

ELB E-BULLETIN

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Welcome to the fifth edition of the e-Bulletin (Volume VII) brought to you by the Employment, Labour and Benefits 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.

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



Employees' pension
fund



Central Advisory Board
on minimum wages



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 the 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 past 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.

As of now, 4 out of a total of 36 states and union territories are yet to publish draft rules on the code on wages, while 5 states have not released draft rules on code on industrial relations, social security and occupational safety, health and working conditions.

Separately, the Union Budget 2025 highlighted that gig workers associated with online platforms play a crucial role in driving dynamism within the modern services economy. Recognizing their contributions, the Central Government will facilitate issuance of their identity cards and registration on the e-Shram portal along with entitlement to healthcare benefits under the Pradhan Mantri Jan Arogya Yojana (health insurance scheme providing financial protection for secondary and tertiary healthcare).

In the case of Indian Federation of Application-Based Transport Workers (IFAT) v Union of India and Others Writ Petition (Civil) Number 1068 of 2021, the Supreme Court while addressing concerns regarding the delay in implementing the Code on Social Security, 2020, has directed the Central Government to file an affidavit specifying the timeline for the implementation of the Code on Social Security, 2020.

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.

Chandigarh introduces a start-up policy with compliance relaxations under selected labour laws

Through a notification published in the Official Gazette on 29 April 2025, the administration of Chandigarh has notified the 'Chandigarh Start-up Policy 2025' (Policy), which has come into effect from the date of its publication. The Policy sets out a comprehensive framework aimed at supporting start-ups across various stages of growth, i.e., from ideation to commercialisation through targeted incentives, infrastructural support, and institutional collaboration. Among other benefits, the Policy introduces a facility for self-certification compliance for eligible start-ups under six key labour laws i.e.,



the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996



the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979



the Payment of Gratuity Act, 1972 (Gratuity Act)



the Contract Labour (Regulation and Abolition) Act, 1970



the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (EPF Act)



the Employees' State Insurance Act, 1948 (ESI Act)

Further, start-ups registered under the Policy will have access to the 'Start-in Chandigarh Portal', designed to facilitate seamless registration, track application status, request approvals, and avail other policy benefits in a streamlined digital environment.



Andaman & Nicobar Islands revises spread-over limit for adult workers under the Factories Act, 1948 (Factories Act)

By way of a notification dated 17 April 2025, the administration of Andaman and Nicobar Islands has revised the spread-over limit applicable to adult workers employed in factories within the union territory, under Section 55 of the Factories Act. Pursuant to this notification, the maximum spread-over of working hours, inclusive of intervals for rest, has been increased from ten and a half hours to twelve hours on any given day. The notification has come into immediate effect from the date of its publication.

Jammu & Kashmir streamlines registration process under the Jammu and Kashmir Shops & Establishments Act, 1966 (J&K S&E Act)

By way of a circular dated 28 April 2025, the Government of Jammu and Kashmir has streamlined the registration process along with other procedural aspects under the J&K S&E Act. According to the circular, no prior inspection is required for the registration or renewal of the registration of establishments under the J&K S&E Act, and such inspections may now be conducted post-registration. Final registration shall be granted within one day of application submission. Additionally, applicants are no longer required to upload supporting documents during the registration process. Instead, a standardized undertaking must be submitted along with the application.

Haryana government notifies conditions for employing women in night shifts across factories and commercial establishments

By way of multiple notifications published in the Official Gazette on 8 May 2025, the Government of Haryana has issued detailed guidelines outlining the conditions under which exemption may be granted for employing women during night shifts in factories and commercial establishments. These exemptions are granted under the Factories Act permitting employment of women between 7 PM and 6 AM, and under the Punjab Shops and Commercial Establishments Act, 1958 (as applicable to Haryana) (Punjab S&E Act) allowing employment of women between 8 PM and 6 AM. Each exemption will remain valid for a period of one year from the date of issuance.

Such exemption granted to factories and commercial establishments is subject to following conditions: (a) obtaining written declaration or consent from each woman worker including security personnel, supervisors, and shift in-charges, for night shift work; (b) mandatory compliance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) and the rules framed thereunder; (c) adequate lighting and installation of CCTV cameras in all areas where women are deployed; (d) women to be deployed in groups of no fewer than four during night shifts (however, this requirement is waived for women in senior positions working in commercial establishments especially in IT / ITeS sectors, earning more than INR 1,00,000 per month); (e) provision of transportation facilities for women workers to and from their residence, with CCTV enabled vehicles; (f) deployment of at least one female security guard during night shifts; (g) for commercial establishment an application for exemption must be submitted to the Labour Commissioner or Chief Inspector of Shops (Haryana) at least one month prior to the intended start of the exemption period; and (h) the employers in commercial establishments must ensure compliance with other applicable labour welfare laws, including the ESI Act and the Punjab Labour Welfare Fund Act, 1965 (as applicable to Haryana), etc.



West Bengal discontinues submission of returns in paper form under the West Bengal State Tax on Professions, Trades, Callings and Employments Rules, 1979 (West Bengal PT Rules)

Through an order dated 7 May 2025, the Government of West Bengal has dispensed with the requirement of submitting a physical (paper) copy of the return in Form III under Rule 12 of the West Bengal PT Rules (furnishing quarterly returns in Form III). Pursuant to this order, employers are now required to download Form III from the official profession tax portal at <https://professiontax.wb.gov.in>, sign the return, and upload the signed copy directly to the portal. This order has come into force with immediate effect.

Mumbai and Pune strengthens implementation of workplace sexual harassment laws

By way of a notification, the district administrations of Mumbai and Pune have directed stricter enforcement of the provisions of the POSH Act. Accordingly, all establishments employing 10 or more workers are required to constitute an Internal Committee (IC) in accordance with the POSH Act, and further, are required to update the details of the constituted IC on the 'She Box Portal.' Establishments located in Mumbai have been directed to complete the constitution of the IC and updating the requisite information on the portal on or before 15 May 2025, and failure to do so is punishable with a fine up to INR 50,000. Similarly, establishments in Pune are required to comply with the POSH Act provisions, with non-compliance attracting penalties of up to INR 50,000. In addition, establishments in Pune are required to submit proof of IC constitution to the District Women and Child Development Officer via email at icpune2021@gmail.com

Previously, Delhi had issued similar notification, which was covered in our January 2025 edition of the bulletin, available [here](#).

Government of Tamil Nadu allows shops and commercial establishments to operate 24*7

Through a notification dated 8 May 2025, the Government of Tamil Nadu has exempted all shops and establishments employing 10 or more persons from the provisions of Section 7(1) and Section 13(1) (opening and closing hours requirements) of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu S&E Act).

Pursuant to this exemption, eligible establishments are permitted to operate on a 24*7 basis on all days of the year for a period of 3 years, with effect from 5 June 2025. Such shops and commercial establishments operating 24*7 are subject to certain conditions such as a) providing every employee one day of holiday in a week on a rotation basis and exhibiting such details at conspicuous places within the establishment; b) paying the employees' wages along with overtime directly in their bank accounts; c) ensuring that no employee works for more than 8 hours per day and 48 hours per week and the total working hours, including overtime, does not extend beyond 10 hours per day and 50 hours per week; d) ensuring that no employees are working on holidays or performing overtime as per the applicable requirements, otherwise penal action will be initiated against employers / managers as per Tamil Nadu S&E Act and rules framed thereunder; and e) imposing adequate safety measures for women employees along with seeking written consent from the women employees to work on a night shift, i.e., after 8 PM on any day, among other conditions.



Case Updates

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

Central Government is the appropriate authority for referring industrial disputes in nationalised companies: Calcutta High Court

In the case of *M/s Braithwaite & Co. Limited v Second Industrial Tribunal and Others* Writ Petition Application Number 2477 of 2012, the Calcutta High Court held that the Central Government is the appropriate authority for making a reference under the Industrial Disputes Act, 1947 (ID Act) in relation to nationalised undertakings such as the petitioner company.

The petitioner was taken over by the Central Government pursuant to the Braithwaite & Company (India) Limited (Acquisition and Transfer of Undertakings) Act, 1976 (1976 Act) and all workmen employed by the petitioner were deemed to be employees of the Central Government from 1 April 1975.

Despite this, an industrial dispute was raised by the respondent's union in connection with disciplinary action imposed by the petitioner, which was referred by the State Government to the second industrial tribunal (Tribunal) for adjudication. Such reference was challenged by the petitioner on the ground that the appropriate government in this case was the Central Government, and not the State Government, which was rejected by the Tribunal, and hence, the present petition.

The court held that the Central Government was the appropriate government under Section 2(a) of the ID Act in view of the statutory takeover of the petitioner under the 1976 Act. The court further reiterated that mere ownership by the government does not suffice, it must be shown that the company is carrying on the industry by or under the authority of the Central Government which was clearly the case here. Accordingly, the order of the Tribunal was set aside by the court.

Restrictive covenants imposing minimum service period and liquidated damages are valid: Supreme Court

In the case of *Vijaya Bank and Another v Prashant B Narnaware* Civil Appeal Number 11708 of 2016, the Supreme Court upheld the enforceability of a restrictive covenant in an employment contract which required the employee to serve a minimum period of 3 years from the date of appointment and, in the event of breach, mandated the payment of INR 2,00,000 as liquidated damages. The court further held that such a clause does not amount to a restraint of trade under Section 27 of the Indian Contract Act, 1872 and is not violative of public policy given that public policy should be weighed against other factors including increased competition of a public sector organisation vis-à-vis private employers. We have analysed this judgment in detail in our ERGO available [here](#).



Compliance update sought from states and union territories on effective implementation of the POSH Act : Supreme Court

In the case of *Aureliano Fernandes v The State of Goa and Others* Miscellaneous Application Diary Number 22553 of 2023, the Supreme Court has directed the amicus curiae to collate affidavits filed by states and union territories detailing the implementation status of its earlier directions regarding the robust enforcement of the POSH Act (these directions were previously analysed in our December 2024 edition of the bulletin, available [here](#)). The court has specifically sought a consolidated list concerning the appointment of District Officers across states and union territories, as mandated under the POSH Act. While most states and union territories had filed the requisite affidavits, the union territory of Dadra and Nagar Haveli remains non-compliant as of the date of hearing.

Provident fund dues cannot be extinguished by resolution plan under Insolvency and Bankruptcy Code, 2016 (IBC): Bombay High Court

In the case of *Dalmia Cement (Bharat) Limited and Others v The Central Board of Trustees, Employees Provident Fund Organization (EPFO)* Writ Petition Number 693 of 2022, the Bombay High Court held that the dues under the EPF Act do not form part of a corporate debtor's assets and cannot be extinguished under a resolution plan approved under IBC.

In the present case, the petitioner was admitted into corporate insolvency resolution proceedings (CIRP) in April 2017, and a resolution plan was subsequently approved by the National Company Law Tribunal. Thereafter, the EPFO issued recovery notices, which were challenged by the petitioner on the ground that the EPFO had not submitted any claims during the CIRP.

The court held that EPF dues are trust property under the EPF Act, and therefore not part of the corporate debtor's estate under Section 18(1) of the IBC. It observed that revival of a company under the IBC cannot come at the cost of eroding statutory rights conferred on employees under social welfare legislation. Further, the court held that since provident fund dues are not owed to the Central or State Government, but to individual employees, they do not qualify as 'operational debt' under Section 5(21) of the IBC. As such, they cannot be extinguished or waived through an approved resolution plan. Consequently, the court dismissed the writ petition and directed that the provident fund dues must be honoured by the successful resolution applicant.

Interim relief granted on enforcement of Karnataka Gratuity Insurance Rules, 2024 (Gratuity Insurance Rules): Karnataka High Court

In the case of *Bruhat Bangalore Hotels Association and Others v Principal Secretary, Labour Department of Karnataka* Writ Petition Number 9358 of 2024, the Karnataka High Court passed an interim order restraining the Government of Karnataka from taking any coercive action against the petitioners for non-payment of the gratuity insurance premium as mandated under the Gratuity Insurance Rules.

In the present case, petitioners had challenged the constitutionality of the Gratuity Insurance Rules. Among other grounds, the petitioners argued that the requirement to pay insurance premium even for employees who have not yet completed 5 years of continuous service (as required under the Gratuity Act) imposes an unreasonable financial burden, particularly on small-scale establishments, potentially exceeding their profits.



The court issued an interim order preventing the State Government from initiating any adverse or coercive measures against the petitioners for non-compliance with the premium payment obligation under the Gratuity Insurance Rules, pending further hearing of the matter.

Court dismisses modification application seeking interest on delayed gratuity payment in finalised writ proceedings: Allahabad High Court

In the case of *Ram Pal Singh v State of Uttar Pradesh* Writ Application Number 3505 of 2024, the Allahabad High Court dismissed a modification application filed by a retired employee seeking interest on the delayed payment of gratuity. The court held that such relief could not be claimed once the writ petition had already been adjudicated.

In the present case, the petitioner was a retired officer who superannuated on 31 August 2004. While he was paid INR 2,32,829 as gratuity, a sum of INR 26,897 was withheld on account of an alleged excess payment of salary. The issue was subsequently adjudicated by the court, and the withheld amount was released to the petitioner. In the present application, the petitioner seeks payment of interest for the delay in disbursing the full gratuity amount.

The court reiterated that gratuity is a statutory right and that undue delay in its disbursement invites liability to pay interest. However, the court held that once the writ petition has been finally disposed of, a modification application is not maintainable to seek additional or substantive reliefs that were not expressly granted in the final order. The court also noted that revival of concluded proceedings through a modification application is impermissible in law.

Burden of proof shifts to the employer once the employee makes claims on oath: Delhi High Court

In the case of *Deen Dayal Upadhyay Hospital v Sangeeta* Civil Miscellaneous (Main) Number 1438 of 2019, the Delhi High Court emphasized the principle that once specific claims are made by an employee under oath in a petition, the evidentiary burden shifts to the employer to rebut those claims with proper evidence.

Present case involved a 'safai karamchari' who was employed by the petitioner hospital and whose services were allegedly terminated illegally. The respondent also contended that she had not been paid minimum wages in accordance with law. In response, the petitioner contended that the respondent had been engaged merely as a daily wage worker and was paid wages during the period of her engagement. Upon challenge, the labour court ruled in favour of the respondent and awarded compensation. Aggrieved by the said order, the petitioner approached the court by way of the present petition.

The court while upholding the labour court's order, observed that although the initial onus lies on the workman to establish continuous employment for 240 days, once such statements are made under oath, the onus shifts to the employer to disprove the same. In this instance, the petitioner failed to produce any material evidence to rebut the respondent's claims. Therefore, the court held that the petitioner had not discharged the burden of proof cast upon it and accordingly dismissed the petition.




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.

Indian employers shift focus to flexible health benefits to attract and retain talent

Indian companies are increasingly redesigning employee [benefit](#) structures to align with evolving workforce expectations, with a marked focus on flexible health insurance, mental health support, and diversity, equity, and inclusion initiatives. This shift is aimed at strengthening employee retention and enhancing talent acquisition in a competitive labour market. Recent reports indicate a growing trend among employers to offer customisable health insurance plans that extend beyond traditional coverage to include dependents such as parents and siblings, as well as wellness programs and financial planning tools. There is also a noticeable shift in employee preferences, with individuals actively seeking greater control over the structure and scope of their benefits and opting for personalised insurance schemes.

These developments assume particular significance in the Indian context, where the absence of a robust social security framework and disparities in compensation underscore the need for comprehensive and employer-driven benefit packages.



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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