



ELB E-BULLETIN

VOL 3 | ISSUE 6

June 2021

- ▶ LABOUR CODES: STORY SO FAR
- ▶ REGULATORY UPDATES
- ▶ CASE UPDATES
- ▶ INDUSTRY INSIGHTS



**KHAITAN
& CO**

Advocates since 1911

Welcome to the sixth edition of the e-Bulletin (Volume III) 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.

In the [previous edition](#), we discussed the status of the labour codes and the implementation framework being built by state governments in the form of rules thereunder. While the status remains the same as on the date of preparation of this bulletin, we do note that the Central Government, through its notification dated 3 June 2021, released the draft Code on Social Security (Employee's Compensation) (Central) Rules, 2021. The draft rules contain procedural aspects relating to Chapter VII of the Code on Social Security, 2020, which deals with compensation to employees employed in specified establishments in case of an accident or an occupational disease. The draft rules *inter alia* set out the rate of the interest payable by an employer in the event of failure to pay compensation within 30 days from the date it fell due, and the manner in which a claim for compensation can be filed by an employee before the competent authority.

It may be noted that the draft rules are available for public consultation for a period of 45 days (i.e., until 18 July 2021). Khaitan & Co has, in association with few industrial associations, made a representation to the Central Government regarding inclusion of certain aspects not covered in the draft rules, including incorporation of a procedure to be followed by contract workers for bringing claims for compensation before the principal employer procuring their services through a contractor.

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.

Integration of registration under the Delhi Shops and Establishments Act, 1954 (DSA) with the framework under the Ministry of Corporate Affairs, Government of India (MCA)

By way of an order dated 28 May 2021, the Government of Delhi directed that the Simplified Proforma for Incorporating Company Electronically Plus (SPICE+) portal developed and maintained by the MCA will now be integrated with the registration portal under the DSA. Pursuant to this, new companies seeking to obtain registration under the DSA will be required to do so on the SPICE+ portal. However, any subsequent registration which the companies intend to obtain for their branch offices will have to be done directly on the registration portal of the DSA.

Securities and Exchange Board of India (SEBI) relaxes the requirement of minimum vesting period in case of death of employee(s) under SEBI (Share Based Employee Benefit) Regulations, 2014 (SBEB Regulations)

Through a circular dated 15 June 2021 (Circular), the SEBI announced relief to the families of the deceased employees (who were employed with listed companies) under the SBEB Regulations. The Circular provides that the provision under the SBEB Regulations pertaining to the minimum vesting period of one year will not be applicable in case of death of an employee (for any reason), and accordingly, the employee stock options or the stock appreciation rights granted to such employees will vest on the date of their death irrespective of the options or the rights meeting the minimum vesting criterion.



This relief will be available to the employees whose death occurred on or after 1 April 2020.

Mandatory seeding of Aadhaar with Universal Account Number (UAN) for filing electronic challan-cum-return (ECR)

On 1 June 2021, the Employees' Provident Fund Organization (EPFO) issued a circular (June Circular) stating that, in view of the implementation of Section 142 of the Code on Social Security, 2020, ECR will be allowed to be filed only in respect of those employee-members whose Aadhaar numbers are seeded and verified with their respective UANs. The June Circular specifies 1 June 2021 as the date of its implementation.

Shortly after the June Circular was released, a circular dated 15 June 2021 was issued by the EPFO, which partially modified the contents of the June Circular. Pursuant to the same, the EPFO has decided to extend the timeline for implementation of the June Circular to 1 September 2021. This comes after several industry bodies and employers' associations reached out to the EPFO requesting for an extension of the timeline as the ongoing COVID-19 pandemic made it difficult to coordinate with employees and seek their cooperation in the seeding process.

It may also be noted that The Association of Industries and Institutions has already filed a writ petition before the High Court of Delhi (which has admitted the same) *inter alia* seeking directions towards enabling employers to remit employees' provident fund contributions and file returns without mandatory seeding of Aadhaar number with UAN.

Maharashtra introduces amendment to extend the date of filing of professional tax returns

By way of a notification dated 17 June 2021, the Finance Department of the Government of Maharashtra has introduced an amendment to the notification dated 21 August 2014 issued under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975. The June notification modifies the schedule appended to the 2014 notification

under entry (8), which deals with situations where employers who could not pay taxes or upload returns due to COVID-19 pandemic, it and extends the due date for filing of professional tax returns for the months of March 2021, April 2021, and May 2021 to 30 June 2021 on the website of Maharashtra Goods and Services Tax Department. The 2014 notification was issued to exempt late fee in respect of returns for certain classes of employers in public interest with effect from 26 June 2014.

03. CASE UPDATES

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

Prospective resignation can be withdrawn before it is effective / accepted: Supreme Court reiterates

In the case of Arjun Ahluwalia and Others v Air India Limited Writ Petition (Civil) 4203 of 2020, the Supreme Court of India was examining a case of prospective resignation wherein the petitioners tendered their resignation with a 6-month notice period. Before the respondent-employer could accept their resignation, the same was withdrawn, and the notice period had not elapsed at the time of such withdrawal. The respondent contended that the general principle in relation to prospective resignation (i.e., that the same could be withdrawn at any time prior to it being accepted or becoming effective) would not apply to pilots employed by various airlines on account of the special nature of their job.

The court, however, did not accept the respondent's contention, observing as follows:

"The resignation tendered by an employee indicating a prospective or a future date from when the resignation is to take effect can be withdrawn at any time before it is accepted, in the absence of anything to the contrary in the applicable rules or terms and conditions of service...The moment the resignations were withdrawn, during the notice period and prior to their acceptance, they were non-est and non-existent in the eyes of law on the dates the respective decisions were taken to accept them."



Accordingly, the court directed the respondent to reinstate the petitioners with continuity of service from the date of expiry of the six months' notice period, also stipulating that the intervening period until reinstatement shall not be treated as a break in the employees' services for any purpose. The respondent was also directed to pay back wages for such intervening period.

04.

INDUSTRY INSIGHTS

In this section, we delve into interesting human resources related practices and / or initiatives noticed across various sectors in the past one month.

India Inc. emerging with a hybrid work model: An expected fundamental post-pandemic approach?

Although the expected third wave of the global COVID-19 pandemic is around the corner, several organizations in India have begun to get their workforce vaccinated through inoculation drives organised on site or otherwise. Accordingly, employers are now preparing an appropriate strategy to resume full-fledged operations and are planning to implement an effective hybrid work model, something which may be known as the next normal.

There are [reports](#) to suggest that more than 60% of the employees aged between 18 and 40 years favour a hybrid work arrangement. Therefore, employers are looking to design an approach which not only appears to be sustainable and cohesive but also is equitable in nature. It will not be incorrect to say that the management in several organisations is facing nuanced challenges to devise a favourable work environment which suits the requirements of the near future.

To navigate through the never-seen-before issues which gained momentum during the COVID-19 pandemic, industries across sectors are now taking decisions in allowing some employees to work from office while letting the rest of the strength to work remotely. Set out below are few trends which have been widely

discussed across industries vis-a-vis a hybrid-work-model setup:

Why employees want a hybrid work model: The vision of the post-pandemic work model for many employees is a combination of remote work and office time. This is primarily because, after working remotely for more than a year, many employees across the globe are of the view that work can easily be accommodated around the rest of their lives. The hybrid work model is the most preferred option as the same would offer independence and flexibility. Other factors to prefer a hybrid model as opposed to a full remote working model *inter alia* include overcoming the fear of loss of opportunities, insecurities due to lack of communication, addressing mental health issues, need for in-person connections and work-life balance, connection with company values, and in-person training and formal collaborations.

Key considerations for employers to effectuate the hybrid work model: Even though the employers are conscious of their employees' needs, they are equally focussed on the business requirements and are trying to perceive hybrid work model as a necessity and an opportunity to create value for all stakeholders. It may be crucial for employers to conduct surveys and devise risk-assessment models to evaluate the hybrid setup and offer a seamless professional experience. The other aspects which need employers' attention broadly include creating a safer post-pandemic workplace to facilitate health and well-being of the employees, adapting to modern infrastructure and technology (such as alternatives to biometric access), assessing the vaccination status of the workforce, reinvention of company policies, etc.

Given the extended disruption caused in the workplace dynamics, while the hybrid-work-model may seem to be a welcome change, the practical aspects of getting this executed effectively by the industries at large will need assessment in due course and will be subject to the situation of the pandemic.

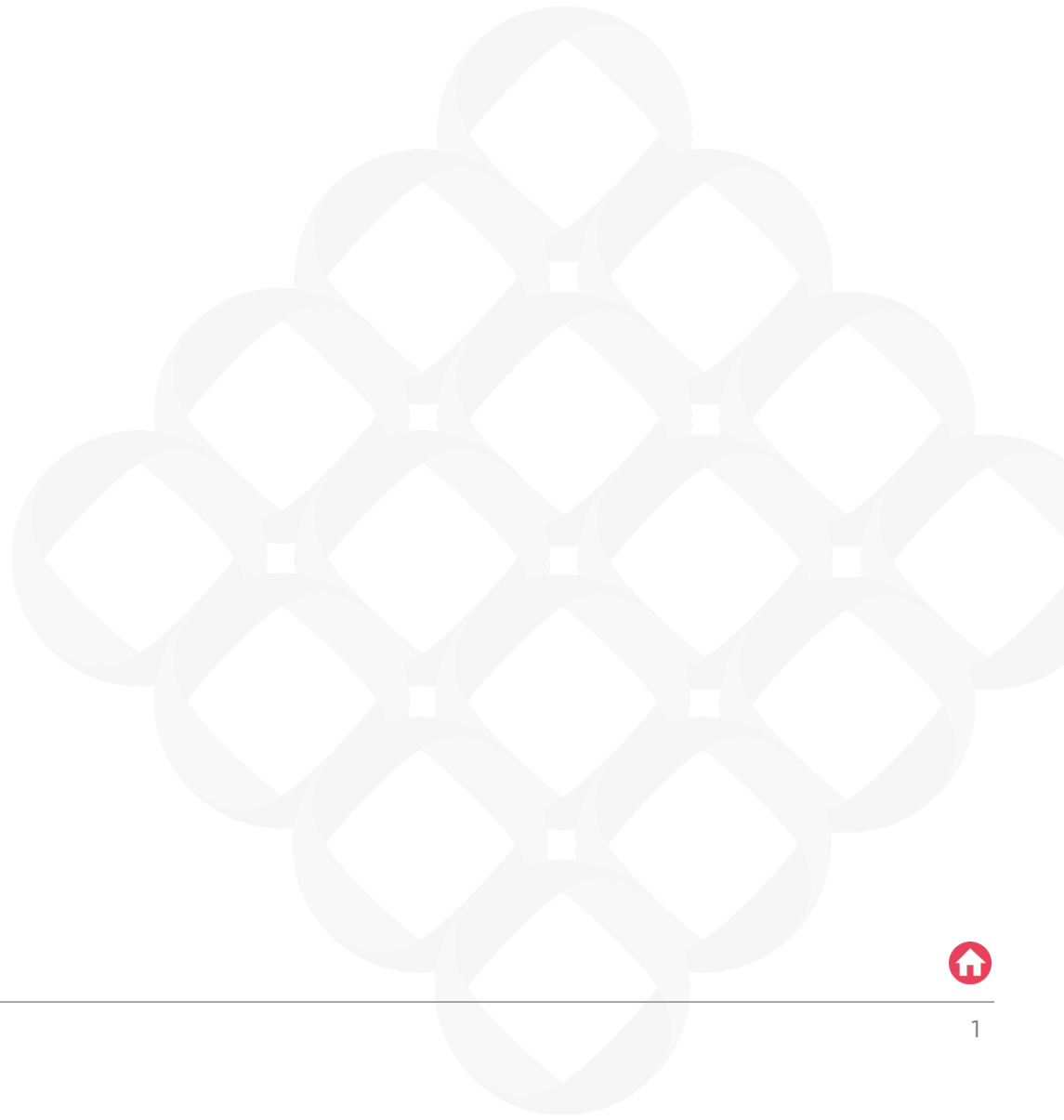
We hope the e-Bulletin enables you to assess internal practices and procedures in view of recent legal developments and emerging industry trends in the employment and labour law and practice landscape.



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.

The contributors to this edition of the e-Bulletin are Anshul Prakash (Partner), Archika Dudhwewala (Senior Associate) and Deeksha Malik (Associate), who were assisted by Divya Kumar (Associate).

For any queries in relation to the e-Bulletin or the workforce related issues occasioned by COVID-19 outbreak, please email to us at elbebulletin@khaitanco.com.



AMBITION STATEMENT

"Our ambition is to be a respectable law firm providing efficient and courteous service, to act with fairness, integrity and diligence, to be socially responsible and to enjoy life. We should put greater emphasis on working in consonance with our aforesaid values than on maximizing earnings. Earn we should but with dignity and pleasure."

Khaitan & Co is a premier full-service Indian law firm with over 700+ lawyers, including 150+ partners and directors, and has offices in Mumbai, New Delhi, Bengaluru, Kolkata, Chennai and Singapore

To know more about us, please visit www.khaitanco.com.



**KHAITAN
&CO**
Advocates since 1911

www.khaitanco.com