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Welcome to the eleventh 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

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 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.

The Ministry of Labour and Employment, as a way ahead, has planned to conduct training workshops for state government labour officials in the coming months. These workshops are proposed to facilitate the nationwide rollout of the new labour codes, ensuring readiness and addressing potential legal challenges. Additionally, the Central Government has urged the state of West Bengal to expedite the drafting of rules under the four labour codes, highlighting the benefits for all societal sections, including women and migrant workers.

Further, the Ministry of Labour and Employment is in talks to convene a meeting with the labour ministers of all states and union territories by early December to understand the current status of the labour codes. Previously few states including West Bengal had raised concerns regarding the adoption of these proposed labour codes, however, they have now agreed to draft the necessary rules to enforce them. The states have been directed to prepare a comparative study of the rules drafted by the states and model rules framed by the Union Government in order to identify gaps and accordingly, fill such gaps, prior to the enforcement of the proposed labour codes.

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.

Public comments invited by Karnataka on proposal for paid menstrual leave

By way of a circular published on 18 October 2024, the Government of Karnataka has sought public comments on a proposal to grant paid menstrual leave to women workers in various industries. This initiative aims to enhance the efficiency, performance, and morale of women workers. The government has proposed six days of menstrual leave per year for women workers employed in factories, mines, plantations, shops, and commercial establishments, among others.

Comments are invited to be submitted on this proposal within 45 days from the date of the circular. As part of its advocacy initiatives, the firm has also put together its recommendations for submission to the government.

Uttar Pradesh exempts information technology-enabled services (ITES) and information technology (IT) establishments from certain provisions of the Uttar Pradesh Dookan Aur Vanijya Adhisthan Adhiniyam, 1962 (UP S&E Act)

As per a notification dated 26 September 2024, published in the Official Gazette, the Government of Uttar Pradesh has introduced exemptions under the UP S&E Act, effective for a period of 2 years from 26 September 2024, applicable to ITES and IT establishments operating in Uttar Pradesh. It may be noted that this notification was accessible in the public domain only recently.

Through this notification, the applicability of Section 6 (hours of work and overtime), and Section 7 (interval for rest and spread over) on all ITES and IT establishments has been suspended during the above-mentioned exemption period. As per the notification, an employee's daily working hours, including rest intervals, must not exceed 12 hours, and the total weekly working hours must not exceed 48 hours. Given that employees are allowed one day of weekly off, there may be instances where an employee, working for 12 hours a day as per the notification, exceeds 48 hours of work during the week. In this regard, the notification clarifies that overtime will be payable if any employee works for

more than 48 hours in a week, and the number of overtime hours is capped at 125 hours in a quarter.

This exemption is further subject to the employer's compliance with stipulated conditions, including maintaining adequate safety measures for women employees working night shifts, providing appropriate overtime compensation, ensuring weekly off-days in accordance with applicable regulations, etc.

Case Updates

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

Employers cannot be held liable for abetment of an employee's suicide in the absence of evidence demonstrating criminal intent: Supreme Court

The Supreme Court in the case of Nipun Aneja and Others v State of Uttar Pradesh [Criminal Appeal No 654 of 2017] addressed whether the conduct of senior officers of Hindustan Lever Limited amounted to abetment of suicide under Section 306 (abetment to suicide) of the Indian Penal Code, 1860 (IPC) (at present, Section 108 of the Bharatiya Nyaya Sanhita, 2023). The deceased in the present case was found hanging in his hotel room and alleged that the appellants harassed and humiliated him during a company meeting, leading to his death. Following the incident, the deceased's brother filed a case against the appellants, asserting that their actions compelled the deceased to take his life.

The Supreme Court analyzed the evidence and clarified the standards for abetment under Section 306 of IPC, emphasizing the necessity for clear and intentional acts designed to provoke suicide. It found no direct causal link between the conduct of the appellants and the suicide, as the alleged humiliation and transfer were general measures applied to all employees resisting the voluntary retirement scheme. The court allowed the appeal, observing that prosecuting the appellants based on insufficient evidence would be an abuse of process. The judgment underscored the importance of distinguishing workplace disputes from genuine instances of abetment, ensuring that individuals are not subjected to unwarranted criminal proceedings in the absence of substantial evidence of culpability.

The aforementioned principle has been consistently upheld by various High Courts. For instance, in the case of Dr G K Arora v State and Others [Criminal Miscellaneous Case 5431 of 2014 and 5817 of 2024], the Delhi High Court observed that individuals in positions of authority, whether in the public or private sector, are often required to make decisions that may seem harsh and cause hardship to employees. However, in the absence of mens rea (criminal intent), such actions cannot be considered incitement or abetment under Section 306 of IPC.

Industrial court lacks jurisdiction in cases where employer-employee relationship is disputed: Bombay High Court

In the case of Tata Steel Limited v Maharashtra Shramjivi General Kamgar Union and Another [Writ Petition Number 9664 of 2021], the Bombay High Court held that under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act), the Industrial court has jurisdiction only in cases where the employment relationship is not in dispute.

The key issue before the court was whether the industrial court has the jurisdiction to decide a complaint of unfair labour practice under the MRTU & PULP Act when the existence of an employer-employee relationship is in dispute. The complainant, representing canteen workers in a statutory canteen established by the petitioner company, sought to have the workers declared as permanent employees of the company, with entitlements akin to other permanent employees of the petitioner company. The petitioner company contended that it maintained the canteen solely to comply with the Factories Act, 1948, and the operation of the canteen was not its business. Since the canteen workers were engaged through a third-party contractor, the company argued there was no direct employer-employee relationship, thereby challenging the jurisdiction of the industrial court.

The court, setting aside the industrial court's decision, held that the industrial court lacked jurisdiction to decide the complaint of unfair labour practice in cases where the employer-employee relationship itself was disputed. The court clarified that under the MRTU & PULP Act, the industrial court can adjudicate complaints only when an undisputed employment relationship exists. The court clarified that while under specific circumstances contract workers could be deemed employees of the principal employer (e.g., where the principal employer exercises significant control or supervision), no such conditions were being fulfilled in the present case. The canteen workers were engaged through a third-party contractor, and the petitioner had no direct oversight of their employment terms. Consequently, the court held that the industrial court erred in its ruling and accordingly, overturned the industrial court's order directing the petitioner to grant permanency and associated benefits to the canteen workers.

The new employer cannot refuse employment if the previous employer accepted resignation: Delhi High Court

In the case of Matthew Johson Dara v Hindustan Urvarak and Rasayan Limited [Civil Miscellaneous Application 60847 of 2024], the Delhi High Court held that if the previous employer has accepted the employee's resignation, the new employer cannot refuse to appoint the selected candidate.

In the present case, the petitioner was selected for the position of Vice President with the respondent company but had his appointment revoked for not providing a relieving letter from his previous employer, Brahmaputra Valley Fertilizer Corporation Limited (BVFCL), within the given timeframe. Although the petitioner resigned from BVFCL expecting a 15-day notice due to probation, BVFCL retroactively extended the notice to one month and issued a show-cause notice threatening disciplinary action. This led to the respondent company cancelling the offer.

The court, after reviewing the facts, observed that BVFCL had since issued the relieving letter to the petitioner and that the Vice President position with the respondent company remained vacant. Consequently, the court held in favour of the petitioner, concluding that the sole reason for the revocation was 'failure to provide the relieving letter' had been resolved. The court directed the respondent to allow the petitioner to join the position of Vice President with all consequential benefits.

Appellate authority has implied power to grant interim relief under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act): Karnataka High Court

In the case of Nagaraj G K v Additional Labour Commissioner and Others [Writ Petition Number 28361 of 2024], the Karnataka High Court held that the appellate authority under the POSH Act has implied power to grant interim relief.

The petitioner challenged the recommendations made by the internal committee (IC) under the POSH Act and the subsequent transfer order issued by the employer, before the appellate authority. The petitioner also filed an interim application for a stay on transfer order before the appellate authority, which remained unanswered. This raised the issue before the court of whether the appellate authority under the POSH Act is competent to grant interim relief.

While disposing of the case, the court clarified that appellate authorities under the POSH Act possess the implied power to grant interim relief, even in the absence of an explicit statutory provision, as long as the statute does not expressly prohibit it. The court highlighted that this interpretation ensures fairness in proceedings and enables timely intervention in appropriate cases. In the present case, without commenting on the correctness of the challenged orders, the court directed the appellate authority to consider the petitioner's application for interim relief on priority and to decide the matter within two weeks.

Trainees performing similar duties as regular employees, to be provided coverage under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act): Kerala High Court

In the case of Malabar Dazzle India Private Limited v Employees' Provident Fund Appellate Tribunal and Others [Writ Petition Civil Number 30357 of 2021, 29166 of 2014 and 7245 of 2014], the Kerala High Court held that if trainees have the same functions and responsibilities as that of regular employees of the company, such trainees should be treated as "employee" under the definition of Section 2(f) of the EPF Act.

The petitioner in the present case had enrolled all its employees under the EPF Act and commenced remitting contributions for those enrolled. However, it excluded certain individuals categorized as "trainees" from this coverage. Further, the petitioner had also categorized individuals engaged as drivers, attenders, electricians, receptionists, accountants etc., as trainees and did not extend any benefits of the EPF Act to them. This led to the Employees' Provident Fund Organisation (EPFO) initiating an inquiry under Section 7A of the EPF Act, alleging non-payment of contributions in respect of trainees engaged by the petitioner during the period from July 2007 to September 2011.

It was argued by the petitioner that the individuals categorized as trainees were governed by certified standing orders and did not fall within the statutory definition of "employees" under the EPF Act. The court rejected the petitioner's argument, noting that the standing orders referenced by the petitioner were not certified at the relevant time. Moreover, the court observed that the trainees in question were performing functions, duties, and responsibilities equivalent to those of the petitioner's regular employees. Accordingly, the court held that these trainees must be treated as "employees" under the EPF Act, making all provisions of the Act applicable to them.

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's offers flexible benefits to cater to a multigenerational workforce

India Inc's increasingly adopting flexible benefits models to cater to the diverse needs of their multigenerational workforce. Recognizing that different generations such as Boomers, Gen X, Millennials, and Gen Z are at varying life stages with distinct priorities, companies are tailoring benefits to cover needs pertaining to employees' families, lifestyle or health etc., to enhance employee satisfaction and engagement. Employers are giving options of wellness wallets / benefit allowances, wherein a certain amount is given to the employees, and they can accordingly spend it, or employers are entering into a partnership with vendors to provide mental health support, financial counselling and caregiving resources to employees. These initiatives are instrumental in attracting and retaining top talent, fostering productivity, strengthening workplace culture, and elevating the company's brand image. Additionally, offering flexible benefits allows organizations to optimize costs while addressing individual employee preferences effectively. Under this model, employees are empowered to select from a wide variety of benefits that align with their unique needs.

Companies are implementing this approach through user-friendly portals where employees can choose their benefits or by allocating a set amount that employees can spend as they see fit etc. To ensure the continued relevance of these offerings, organizations are actively soliciting feedback from employees across generations. This feedback-driven approach allows companies to adapt their benefits programs to meet the evolving expectations of their workforce. By embracing such innovative strategies, Indian companies are setting a benchmark in workforce management, catering to generational diversity, and building a robust, future-ready organizational culture.

Increasing trend of hiring expatriates in India Inc

Indian companies operating in sectors such as retail, automotive, oil and gas, aluminium, smart infrastructure, and renewables are increasingly engaging expatriates on short-term assignments. This practice addresses the dual objectives of leveraging international expertise and mitigating local talent shortages. It reflects a growing trend where expatriates, particularly post-retirement professionals, are embracing such assignments as gig opportunities.

The rising demand for expatriate talent is driven by factors such as the need for global expertise, cost optimization strategies, and the requirement for project-specific skills. These short-term assignments enable companies to access international knowledge while minimizing logistical challenges, controlling costs, and reducing the risks associated with long-term commitments. Expatriates play a crucial role in managing large-scale projects and specialized initiatives that extend beyond routine operations. The expertise required to create integrated, functional, and sustainable ecosystems is often found in developed markets, making expatriate contributions invaluable to Indian businesses. By adopting this strategy, Indian companies are positioning themselves to drive innovation, execute complex projects, and compete effectively on a global scale.

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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