

ELB E-BULLETIN

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Welcome to the twelfth 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 convened a virtual meeting on 30 December 2024, to deliberate on social security schemes for gig and platform workers. In pursuit of establishing comprehensive social security coverage for such workforce, a special session was organized with a committee of experts to assess the available options. During the meeting, existing social security schemes for unorganized workers were evaluated alongside welfare benefits extended to the organized sector. The discussion emphasized on aligning the efforts with the mandate of the Code on Social Security, 2020, focusing on areas such as life and disability coverage, health and maternity benefits, old age protection, and childcare facilities. The committee was tasked with analysing flagship schemes of the central government as well as those catering to the organized sector to propose a robust and inclusive framework for social security for the gig and platform workers.

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.

Employees' Provident Fund Organization (EPFO) releases notifications for mandatory activation of Universal Account Numbers (UAN) and seeding of bank accounts with Aadhaar to avail benefits under the Employment Linked Incentive Scheme (ELI Scheme)

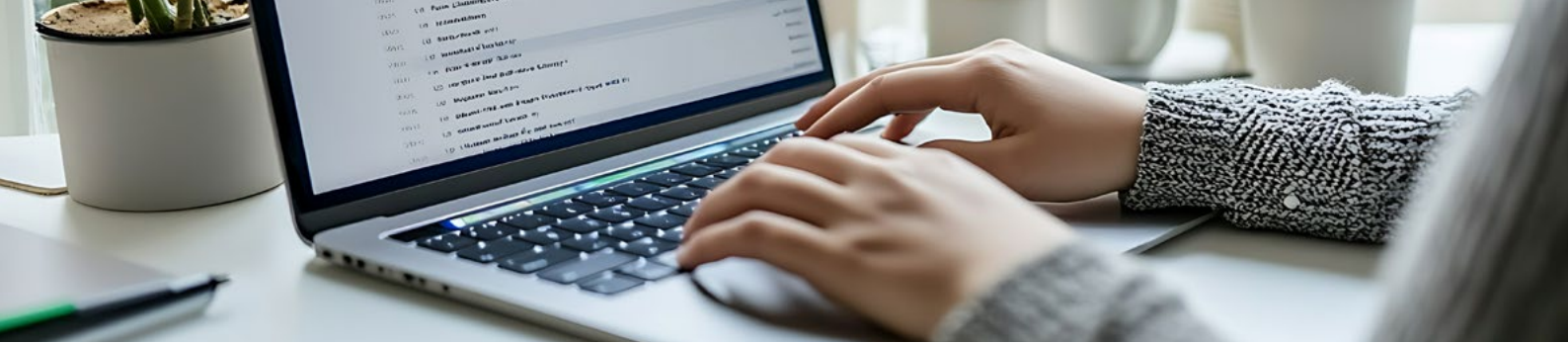
Through a notification dated 22 November 2024, the Ministry of Labour and Employment has mandated the activation of UAN for all eligible employees by seeding Aadhaar with their respective bank accounts for the purpose of effective implementation of the ELI Scheme, which was announced in the Union Budget for the financial year 2024-2025. Consequently, it is now required for every EPFO member to have an Aadhaar-linked UAN, which must be activated by creating a login on the member portal. This measure facilitates access to numerous services through a single-window system. Additionally, to enable employees to benefit from any direct bank transfer scheme (DBT), it is imperative that their bank account numbers are seeded with Aadhaar. This linkage ensures the direct credit of benefits into the respective beneficiary's bank accounts.

Further, by way of a circular dated 20 December 2024, the EPFO has extended the earlier deadline of 15 December 2024 for UAN activation and linking Aadhaar numbers with employees' bank accounts to 15 January 2025 to provide additional time for compliance.

The ELI Scheme has been introduced with the objective of fostering employment generation within the formal sector of the workforce. It primarily targets first-time employees, aiming to provide them with opportunities for professional growth and integration into the workforce. We have elaborately covered the ELI Scheme in our ERGO dated 24 July 2024, available [here](#).

Kerala extends the validity period of factory licenses to 10 years

Through a notification dated 23 November 2024 published in the Official Gazette, the Government of Kerala has amended Rule 7(5) (pertaining to the renewal of factory license) of the Kerala Factories Rules, 1957 (Kerala Rules), extending the validity period of factory licenses to a maximum of 10 years. Previously, under Rule 7(5) of the Kerala Rules, the validity period for factory licenses was limited to a maximum period of 5 years.



Case Updates

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

Employer is obligated to provide inquiry report to the concerned parties under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act): Supreme Court

In the case of *Ms X v Union of India and Others* [Writ Petition (Criminal) Number 284 of 2020], the Supreme Court has ruled that withholding the inquiry report prepared by the inquiry committee under the POSH Act constitutes a violation of Section 13, which mandates that the “concerned parties” must be provided with the findings of the inquiry.

In the present case, the petitioner, a constable in the Border Security Force, filed a complaint of workplace sexual harassment against a colleague. The petitioner contended that since no appropriate action was taken by the respondent being the employer, she had to approach the court. The respondent argued that an inquiry under the POSH Act had already been conducted but yielded no conclusive findings. Subsequently, a second inquiry was conducted under the Border Security Force Act, 1968, which found the accused guilty and imposed a punishment i.e., 89 days of rigorous imprisonment in custody, forfeiture of 5 years of service for the purpose of promotion and forfeiture of 5 years of past service for the purpose of pension. Dissatisfied, the petitioner argued that the accused should have been punished under the POSH Act and alleged that she was not provided with the inquiry report as required under Section 13 of the POSH Act, rendering the process non-compliant.

The court held that the petitioner qualified as a “concerned party” under Section 13 of the POSH Act and was therefore entitled to receive a copy of the inquiry report. While the court dismissed the petition basis the conclusion that the punishment imposed on the accused fulfilled the ends of justice, it also imposed a penalty of INR 25,000 on the respondent for non-compliance with the procedural requirements under the POSH Act.

Payment of Gratuity should not be in instalments: Kerala High Court

In the case of *Sadhoo Beedi Enterprises v the Controlling Authority and Another* [Writ Petition (Civil) Number 36274 of 2024], the Kerala High Court has held that gratuity, being a retirement or terminal benefit, cannot be paid in instalments as this mode of payment is not provided under the Payment of Gratuity Act, 1972 (Gratuity Act).

In the case at hand, the petitioner establishment, covered under the Gratuity Act, cited severe financial difficulties and refused to pay gratuity to the respondent in a lump sum, instead offering to make payments in instalments. The respondent challenged this action, asserting that no consent had been given to receive gratuity in instalments.



The court observed that gratuity is a one-time lump sum payment provided by the employer to an employee upon the termination of employment, unlike pensions, which are periodic payments. The purpose of gratuity is to serve as immediate financial support upon retirement or termination of employment. Consequently, financial distress on the part of the employer cannot be a justifiable reason to deny or delay the full payment of gratuity. The court directed the petitioner to pay the remaining gratuity as a lump sum amount, ensuring compliance with the provisions of the Gratuity Act and upholding the rights of the employee.

Burden of proof lies on claimant to hold the establishment as 'industry' under the Industrial Disputes Act, 1947 (ID Act): Delhi High Court

In the case of *Satish Kumar v Holistic Child Development India and Others* [Writ Petition (Civil) 5664 of 2010], the Delhi High Court has held that a party asserting that an establishment qualifies as an "industry" under the ID Act must present positive facts and evidence to substantiate the claim.

In this case, the petitioner challenged the termination of his services, alleging that he was engaged in a permanent role with a monthly salary but was falsely categorized as a daily wager by the respondent and denied statutory benefits accorded to other permanent employees. The petitioner sought regularization of his employment and reinstatement with full back wages, arguing that the termination was illegal.

The respondent, a registered public charitable trust, contended that its objective was to assist poor, orphaned, and abandoned children and it did not fall within the definition of "industry" under Section 2(j) of the ID Act. The respondent also claimed that the petitioner was never issued an appointment letter, worked only for short durations, was not employed against a permanent post, and received consolidated wages for day-to-day work. Furthermore, the respondent asserted that the petitioner was removed from their service due to misconduct.

The court emphasized that the onus of proving that the respondent qualified as an "industry" rested on the petitioner. It noted that when a dispute arises regarding whether an establishment is an "industry," the claimant must provide concrete evidence to support such a conclusion. In the absence of evidence from the petitioner, the court held that the respondent did not meet the criteria of an "industry." Additionally, the court found insufficient evidence to establish an employer-employee relationship between the parties and dismissed the petition.

Written complaint necessary to initiate inquiry under POSH Act: Kerala High Court

In the case of *Abraham Mathai v State of Kerala and Others* [Writ Petition (Civil) Number 39915 of 2018], the Kerala High Court has ruled that submission of a written complaint is essential to initiate an inquiry under the POSH Act.

In the present case, the petitioner, the Managing Director of a company, faced allegations of sexual harassment from the respondent, a former employee of the company, who had been terminated for dereliction of duties. Additionally, an anonymous complaint of sexual harassment at workplace was filed against the petitioner with the district collector, who subsequently forwarded it to the local committee



(LC) for action. The LC conducted an inquiry, found the petitioner guilty, and made recommendations to the company for further action.

The respondent employee had made verbal allegations of sexual harassment before the authorities of LC during the inquiry, which were considered by the LC as potentially falling under the definition of sexual harassment under the POSH Act. The core issue raised before the court was whether an inquiry could be initiated under Section 11 (inquiry into sexual harassment complaint) of the POSH Act in the absence of a written complaint. The court held that under Section 9 (complaint of sexual harassment) of the POSH Act, an aggrieved woman must submit a written complaint of sexual harassment to either the internal committee (IC) or LC within the prescribed time. The court emphasized that the provisions of the POSH Act mandate a written complaint to initiate an inquiry under Section 11. In this case, although the respondent made verbal allegations, she did not file a formal written complaint of sexual harassment. Additionally, she stated before the LC that the petitioner did not physically touch her or request sexual favours, but rather created a hostile work environment that led to her termination and salary denial. Such behaviour, the court noted, does not qualify as sexual harassment under the definition provided in the POSH Act. The court concluded that the verbal complaints made by the respondent could not replace the requirement of a written complaint under Section 9 of the POSH Act. Consequently, the inquiry conducted by the LC was deemed illegal, and the court quashed the inquiry report.

Supreme Court issues notice in view of a public interest litigation (PIL) for guidelines for protection of IC members of private companies

In the case of *Janaki Chaudhary and Another v Ministry of Women and Child Development and Others* [Writ Petition (Civil) 796 of 2024], the Supreme Court has issued a notice to the Union Government, specifically addressing the Ministry of Women and Child Development, the Ministry of Corporate Affairs, and the National Commission for Women, seeking their response to a public interest litigation (PIL). The PIL calls for the protection of members of IC in private companies, requesting safeguards against arbitrary and retaliatory actions arising from decisions made during inquiries into workplace sexual harassment complaints under the POSH Act.

The petitioner in the case argued that IC members in private companies are not afforded adequate protection against retaliation for their decisions, unlike their counterparts in the public sector. In the public sector, IC members benefit from fixed tenures and safeguards against arbitrary termination, among other protections. The petition contended that the lack of similar safeguards for private sector IC members creates an unjust distinction, violating the principle of equality under Article 14 of the Constitution of India.

Furthermore, the petitioner emphasized that IC members are vested with quasi-judicial powers, yet they cannot carry out their duties without fear or favour. The petition also called for the establishment of a commission to review and address deficiencies in the POSH Act regarding the protection of IC members, along with the creation of an external grievance redressal mechanism to address any undue harassment or retaliation faced by IC members. The petition also sought to ensure that IC members are provided with a secure, impartial, and supportive work environment to perform their duties effectively and without fear of reprisal.

Supreme Court issues guidelines for efficient compliance and implementation of the POSH Act

In the case of *Aureliano Fernandes v The State of Goa and Others* [Miscellaneous Application Diary Number 22553 of 2023], the Supreme Court has issued detailed guidelines to ensure the effective implementation of the POSH Act across all states and Union Territories. The directives emphasize the need for robust mechanisms and procedures to address sexual harassment complaints at workplaces, promoting transparency and accountability. To this end, the Chief Secretary of every state and Union Territory is directed to appoint and notify a District Officer in each district. These District Officers are tasked with exercising and discharging functions under the POSH Act. Their responsibilities include constituting LCs in their respective districts to receive and address complaints of sexual harassment. Additionally, each District Officer is required to designate a Nodal Officer in every block, taluka, tehsil (in rural or tribal areas), and ward or municipality (in urban areas). These Nodal Officers will facilitate the submission of complaints by aggrieved individuals and forward them to the respective LCs for action. The court also mandated that details of the Nodal Officers, including their names and designations, must be made publicly available on the website of the District Officer. This ensures that women unable to directly approach the LCs can seek assistance from the Nodal Officers. Furthermore, for districts where LCs have not yet been constituted, District Officers are instructed to establish these committees promptly.

The guidelines also address the existing SHe-Box mechanism, an online platform for registering complaints of sexual harassment. States and Union Territories operating SHe-Box systems are directed to include the names and designations of Nodal Officers for each district on the platform. District Officers are further required to monitor the timely submission of reports by LCs and implement measures to create widespread awareness about sexual harassment and women's rights under the POSH Act. Chief Secretaries are instructed to oversee a survey of all organisations within their jurisdictions to ensure compliance with the POSH Act's mandate for constituting ICs. Where organisations have not yet established ICs, the relevant authorities must issue necessary advisories or directions to ensure compliance without delay.

Lastly, the court directed all states to implement She-Box systems where not already established. This platform should facilitate the filing of complaints either with the ICs or the LCs, providing a comprehensive and accessible redressal mechanism for aggrieved women. These guidelines underscore the Supreme Court's commitment to fostering a safer, equitable, and harassment-free environment for women in workplaces nationwide.

Directions given for comprehensive reforms and better enforcement of POSH Act in Tamil Nadu: Madras High Court

In the case of *Dr Supraja v the State and Others* [Writ Petitions (Mandamus) Numbers 13981, 9747, 12601, 12247 of 2024], the Madras High Court acknowledging significant gaps in compliance with the POSH Act in Tamil Nadu, has called for comprehensive reforms to improve its implementation.

The petitioners in the cases before the court, employees of government-run institutions, alleged workplace sexual harassment by colleagues or superiors. Rather than addressing these complaints, the institutions reportedly resorted to retaliatory actions, including suspensions and punitive measures against such complainants. The court observed a disturbing lack of sensitivity and fairness in handling such cases and identified key shortcomings in the implementation of the POSH Act, such as inadequate awareness, improperly constituted ICs and procedural lapses.

In its judgment, the court issued several directives in the larger public interest. These included requiring the State Government of Tamil Nadu to frame rules under the POSH Act and establish a dedicated



government website. This website should provide reference numbers for each complaints committee, along with details to ensure transparency in their functions. Additionally, the court directed the creation of a dashboard to monitor the number of committees, complaints received, complaints resolved, reports submitted by ICs, and actions taken by establishments. The court also emphasized ensuring the allocation of sufficient funds for the effective implementation of the POSH Act.

Further, the court mandated that the government respondents in the present cases submit suggestions to promote gender sensitization and awareness among employees regarding sexual harassment at workplace. These measures aim to address systemic gaps and ensure the effective enforcement of the POSH Act's provisions.

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 Inc is fostering employee engagement through corporate volunteering initiatives

Indian Inc is actively encouraging its employees to volunteer their time and skills towards [social causes](#) such as education, healthcare, skilling, disaster relief, and environmental sustainability. Several organizations have reported an increase in employee participation and volunteering hours. To further support these efforts, many companies are offering paid leave for volunteering activities and implementing reward and recognition programs to acknowledge individuals who go above and beyond in their contributions. To promote inclusivity and flexibility, some companies are introducing virtual volunteering opportunities. These initiatives enable employees to support diverse communities remotely through activities such as mock interviews, resume workshops, and career mentoring, aimed at helping individuals enhance their employability and navigate the job market. Additionally, organizations are encouraging employees who exhibit significant interest and dedication to assume leadership roles within specific volunteering initiatives. These leadership opportunities allow employees to manage and drive projects, further enhancing the impact of their corporate social responsibility efforts.



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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