

ELB E-BULLETIN

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Welcome to the sixth 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.

Securities and Exchange Board of India (SEBI) issues guidelines for appointment of key managerial personnel (KMPs) in market infrastructure institutions (MIIs)

The SEBI by way of a circular dated 26 May 2025 has issued guidelines on the appointment, re-appointment and termination for KMPs of MIIs along with cooling-off period for KMPs of an MII before joining a competing MII. The provisions of the circular are applicable from the 90th day of the issuance of the circular.

MII are essentially financial institutions that provides essential infrastructure for managing operations in stock and capital markets. An MII is required to engage an independent external agency to identify and recommend suitable candidates for the positions of Compliance Officer (CO), Chief Risk Officer (CRiO), Chief Technology Officer (CTO), and Chief Information Security Officer (CISO), and the agency should submit its recommendations to the Nomination and Remuneration Committee (NRC). The NRC will evaluate the recommendations of the agency, and in discussions with the management of the MII, will submit its recommendations for appointment to the Governing Board (GB) of the MII, who will take the final decision.

The NRC will also evaluate the cases of re-appointment, termination or acceptance of resignation of CO, CRiO, CTO and CISO, and submit its recommendations to the GB of the MII. The GB will take the final decision provided that no KMP can be terminated unless they have been given a reasonable opportunity of being heard by the GB.

Further, the cooling-off period for non-independent directors and public interest directors will be prescribed by the GB of the MII, which shall also provide a mechanism for a cooling-off period for KMPs (including the managing director) of the MII joining a competing MII as a KMP.



Uttar Pradesh releases the Uttar Pradesh Global Capability Centres Policy 2024 (UP GCC)

The Government of Uttar Pradesh has introduced the UP GCC which will remain in force for a period of 5 years from the date of its notification. The policy aims to position Uttar Pradesh as a leading destination for the consideration of major industry players vis-à-vis their potential investments in India on account of its strategic location, young workforce and its rapidly developing infrastructure. The UP GCC sets out the strategic objectives on which the UP GCC has been formulated, including



The UP GCC also sets out details of the fiscal support which will be available to the industry players, along with the different minimum investment and employment criteria on the basis of which the incentives may be administered. Amongst these incentives, the investors will also be provided with

- Payroll subsidies, i.e., a percentage reimbursement of the cost of salaries and emoluments paid to on-roll employees who have been employed for a continuous period of 1 financial year;
- Recruitment subsidies, i.e., INR 20,000 per fresher employee who has been recruited and has continued with their employment for a minimum period of 1 year, and at least 30 fresher employees having domicile of Uttar Pradesh have been recruited; and
- Refund of the total contribution of the employer to the employees' provident fund for specific categories of employees including female employees and employees who are domiciled in Uttar Pradesh at the rate of INR 2000 per employee for a period of 3 years post commencement of operations.

Further, the eligible units under the UP GCC will be exempted from inspections under certain applicable labour laws, including the Factories Act, 1948 (Factories Act), Maternity Benefit Act, 1961, Minimum Wages Act, 1948, etc. These units will be eligible for inspection only once in every 5 years and will be permitted to file self-certifications vis-à-vis their compliance with applicable labour laws. The units will also be permitted to operate on a 24/7 basis, along with the permission of engagement of female workers in all three shifts.

Tamil Nadu amends the Tamil Nadu Shops and Establishments Act, 1947 (TN S&E Act) vis-à-vis the penalties and adjudicating mechanism

By way of a notification dated 6 June 2025 published in the Official Gazette, the Government of Tamil Nadu has enacted the Tamil Nadu Shops and Establishments (Amendment) Act, 2025 (Amendment Act), which has introduced certain amendments to the TN S&E Act, including the revised the penalty for contravention of Section 41-A of the TN S&E Act (which pertains to employer's responsibility for payment



of full wages to an employee who has been employed pending proceedings with any High Court or the Supreme Court). The erstwhile penalty for contravention of the aforementioned provision, included imprisonment and / or fine, which has now been revised to a fine which may be extended to INR 50,000. Further, in case of any obstruction caused to any Inspector by the employer, the penalty in this regard has been revised from INR 250 to INR 5,000.

The Amendment Act has also introduced Sections 46-A and 46-B which pertain to the power of the state government to appoint an Adjudicating Officer for determination of penalties under the TN S&E Act, and the appeal mechanism for the order passed by such an Adjudicating Officer, respectively.

Bihar government amends Section 66 of the Factories Act pertaining to restriction on employment of women across factories

By way of a notification published in the Official Gazette on 6 June 2025, the Government of Bihar has amended Section 66 of the Factories Act (which concerns restrictions imposed on employment of women across factories). As per the notification, female employees are permitted to be engaged in factories from 5 AM to 10 PM; however, no female employee will be permitted to be employed in the factories from 10 PM to 5 AM. The notification further outlines the conditions for employing women during such extended hours in factories.

Such extension granted to factories is subject to following conditions:

- Obtaining written declaration or consent from each woman worker to be employed until 10 PM
- Provision of transportation facilities for women workers to and from their residence till 10 PM, with CCTV enabled vehicles
- Ensuring that the requirement for a female employee to work until 10 PM is not mandatory
- Ensuring that adequate lighting and installation of CCTV cameras are present in all areas where women are deployed
- Ensuring 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. Further, employers are required to preserve the CCTV footage for a minimum of 45 days.

Employees' Provident Fund Organisation (EPFO) simplifies the process of transfer claim requests

Through a notification dated 20 May 2025, the EPFO has clarified that overlap in service periods should not be considered to be a disqualification metric per se in effectuating the transfer claim requests. In this regard, the EPFO further has noted that the transfer claim requests (received by the officers) may be impacted only if there is a genuine need felt to clarify the overlap in the service tenure of the employee, upon the clarification of which claims may be processed.



Rajasthan strengthens implementation of workplace sexual harassment prevention laws

Following the suite of Mumbai and Pune (as captured in our ELB e-Bulletin for **May 2025**), the district administration of Rajasthan has 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 register themselves and update the details of the constituted IC on the 'SHe-Box Portal' at <https://shebox.wcd.gov.in/>.

Case Updates

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

No appeal lies against rejection of review plea in employees' provident fund cases: Allahabad High Court

In the case of M/s Metro Amusement Private Limited Abu Plaza, Abulane v Union of India and Another, Writ Civil Number 9281 of 2025, the Allahabad High Court considered a petition challenging a review petition which was rejected on ground of delay. The respondent raised objection to the petition as the main order against which the review application was filed was not under challenge.

The Allahabad High Court reiterated that an application for review which is rejected leads to an order from which no appeal lies under Section 7B (reviews of orders passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) which is for determination of dues from employers) of the EPF Act. However, if an order rejecting a review application is challenged, a writ petition would be competent in such situation. Further, for the class of cases wherein the competent authority did not turn down the review application and passed an order that deals with the merits of the assessee's case, then that kind of order would fall under Section 7B(5) of the EPF Act, as this order is passed under review (from which an appeal lies), treating it to be an original order under Section 7A of the EPF Act.

Gratuity can be attached against decree for recovery of money: Delhi High Court

In the case of Bureau of Outreach and Communication and DD M/o Information and Broadcasting v Canara Bank, Civil Miscellaneous Number 623 of 2022 and Civil Miscellaneous Appeal Number 29452 of 2022 (Stay), the Delhi High Court dealt with the question whether gratuity payable to a deceased employee is liable to be attached against decree for recovery of money passed against the heirs of the employees.

The court opined that pursuant to Section 60(g) of the Code of Civil Procedure, 1908 which provides that stipends and gratuities allowed to pensioners of an employer as an exception to property which is liable to be attached and sale in execution of decree, gratuity payment is immune from attachment so long as it is received by the employee. In the present case, the employee had passed away before the release of gratuity payment and the gratuity payment was payable to the nominees of the deceased employee.



However, in the present case, the deceased employee had not made any nomination. The court held that since the deceased employee made no nomination, the gratuity amount was payable to the family members.

Therefore, the court held that gratuity which was payable to the employee can now be attached on the ground that it turned into the nature of a debt payable to the legal heirs of the employee, as such payment formed part of the deceased employee's estate. Only if the gratuity is payable to the employee, then the same is not liable to be attached.

A communication by an officer without any authority does not constitute communication by appropriate government under Industrial Disputes Act 1947 (IDA): Supreme Court

In the case of Harinagar Sugar Mills Limited (Biscuit Division) and Another v State of Maharashtra and Others, Civil Appeal of 2025 (arising out of Special Leave Petition (Civil) Number 4268 of 2023 and 4645 of 2023), the appellant company was manufacturing biscuits for an exclusive client. The client terminated the work agreement, and the appellant company had to file for closure of business. However, the Deputy Secretary on behalf of the respondent authority asked appellant company to resubmit the closure application as they did not disclose their efforts to prevent closure and the workers union also opposed the closure.

While the company claimed that by virtue of Section 25O(3) of the IDA (wherein if appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of 60 days from the date of closure application, then deemed permission is granted), deemed permission of closure was granted, the respondent claimed that the state government was yet to grant permission. Further, the union also obtained an ad-interim order from the industrial tribunal to restrain the company from closing operations.

The Apex Court opined that all citizens of the country have a constitutional right and freedom to run their business as they deem fit subject to reasonable restrictions.

Further, the court assessed that the communication from the Deputy Secretary on behalf of Labour Minister, that the company had not supplied sufficient reasons for closure, was not proper as the Deputy Secretary is not duly authorised to conduct communication or reject application for closure, and a notification is required for the Deputy Secretary to act. The court also reiterated that administrative authorities are required to give reasons for a decision, and decision should be top drawn. The fact that the ministry did not consider the matter independently and sub-delegated to the officer was not permitted by law.

The court held that the application submitted by the company was complete and deemed closure was allowed, while clarifying that money paid to employees in the pendency of the petition would not be recovered.



Reduced salary / ad-hoc salary on account of the COVID-19 pandemic is not the correct base for computation of gratuity: Delhi High Court

In the case of *Discover India Limited v Vishwambhar Nath Dwivedi*, Civil Writ Petition Number 8260 of 2025, the Delhi High Court noted that gratuity will be computed on the basis of the actual last drawn salary of the employee and not any reduced salary amount which may have been effectuated on account of any apparent exigencies.

In this case, the petitioner company preferred an appeal of the order passed by the controlling authority under the Payment of Gratuity Act, 1972, with the Delhi High Court. On account of the COVID-19 pandemic, the respondent employee of the petitioner company was receiving a reduced salary from April 2020 to September 2020, as the petitioner company was suffering huge losses during the said period. Upon the resignation request of the respondent employee in 2021, the petitioner company offered a settlement to the respondent employee wherein the gratuity amount for the respondent employee was computed on their reduced last drawn salary. The petitioner company presented their case that the respondent employee was on leave from October 2020 to December 2021 and the respondent employee never protested to the reduced salary which was being continually credited to his bank account.

The Delhi High Court in this regard noted that there was no consistent or regular amount that the respondent employee was receiving from the petitioner company for April 2020 to September 2020. Further, the respondent employee did not receive any salary for the period of October 2020 to February 2021 despite attending work for the said time. Additionally, the petitioner company had never obtained consent from the employees as regards their reduced salary and it was rather a unilateral decision resulting on account of the COVID-19 pandemic (without a written / verbal intimation). Accordingly, as the last drawn salary was merely ad-hoc in nature, the Delhi High Court clarified that the computation of gratuity must be undertaken basis the last drawn actual salary of the employee.

Employee cannot be restrained from seeking another employment: Delhi High Court

In the case of *Varun Tyagi v Daffodil Software Private Limited*, First Appeal from Order Number 167 of 2025, an appeal was filed in the Delhi High Court by the petitioner employee, who was an information technology engineer in the respondent company, against an interim injunction restraining him from working with another entity.

The employment agreement executed by the petitioner employee had a post-employment non-solicitation and non-compete clause. However, the petitioner after resigning from his employment joined another entity which was a business associate of the respondent company. The trial court provided an interim injunction against the petitioner restraining him from working with the client and business affiliates of the respondent company until further orders.

The court supported that right of an employee to seek for better employment cannot be curbed by an injunction even if the employee had confidential data. Concerns around confidentiality cannot be used to perpetrate forced employment. Such restriction will not be allowed in view of Section 27 of Indian Contract



Act, 1872 (Contract Act) which provides that all agreement which restrain anyone from exercising a lawful profession of any kind are void to that extent. Further, the court opined that the apprehension of the employee sharing confidential data or intellectual property with his new employer was misconceived as the scope of work between the business affiliate i.e. the new employer and respondent was limited to providing manpower supply. The court also discussed that unlike English law, the Contract Act does not recognize distinction between partial and absolute restraint.

The court quashed the interim injunction and allowed the petitioner employee to work with his new employer during the pendency of the matter. The court further held that if the respondent is able to prove the breach of employment agreement subsequently, they can be compensated by way of damages.


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.

Artificial intelligence impacts the informal workforce of India Inc

The informal workforce in India has historically been significant contributors to economy, specifically in view of the huge number of people engaged in such sphere. While traditionally this space has not seen much advancement in terms of structure or technology, recently artificial intelligence (AI) has started to **impact** this segment of workforce.

With various jobs being automated, such as AI powered kiosks for billing in stores etc, many jobs are at risk of being impacted and replaced. Many jobs in India which are primarily low-skill and repetitive may be at risk. What is more worrisome is the fact that most of the informal social workers do not have financial, economic and societal safety nets to fall back on in case of a job displacement. This requires an urgent upskilling in the Indian job market. However, not everything is gloomy; AI has also helped various traditional informal occupations such as artists, street vendors to access wider marketplaces. What is important is to assess and formulate strategies which ensure that the benefits of AI are not reaped by only digitally skilled workforce while the burden is shouldered by the informal workforce.



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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