Coal Mines Workers’ Union* [Civil Appeal Numbers 4092/4093 of 2024], the Supreme Court of India held that workers engaged in a permanent or perpetual nature could not be classified as contract workers under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA Act) in order to prevent them from receiving the benefits of regularization.

In the present matter, the primary issue concerned the non-regularization of 13 out of 32 employees of the appellant, who were considered contract workers despite completing work that was perpetual in nature.

The Supreme Court of India observed that all 32 workers who joined the appellant’s service, worked continuously for a period of 10 years. Referring to the settlement with the workers’

union, the court concluded that the remaining 13 workers should have been treated on par with the other workers who were regularized, and it was unjustified to exclude these workers from the settlement. The Supreme Court of India emphasized that the appellant failed to demonstrate any distinction between the two groups of workers, as they performed identical tasks.

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's shift towards living wages set for 2025

According to reports, India is aiming to [transition](#) from its minimum wage system to a living wage framework by 2025. The Government of India has sought assistance from the International Labour Organization to develop a comprehensive framework for implementation of this initiative. The concept of living wage ensures that workers and their families can afford a decent standard of living, considering factors like location, marital status, and number of children. This wage is calculated based on the work done during normal hours, while the minimum wage is determined by the overall economy.

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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