



ELB E-BULLETIN

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Welcome to the fifth 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.

#### [No requirement to obtain registration for shops / establishments under the Tripura S&E Act](#)

By memorandum dated 26 April 2024, the Government of Tripura enforced the amendment dated 15 May 2021, which deleted Section 16 of the Tripura Shops and Establishments Act, 1970 (Tripura S&E Act). Previously, Section 16 of the Tripura S&E Act required every employer to apply for registration of their shop or establishment and to renew such registration every 3 years. Following this amendment, no employer shall now be required to apply for registration of their shop or establishment under the Tripura S&E Act.

#### [Approval of interest rate on employees' provident fund \(EPF\) accumulations for the fiscal year 2023-24](#)

The Employees' Provident Fund Organisation (EPFO) has announced the approval of the Central Government, to credit interest at the rate of 8.25% on EPF accumulations under Paragraph 60(1) of the Employees' Provident Funds Scheme, 1952 (EPF Scheme), for the fiscal year 2023-2024 to the account of each member of the EPF Scheme. The rate of interest for the financial year 2022-2023 was set at 8.15%.

This approval comes pursuant to the proposal made by the Central Board of the Trustees under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) to revise the annual rate of interest to be credited on EPF accumulations of the members.

#### [Shops and commercial establishments in Rajasthan are exempted from weekly closure requirements](#)

Through a notification dated 2 May 2024, the Government of Rajasthan has notified that shops and commercial establishments

registered under the Rajasthan Shops and Commercial Establishments Act, 1958 (Rajasthan S&E Act), are exempted for a period of 3 years from the applicability of Section 12(1) (weekly holidays) of the Rajasthan S&E Act.

This exemption is subject to certain conditions, such as (i) employees receiving 1 day off per week on a rotational basis; (ii) maintenance of a separate record for overtime if employees work more than 9 hours a day and 48 (forty-eight) hours per week; (iii) compensation for overtime to be given as per the law; and (iv) all employees to be issued appointment letters. The employer is also required to provide employees with all other benefits prescribed under the Rajasthan S&E Act. Any violations of the prescribed conditions will result in automatic termination of the exemption and legal consequences for the employer.

#### EPFO introduces auto-claim settlement for education, marriage and housing

The EPFO, by a notification dated 13 May 2024, has introduced auto-claim settlement for education, marriage and housing purposes. This notification has clarified that members of the EPF Scheme can enjoy auto-settlement of claims under Paragraphs 68K (education and marriage purpose) and 68B (housing purpose) of the EPF Scheme to the extent of INR 1,00,000.

#### Heat action plan for establishments, factories, shops and construction sites operating in Delhi

As per a notification dated 27 May 2024, the Labour Department of Delhi has issued guidelines for establishments, factories, shops and construction sites to follow, in order to tackle the severe heatwave conditions. The employers, as a result, are required to make certain arrangements at the workplace, such as (i) availability of adequate drinking water; (ii) availability of cooler / fans; (iii) proper ventilation; (iv) provision of fire-fighting equipment; (v) keeping flammable items in isolated cool places; (vi) not requiring workers to work under direct sunlight; (vii) provision of emergency kits for construction workers; (viii) adjusting shift timings to avoid work during peak hours i.e., from 12 PM to 4 PM; (ix) conforming to electrical safety regulations; and (ix) attending heat-related illnesses properly and promptly.

#### Ministry of Women and Child Development (WCD) releases National Minimum Standards

#### and Protocol for Crèche (Operation and Management)

To ensure that standardised and quality crèche services are available in all establishments across the country, the Ministry of WCD has released the National Minimum Standard and Protocol for Crèche (Operation and Management). These standards and protocols aim to provide comprehensive childcare in a safe and secure environment, fostering the overall development of children. Further, these standards and protocols provide guidelines with respect to (i) key points to be considered before opening the crèche; (ii) composition of the crèche administrative committee; (iii) staff or resource person requirements; (iv) roles and responsibilities of crèche supervisors and helpers; (v) details of services to be provided in crèches; and (iv) provisions for safety inspections.

## 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 of cooperative societies are entitled to benefits under labour legislations:

##### Kerala High Court

In the case of Cherplassery Co-operative Hospital Limited v State of Kerala and Others [Civil Writ Petition Number 32291 of 2014], the Kerala High Court held that employees of co-operative societies are entitled to benefits under various labour laws, such as Kerala Shops and Commercial Establishments Act, 1960 (Kerala S&E Act), Minimum Wages Act, 1948, Maternity Benefit Act, 1961, and Kerala Industrial Establishment (National and Festival Holidays) Act, 1958.

This decision arose from a petition filed by a co-operative hospital inspected for compliance under these labour laws. The hospital argued that, as it was governed by the Kerala Co-operative Societies Act, 1969 (Kerala Co-operative Societies Act), the inspection was beyond the labour authority's jurisdiction. The court dismissed this argument, asserting that co-operative societies fall under the definition of 'establishment' in the Kerala S&E Act.

The court further clarified that the Kerala Co-operative Societies Act focuses on welfare aspects related to conditions of service for employees, such as appointments, promotions, and salaries, whereas these labour legislations provide social security measures, including enforcement and inspection of welfare provisions essential for employees, which the Kerala Co-operative Societies Act does not address. Therefore, the court concluded that the Kerala Co-operative Societies Act does not exclude the applicability of the aforementioned labour legislations to co-operative societies, ensuring that the employees working in these co-operative societies are also protected under the applicable labour laws.

[Use of expressions "baby" and "sweetie" need not be construed as necessarily sexually coloured:](#)

#### [Calcutta High Court](#)

In the case of *X v Gender Sensitization and Internal Complaint Committee (IC) and Others* [Writ Petition Application Number 26677 of 2023], the Calcutta High Court observed that the expressions "baby" and "sweetie" may be commonly used in certain social contexts and do not necessarily carry a sexual connotation. Consequently, the use of these terms should not automatically be interpreted as sexually suggestive.

This decision emerged from a petition filed by a former Deputy Commandant of the Coast Guard against the order of IC. The Deputy Commandant had alleged sexual harassment against her Commanding Officer during her tenure of service. The IC had dismissed the complaint on all counts, leading the petitioner to file the present writ petition. The petitioner contended in court that the respondent engaged in inappropriate staring, peeping, and physical contact, and used terms such as "baby" and "sweetie", in an attempt to hinder her career progression.

The court dismissed the writ petition, concluding that the petitioner had not substantiated her claims of sexual harassment. Furthermore, the court noted that although the respondent's use of certain expressions was deemed inappropriate, these expressions were not repeated after the petitioner expressed her discomfort,

indicating an absence of deliberate harassment.

[Provision for inclusion of 'international workers' under the EPF Act deemed unconstitutional:](#)

#### [Karnataka High Court](#)

In the case of *Stone Hill Education Foundation v Union of India and Others* [Writ Petition Number 18486 of 2012], the Karnataka High Court invalidated Paragraph 83 of the EPF Scheme and Paragraph 43A of Employees' Pension Scheme, 1995 (EPS), which contain special provisions for social security contributions to be made to international workers, as being violative of Article 14 of the Constitution of India.

The petitioners in this case challenged the constitutionality of Paragraph 83 in the EPF Scheme and Paragraph 43A of EPS wherein they argued that requiring contributions for international workers to be made on their entire salary (*without any capping*) was arbitrary and violative of Article 14 of the Constitution of India. The court held that it was unconstitutional to treat "non-citizen employees working in India" differently from "employees who are citizens of India", when both sets of workers are employed in India and are equals. The court further noted that while contributions towards employees' provident fund contributions in India for an Indian employee working in a social security agreement (SSA) country are capped, a foreign national from a non-SSA country working in India is required to contribute to their employees' provident fund contributions in India without any cap. Such a distinction among international workers based on nationality was held to be discriminatory.

[Providing rent-free accommodation under employment terms creates a jural relationship of landlord and tenant between an employer and an employee:](#)

#### [Karnataka High Court](#)

In the case of *Chinnaswamy K v Theosophy Company (Mysore) Private Limited* [Civil Revision Petition Number 483 of 2023], the Karnataka High Court held that providing rent-free accommodation as a term of employment establishes a jural relationship of landlord and tenant between an employer and an employee. This is because the rent component is considered as a part of the



employee's emolument, resulting in a reduced salary for the employee.

The present revision petition was filed to overturn the decision of the Small Causes Judge and Additional Chief Metropolitan Magistrate, wherein the petitioner was ordered to vacate and hand over possession of the rent-free quarters provided as part of his employment terms. The court observed that while the petitioner was an employee, the relationship between the respondent and the employee specific to the rent-free accommodation translated to a relationship between a tenant and a landlord and accordingly, the plea of adverse possession by the petitioner was unfounded and the eviction suit was maintainable. Consequently, the court dismissed the petition along with imposing costs on the petitioner.

[Industrial Tribunal cannot permit parties to lead evidence without first examining the evidence presented in the domestic inquiry:](#)

[Delhi High Court](#)

In the case of MCKR Hospital and Ayurvedic R v Satish Kumar [Civil Writ Petition Number 3489 of 2007], the Delhi High Court held that if the Industrial Tribunal identifies any legal errors in the conduct of a domestic inquiry, it may allow the parties to present additional evidence. Upon evaluating this evidence, the tribunal may then decide whether the dismissal or any other punishment is justified.

In the present case, the petitioner, a hospital, sought to quash the orders passed by the tribunal. The tribunal had ruled in favour of the respondent, setting aside the 2 domestic inquiries conducted by the petitioner due to procedural errors, rendering them invalid. Furthermore, the Tribunal declared the dismissal order invalid and instructed the petitioner to reinstate the respondent with continuity of service and to pay salary arrears until reinstatement. Aggrieved by the tribunal's decision, the hospital filed a writ petition seeking to quash the impugned order.

The court dismissed the petition and held that the tribunal, while exercising its jurisdiction for providing approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 (ID Act) (employer can punish an employee for misconduct not connected to a dispute or pending proceedings), is empowered to permit the parties to present

evidence regarding the legality and propriety of the domestic inquiry into the misconduct of a workman. However, such evidence would only be considered by the tribunal if it finds that the domestic inquiry conducted by the management, based on the standard of proof required (*which is "preponderance of probabilities"*), suffers from inherent defects or violates the principles of natural justice. Having said that, an Industrial Tribunal should first examine the evidence presented in the domestic inquiry and cannot mechanically permit the parties to present additional evidence as if it is an essential procedural part of the inquiry to be held under Section 33(2)(b) of the ID Act.

[For the forfeiture of gratuity, an employee must be terminated after being found guilty of an alleged act involving moral turpitude:](#)

[Delhi High Court](#)

In the case of Airports Authority of India v VC Saxena [Civil Writ Petition Number 5321 of 2017], the Delhi High Court held that for the forfeiture of gratuity under Section 4(6) of the Payment of Gratuity Act, 1972 (Gratuity Act), deeming the employee's action in the nature of 'moral turpitude' is insufficient. The act / offence of the employee which constitutes moral turpitude should be duly established in a court of law. Consequently, the payment of gratuity can only be forfeited in cases where the employee is convicted of moral turpitude.

The respondent, employed as a manager at an airport, was subjected to a criminal complaint by the Central Bureau of Investigation for accepting a bribe. Subsequently, the respondent was convicted by the trial court and was dismissed from his position with immediate effect. Thereafter, the respondent filed an application before the appropriate controlling authority for the release of his gratuity, arguing that no departmental proceeding was pending against him and that his termination did not fall under the conditions provided in Section 4(6) of the Gratuity Act.

The court ruled that gratuity is an employee's right and cannot be forfeited without due process of law and adherence to relevant legal provisions. Furthermore, the court noted that the petitioner did not suffer any loss or damage due to the respondent's actions and that there were no allegations against the respondent during his tenure of

service, and consequently, the respondent cannot be deprived of his gratuity. The court upheld the decision of the appropriate controlling authority, confirming the respondent's entitlement to gratuity while partially setting aside the determination of the quantum of the gratuity amount payable to the respondent.

## 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 propagates gender-neutral parental leave policies

According to an [article](#) in The Economic Times, Indian organisations are updating their policies pertaining to parental leaves, in view of

changing society dynamics of families. These change in policies are being done for employees who are in a paternal role either biologically or non-biologically on account of being LGBTQIA+ or adopting parents or commissioning parents.

Employers are rolling out creative policies wherein parental leaves are being given to promote equal parenting by providing leaves to family members supporting the primary caretaker (either biological, adoptive or commissioning). There is also extension in daycare facilities and inclusion of foster / kinship leaves for employees who need pre-adoption care or have to become legal guardians. These policies are rolled out on a gender-neutral manner to cover same-sex partners, as applicable. Such policies are a welcome step and will go a long way in creating an inclusive work environment. This also helps in mitigating employee attrition and managing women workforce participation at all levels, making such organisations a preferred choice for potential talents.

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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