

# HR AND EMPLOYMENT LAW PULSE:

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QUARTERLY ROUND UP

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July - September 2024





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# Introduction

Dear Reader,

As the Indian economy evolves at an impressive pace, so do the dynamics in the workplace. These are resulting in new trends taking shape in the realm of employment law and HR-related regulations. Leading organisations across the globe are already quickly adapting best practices such as mental wellness and recharge breaks, as well as taking an initiative on conversations around new age concepts such as remuneration in cryptocurrency.

With this background, I am happy to share the inaugural edition of **Khaitan & Co's HR and Employment Law Pulse: Quarterly Round Up**. Meticulously curated by legal experts from our Employment Labour and Benefits (ELB) practice, our latest newsletter highlights new and notable employment law and HR related trends and developments from India and around the world. We're also delighted to have a viewpoint from Dinesh Vijaykumar, Regional Counsel at IBM India and South Asia, on diverse work models, women's safety at the workplace and strategies to promote work life balance.

We encourage you to share your feedback and topics of interest, as this will help us tailor our future editions to best serve contemporary requirements.

Look forward to embarking on this informative journey together!



**Haigreve Khaitan**  
Senior Partner



# Market trends and insights

## Global trends

### Australia Implements Right to Disconnect Law

On 26 August 2024, the Australian Government granted certain eligible employees the right to disconnect from work, under the Fair Work Act. The employees of establishments with 15 or more employees now have the right to ignore job related communications outside regular hours. This includes contact (or attempted contact) from an employer or a third party. The law does not prohibit employers from contacting employees outside of regular hours, rather it grants the employees a right to refrain from responding, provided that their refusal is not considered unreasonable.

### New Zealand Court of Appeal rules that Uber drivers are 'employees'

A New Zealand Court of appeal examined the nature and extent of control exercised by Uber over 4 of its drivers and ruled that the real nature of the relationship between Uber and these drivers was one of employment. However, at present, the decision is only applicable to the 4 Uber drivers in question.

### UAE Court allows part payment of salary in cryptocurrency

In August 2024, the Dubai Court of First Instance recognized that cryptocurrency is a valid and enforceable form of remuneration and ordered an employer to pay an employee a part of their

wages in the form of tokens (which was permissible under the employee's employment contract).

### EU adopts Corporate Sustainability Due Diligence Directive (CSDDD)

The EU formally adopted the CSDDD on 25 July 2024, which introduces the obligation for companies to conduct human rights and environmental due diligence with respect to: (i) their operations; (ii) their subsidiaries' operations; and (iii) the operations of their business partners in the company's chain of activities. In addition, the CSDDD sets out an obligation for large companies to adopt a transition plan for climate change mitigation. The CSDDD will become applicable in a phased manner to large EU companies and certain prescribed non-EU companies operating in the EU subject to the fulfilment of criteria relating to turnover and employee headcount. Member States must transpose the CSDDD into national law within a period of 2 years.



## Insights from India

### Women's Workplace Safety

A spate of recent unfortunate incidents, particularly the tragic rape and murder of a doctor at the RG Kar Medical College and Hospital, Kolkata, and the systemic sexual exploitation and workplace abuse in the Malayalam film industry highlighted in the Justice Hema Committee Report, have rekindled the conversation surrounding women's safety at the workplace. The publication of the Justice Hema Committee Report has led to demands from members of other film industry bodies calling for independent investigations into similar systemic issues.

In response to the incident in Kolkata, the West Bengal health department, on 19 August 2024, launched the 'Rattir Saathi - helpers of the night' program aimed at improving the safety of women working during the night in medical colleges, hospitals, hostels, and other establishments. Further details on the 'Rattir Saathi' program can be found in our ELB E- Bulletin (August 2024) which can be accessed [here](#).

The West Bengal State Government also passed the Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024 ("Aparajita Bill") on 3 September 2024, which aims to amend the Bharatiya Nyaya Sanhita, 2023 and Protection of Children from Sexual Offences Act, 2012, to impose harsher penalties for those convicted of rape and permits the imposition of

death penalty in certain instances. The Aparajita Bill is yet to receive presidential assent.

On 29 August 2024, the Ministry of Women and Child Development re-launched the 'She-Box' portal, to streamline the registration and monitoring of workplace sexual harassment complaints and allow women to register sexual harassment complaints online, irrespective of whether they are employed in the public or private sector. The portal currently, however, only allows government (central and state) employees to register complaints.

### Employers are investing in the mental well-being of their employees

The month of September is observed as Suicide Prevention Month all across the globe. In light of this, Indian employers such as the Tata Group, Aditya Birla, Infosys India, ITC Limited are taking significant strides to promote employee welfare, focusing on mental health care and suicide prevention. Many organizations are launching awareness campaigns that educate employees on the importance of mental health and the resources available to them. Employers are also offering workshops and training sessions to help employees recognize signs of mental distress in themselves and their colleagues.

Additionally, companies are enhancing their employee assistance programs (EAPs) to provide confidential counselling and support services, ensuring that employees feel safe seeking

help. Many organizations are also promoting a culture of openness through regular check-ins and mental health days, encouraging conversations around emotional well-being. By prioritizing these measures, Indian employers are not only fostering a supportive workplace but are also taking proactive steps to combat mental health stigma and enhance the overall well-being of their workforce.

### Central Government continues to face challenges with the implementation of the Labour Codes

On 28 August 2024, the Union Labour Minister assured central trade union leaders that further discussions on the implementation of the four Labour Codes would take place. This assurance came in response to concerns raised by 10 central trade unions during a meeting focused on employment linked incentives under the Union Budget. Further, there have been speculations that the Union Labour Ministry will convene a meeting with the labour ministers of all States in December 2024 to gauge the level of preparation of States for rolling out the Labour Codes.

### Karnataka Government mulls 6-day period leave for all women employees

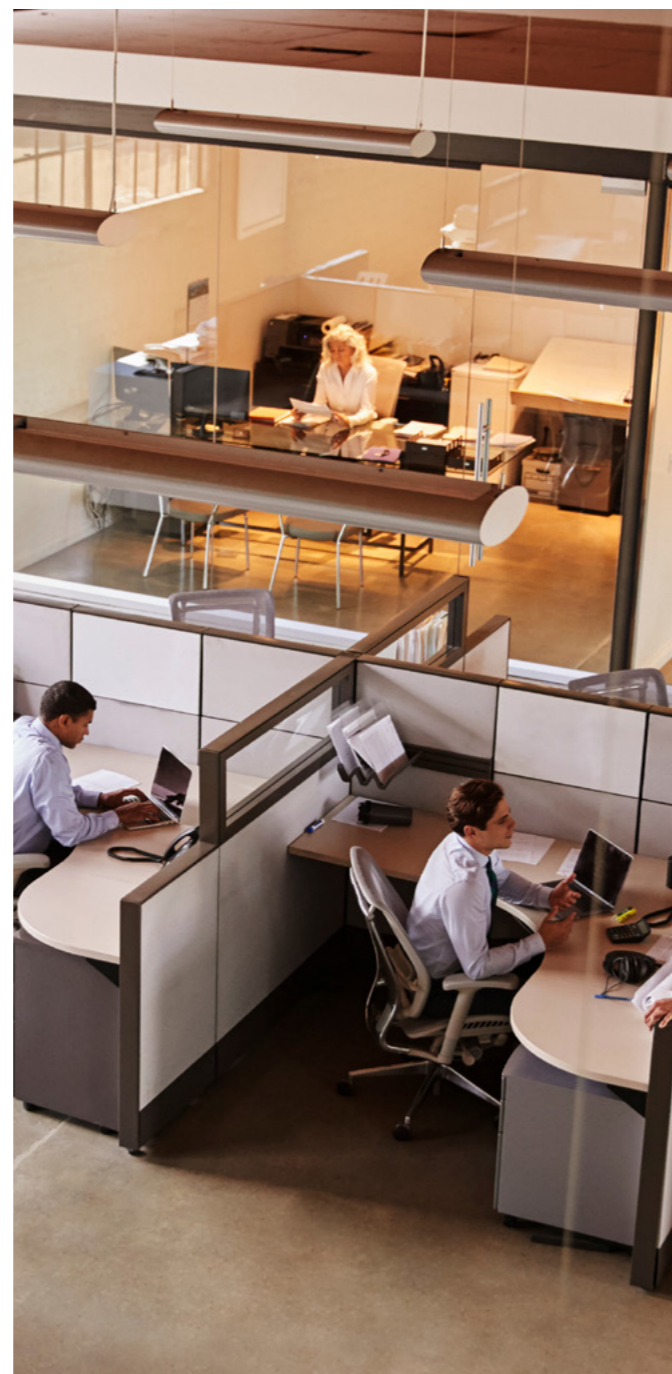
The Karnataka State Government is reviewing a proposed law namely 'The Right of Women to Menstrual Leave and Free Access to Menstrual Health Products' that aims to provide women in public and private sectors with 6 days of paid menstrual leave per year.

### Zomato introduces Zero Probation and Zero Notice Period Policy

Zomato has implemented a policy that eliminates the requirement for new employees to serve a probationary period. Further, the policy also allows employees to leave once they have decided to resign without requiring them to serve a notice period.

### Dentsu India launches Fresher Accelerator Program

Dentsu India launched a 6-month program for fresh graduates that aims to bridge the gap between academic learning and industry-relevant skills. The program provides graduates with multi-disciplinary learning, hands-on training, and development on aspects fundamental to the advertising industry.



# Industry challenges

### Employers are revisiting employment contracts and internal policies while implementing return-to-office mandates

Since the pandemic, Indian companies have been struggling with getting their workforce to return to office 5 days a week. Despite various efforts aimed at incentivizing employees to resume work at the office, many have proven unsuccessful. This has prompted companies to take stricter measures such as linking increments to office attendance, deduction of leave for failure to attend office as per a prescribed roster, reduced career advancement opportunities for remote workers, etc.

#### Our view

To ensure employees duly report to work as per the mandated requirements, as a first step, employers should evaluate their internal policies and the employment contracts to ensure that there is a contractual right to require their employees to report back to physical premises. A few prominent companies in India are offering additional paid leaves to employees who are working from office on a full-time basis and this incentive has been successful in getting employees back to work.



Requiring employees to switch from a work from home / hybrid work model to a work from office model requires creative and strategic thinking on part of the employers and not just strict enforcement. Given the evolution of the modern workplace, there should be a reasonable balance between incentives and enforcement to encourage employees to work from office.

**Vaibhav Bhardwaj**  
Partner

# Legal Updates

## Statutory updates

- **Good to Know: Keep an eye out**
- **Action likely to required**
- **No Action required**

Development	Summary	Action For companies
Tamil Nadu Government amends the Tamil Nadu Shops and Establishments Rules, 1948	Through a notification dated 2 July 2024, the Government of Tamil Nadu introduced provisions for registration of establishments with 10 or more workers. Additionally, employers of establishments with less than 10 workers are required to provide an intimation of their business to the Inspector within 6 months from 2 July 2024. Our ELB E-Bulletin has details of this development here.	<b>Imp: Action likely required</b>
Puducherry Government notifies rules under the Transgender Persons (Protection of Rights) Act, 2019	The Government of Puducherry notified the Puducherry Transgender Persons (Protection of Rights) Rules, 2024 on 5 August 2024, which require employers to frame and display an equal opportunity policy and provide a working environment that is safe and free from discrimination. Additionally, every establishment is required to designate an officer for grievance redressal.	<b>Imp: Action likely required</b>

Development	Summary	Action For companies
Ministry of Labour and Employment releases norms for registration of gig and platform workers on the e-Shram portal	On 16 September 2024, the Ministry released an advisory with the general terms, a Standard Operating Procedure (SOP), and a pro forma setting out the information required for the registration of platform workers. The advisory applies to aggregators who provide services to a business or end-customer through a digital app or platform, and their platform workers.	<b>Imp: Action likely required</b>
Jharkhand Government releases draft bill for platform-based gig workers	The Jharkhand Government released the Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024 on 1 July 2024 for the receipt of objections and suggestions. The bill sets out the rights of platform-based gig workers, regulates contractual terms and conditions of, and obligates payments by aggregators on a weekly basis.	<b>Good to Know: Keep an eye out</b>
Punjab Government extends exemption for shops and establishments to operate 24x7 on all days of the year	The Punjab State Government via a notification dated 15 July 2024 extended the permission granted to shops and commercial establishments to remain open 24x7 throughout the year until 31 May 2025.	<b>Good to Know: Keep an eye out</b>



Development	Summary	Action For companies
<p>Ministry of Labour and Employment launches a new online facility for surrender of exemptions under the EPF Scheme</p>	<p>On 13 August 2024, the Ministry launched a new online module to simplify the surrender of exemptions by establishments that have been operating their own provident fund trusts under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF Act").</p> <p>The online facility aims to simplify the processes of transferring past accumulations and tracking the status of applications for the surrender of exemptions under the EPF Act.</p>	<p><b>Note Change:</b> <b>No action required</b></p>

## Judicial updates

Supreme Court		
Development	Summary	Action For companies
<p>An employer is required to conduct an internal inquiry if it refuses to extend the term of an employee's employment contract on disciplinary grounds.</p> <p>Swati Priyadarshini v. State of Madhya Pradesh and others (Special Leave Petition (C) No. 11685 of 2021)</p>	<p>The Supreme Court observed that the order of non-renewal of an employee's employment contract was stigmatic as it related to alleged misconduct on part of the employee and the employer was required to conduct an inquiry for it.</p>	<p><b>Note Change:</b> <b>No action required</b></p>

High Courts		
Development	Summary	Action For companies
<p>Entries in a company's balance sheet do not amount to an 'agreement' to pay gratuity.</p> <p>Anil Govind Ganu v. Innovative Technomics Pvt. Ltd. (Writ Petition No. 161 of 2024)</p>	<p>The Bombay High Court ruled that entries recording a company's liability towards gratuity in a balance sheet cannot be relied upon to claim gratuity in the absence of an underlying agreement.</p>	<p><b>Good to Know:</b> <b>Keep an eye out</b></p>
<p>Denial of appointment to a pregnant woman due to her inability to participate in a physical test is discriminatory and violative of her constitutional rights.</p> <p>Isha v. Union of India and others (Writ Petition (C) No. 3732 of 2019)</p>	<p>The Delhi High Court condemned the actions of railway officials who refused to postpone Physical Efficiency Test (PET) of a pregnant woman who was shortlisted after having cleared the other tests on grounds of being discriminatory and in violation of the female candidate's rights under Articles 14, 15, 16, and 21 of the Constitution, and directed the employer to postpone the test.</p>	<p><b>Note Change:</b> <b>No action required</b></p>
<p>Reasonable lock-in period restrictions that operate during the tenure of employment are valid.</p> <p>Lily Packers Pvt. Ltd. v. Vaishnavi Vijay Umak (ARB. Petition 1210 of 2023)</p>	<p>The Delhi HC ruled that lock-in periods that operate during an employee's tenure are lawful covenants that do not violate an employee's fundamental right to carry on a trade or profession. For more details on this ruling please refer to our ELB E-Bulletin (July) and our article.</p>	<p><b>Note Change:</b> <b>No action required</b></p>



## DID YOU KNOW

Terminating an employee's services on account of their poor performance does not qualify as a termination for 'cause'. Employees are entitled to prior written notice of termination (or payment in lieu there of) and other statutory separation payouts even where their employment has been terminated due to poor performance after complying with due process.

# In Conversation With...



**Dinesh Vijayakumar**  
Regional Counsel,  
**IBM India Private Limited and IBM South Asia**

**What are your views on various work models being adopted by companies - full time office model, a completely remote work model or a hybrid model? What are some of the challenges that you see in the Technology sector with implementing such model(s)?**

"Let me address this from IBM's point of view. IBM believes that the future of work should be hybrid and flexible, and work-life balance should be of utmost importance. We coined the term 'work-life integration' decades ago, and flexibility has always been at the heart of our workplace. IBM's approach is focused on intentional flexibility, with collaboration decided by team and job-based norms.

When IBMers are in the office, they don't spend entire days behind their desks but in impactful collaboration and meetings with their colleagues. While we trust IBMers and managers to make the right call regarding managing their work from the office and home, our work also depends on client requirements. For example, IBMers supporting clients for mission-critical systems & essential services across industries may have a different working pattern."

**What are some of the measures that organisations of all shapes and sizes can take to strengthen safety of women at the workplace, apart from those already mandated by the law?**

"Companies can prioritise employee experience by establishing comprehensive gender-neutral and all-inclusive policies and programs and fostering an environment where these policies translate into tangible changes in everyday conversations. These policies should acknowledge the imperative of ensuring gender equity in recruitment and career advancement.

At IBM, we have an inherent culture of respecting individuals and have policies in place to create a safe environment so that everyone can bring their whole self to work without any inhibitions. This is a crucial ingredient for everyone's well-being. Beyond all the preventive and holistic lifestyle choices we make, the work environment is of critical importance. IBM's safe and thriving environment encourages people to bring their whole selves to work and show up at their best. We focus on enabling IBMers to progress from passive bystanders to 'active upstanders'.

Ultimately, organisations must systematically evaluate their initiatives' efficacy and gauge their progress in establishing a secure workplace for women."



## How do companies ensure work life balance and what are some of the recent initiatives that have caught your eye?

"At IBM, wellness is inseparable from business objectives and long-term employee goals. The company has a strategic approach to wellness, and our well-being strategy is evaluated and built every year in response to changing employee needs. Global and local needs are evaluated and incorporated into the strategy every year to achieve continual improvement. IBM India's well-being initiatives focus on preventive care, healthy lifestyle choices, and good decision-making from a healthcare standpoint.

I'll give an example of a key change that we institutionalised after recognising the fatigue in the industry among employees after working remotely for a prolonged period. 'Mental Health Allies' was a new program created by an in-house team of IBM occupational health and safety professionals for employees who wanted to help colleagues experiencing burnout or other mental health issues safely by making them "mental health allies".

The Mental Health Ally course does not cover diagnosis, nor do employees become therapists. It shows people how to dial back a crisis: spot warning signs, react empathetically, make people aware of resources, and create a psychologically safe work culture. Employees learn the limits of being an "ally" and not being a substitute for a qualified mental health professional.

One more measure we take that may seem simple on the surface but is not commonplace in our industry is to encourage our people to take vacations. We strongly believe that the best performance and ideas only happen when people are fresh at work. To this end, we have implemented systems that not only urge employees to take vacations but also support work to continue in their absence."



## ABOUT KHAITAN & CO

Khaitan & Co is a top tier and full-service law firm with over 1000 legal professionals, including 270+ leaders and presence in India and Singapore. With more than a century of experience in practicing law, we offer end-to-end legal solutions in diverse practice areas to our clients across the world. We have a team of highly motivated and dynamic professionals delivering outstanding client service and expert legal advice across a wide gamut of sectors and industries.

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