



ELB E-BULLETIN

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Welcome to the first 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.

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.

The union labour minister recently convened a two-day conference with representatives from all states and union territories to discuss the final steps in drafting the rules for the implementation of the four labour codes, along with reforms aimed at boosting employment. During the conference, the Ministry of Labour and Employment (through the union labour minister) directed all states to finalize their draft rules by 31 March 2025. Additionally, West Bengal committed to framing its draft rules while also engaging in discussions on broader reforms to enhance employment opportunities and address the needs of the ever-expanding working age population.

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.

Karnataka introduces self-certification scheme for factories to enhance labour law compliances

By way of a notification dated 4 January 2025, the Government of Karnataka has introduced the Karnataka State Factories Self-Certification Scheme, 2024 (Scheme) to streamline the enforcement of various labour laws, ensuring their effective implementation. Under this Scheme, factory owners are encouraged to voluntarily comply with labour laws, including the Factories Act, 1948, the Payment of Wages Act, 1936, and the Maternity Benefit Act, 1961, along with the rules framed thereunder.

By opting into the Scheme, occupiers can reduce the frequency of inspections while maintaining worker welfare and safety standards. Participation is voluntary, and eligible factory owners can enrol by paying a registration fee, security deposit, and submitting the required details. However, if an occupier fails to comply with the Scheme's terms or violates applicable labour laws, the security deposit may be forfeited, and appropriate legal action can be taken. The Scheme also includes provisions related to mode of registration under the Scheme, period of validity of the Scheme, responsibilities of the authorities under the Scheme, inspection procedures under the Scheme, and measures to ensure transparency and accountability.

Meghalaya notifies amendment to the Meghalaya Factories Rules, 1980

Through a notification dated 16 January 2025, the government of Meghalaya has introduced the Meghalaya Factories (Amendment) Rules, 2025, amending Rule 6(2) of the Meghalaya Factories Rules 1980 which pertains to the renewal of factory licenses. The amendment extends the validity period of factory licenses to a maximum of 10 years. Previously, factory licenses were valid only until the end of the calendar year in which they were granted.



Madhya Pradesh increases quantum of labour welfare fund contributions to be made by employer

Through a notification published in the Official Gazette dated 10 January 2025, the Government of Madhya Pradesh has amended Section 9(2) of the Madhya Pradesh Shram Kalyan Nidhi Adhiniyam, 1982 (pertaining to the rate of contributions), thereby revising the contribution rates for the employers vis-à-vis deposit of labour welfare fund contributions. As per the amendment, the employer's contribution for each employee (payable every six months) has been increased from INR 30 to INR 50. Additionally, the minimum total contribution payable by an employer has been raised from INR 1,500 to INR 2,500 (payable every six months).

Delhi strengthens implementation of workplace sexual harassment laws

By way of a notification dated 6 January 2025, the Government of Delhi in line with the Supreme Court of India's judgment in Aureliano Fernandes v the State of Goa and Others Civil Appeal Number 2482 of 2014, has directed stricter enforcement of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act). Additionally, the Ministry of Women and Child Development has introduced the 'She Box Portal', an online platform for registering complaints of sexual harassment. The public and the private sector employers can enrol and register themselves on the portal. Furthermore, government authorities have been instructed to seek information from employers within their jurisdiction regarding the constitution of internal committee (IC) under the POSH Act.

Employees' Provident Fund Organisation (EPFO) simplifies employees' provident fund (EPF) account transfer process for job switchers

By way of a circular dated 15 January 2025, the EPFO has streamlined the process of transferring EPF accounts when employees switch jobs. Previously, the transfer process had to be routed through either the previous employer or the current employer. However, under the revised process, eligible members can now initiate the transfer themselves, significantly expediting the process and reducing dependency on employers. The eligible members here are those to whom the Universal Account Number (UAN) was allotted on or after 1 October 2017. This move aims to enhance ease of access and efficiency in managing EPF accounts.

EPFO simplifies the joint declaration process for members and employers

Through a notification dated 16 January 2025, the EPFO has issued new directions to simplify the process of joint declarations, superseding its earlier circular dated 31 July 2024. The updated process is based on the classification of members according to specific criteria, such as the nature of linkage of member IDs with UANs generated, etc. To further streamline the process, documents related to joint declarations can now be submitted through Digilocker, with the facility set to be introduced soon. Additionally, in cases where members cannot file joint declarations online, employers can submit requests online, including cases involving deceased members, by duly uploading the physical joint declaration and supporting documents.



EPFO addresses policy issues on pension calculation for higher wages

By way of a notification dated 18 January 2025, the EPFO has addressed key policy issues concerning the processing of pension on higher wages. The four primary issues clarified by EPFO are as follows:

- ▶ **Computation of pension on a pro-rata basis:** EPFO confirmed that this calculation, as outlined in Paragraph 12 (monthly members' pension) of the Employees' Pension Scheme, 1995 (EPS), is equitable and ensures fair treatment for both wage ceiling pensioners and higher-wage pensioners.
- ▶ **Exempted establishments:** The eligibility for higher pension should be determined in accordance with the existing trust rules of the relevant exempted establishment.
- ▶ **Eligibility for pension on higher wages:** The eligibility for pension on higher wages is deemed to be valid only when the dues, including interest, have been received in the pension fund. The practice of netting these dues against pension arrears has been deemed inappropriate by EPFO.
- ▶ **Retrospective wage revisions:** Where any wage revisions are not on account of any deliberate or wilful default on the part of employers, EPFO has clarified that such wages should be accounted for in the retrospective months for which arrears were due. Consequently, damages under Section 14B (recovery of damages) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act), should not be imposed in these cases. However, interest on these dues may still be recovered, up to the date of retirement or cessation of EPS membership, whichever occurs first.

Karnataka increases the rate of labour welfare fund contributions

Through a notification dated 10 January 2025, the Government of Karnataka has amended Section 7A(2) of the Karnataka Labour Welfare Fund Act, 1965 (pertaining to the rate of contribution), thereby increasing the rate of employee contribution from INR 20 to INR 50 and the rate of employer contribution from INR 40 to INR 100 (payable per annum).

Separately, through a press note dated 24 December 2024, the Government of Karnataka has made it mandatory for establishments covered under the Karnataka Labour Welfare Fund Act, 1965 to remit contributions online.



Case Updates

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

Retrospective employee payments to be included while calculating pensionary payments: Kerala High Court

In the case of Mohanan K S v Regional Provident Fund Commissioner and Others Writ Petition (Civil) 15353 of 2024, the Kerala High Court has held that an employee's pensionable salary should be calculated based on the average monthly pay drawn, including arrears of dearness allowance (DA) and pay revision benefits received during the service period. The court also ruled that an employer's failure to remit interest and damages under the EPF Act cannot be used as a ground to deny an employee their pension.

In the present case, the petitioner retired in 2014 while working under the Kerala Co-operative Milk Marketing Federation Limited. The petitioner challenged the pension calculation, arguing that the DA and pay revision benefits, which were retrospectively applied, were not included in the pension calculation. As a result, the petitioner sought pensionary benefits based on higher wages or the payment of arrears. The respondents contended that higher pension benefits under EPS could only be granted if the employer paid interest under Section 7Q (interest payable by employer) and damages under Section 14B of the EPF Act for delayed remittances made in bulk.

However, the court ruled that the petitioner's claim was based on arrears of salary received post-retirement due to DA declaration and pay revision with retrospective effect, which the respondents failed to consider in pension calculations. The court held that pay revision benefits must be included in pension calculations, and an employer's failure to pay interest or damages cannot be used as a reason to deny the rightful pension. Accordingly, the court directed the respondents to recompute the petitioner's pensionable salary, ensuring that it includes actual pay drawn, along with DA and pay revision benefits.

Gratuity cannot be withheld for misappropriation without recovery proceedings: Karnataka High Court

In the case of Central Warehousing Corporation v G C Bhat and Another Writ Petition Number 102635 of 2024, the Karnataka High Court has ruled that an employer cannot withhold the gratuity amount payable to an employee without initiating proceedings for the recovery of losses caused due to misappropriation of funds.

In the present case, the respondent, who had worked as a junior superintendent for the petitioner, was suspended and later dismissed for misappropriation and misconduct after conclusion of a disciplinary process in this regard. Seven years after his dismissal, he filed a claim under the Payment of Gratuity Act, 1972, seeking gratuity with interest for the service rendered. The controlling authority allowed his claim, leading the petitioner to challenge the order before the present court.

The court found no evidence that the petitioner had taken any action to recover the alleged misappropriated amount. Instead, the petitioner had directly withheld the gratuity to be paid to the respondent for his service. The court emphasized that gratuity cannot be withheld arbitrarily and must be released unless recovery proceedings for any amount on account of losses / misappropriation are initiated and adjudicated upon. Accordingly, the court dismissed the petition and directed the petitioner to pay the gratuity to the respondent.

Courts have limited interference in enquiries under POSH Act: Madras High Court

In the case of HCL Technologies Limited v N Parsarathy Writ Petition Number 5643 of 2020, the Madras High Court has ruled that courts can only review internal committee enquiry reports under the POSH Act to ensure that the inquiry was conducted fairly and properly, adhering to basic principles of justice. Courts should not interfere with such proceedings unless there is a failure in due process. Further, the court also noted that any unwelcoming behaviour faced by a woman constitutes an act of sexual harassment under the POSH Act, irrespective of the harasser's intent behind such actions.

In the present case, the respondent, who had been employed as an associate general manager since 2016, faced multiple allegations of sexual harassment. The IC conducted an inquiry and found him guilty of inappropriate behaviour. Even after the initial finding, further complaints were received, leading to another inquiry, which also confirmed his guilt. The labour court, however, reversed the IC's findings, citing the IC's failure to provide CCTV footage, as a reason for overturning the decision of the IC. The petitioner challenged this ruling before the present court. The court held that strict rules of evidence do not apply to IC enquiries under the POSH Act, as these proceedings require a sensitive and reasonable approach. The court emphasized that judicial review should be limited to assessing whether the IC's inquiry was conducted fairly, without getting into hyper-technicalities or insignificant discrepancies. It further ruled that the labour court should not have given undue significance to the non-furnishing of CCTV footage and thus quashed the labour court's order and upheld the IC's findings.

Delay condonation in filing sexual harassment complaints under the POSH Act must be linked to related incidents: Calcutta High Court

In the case of Dr Nirmal Kanti Chakraborti v X and Others First Miscellaneous Appeal 873 of 2024, the Calcutta High Court has ruled that delay condonation for filing a sexual harassment complaint under the POSH Act is permissible only if the series of incidents are related to sexual harassment and not otherwise.

In this case, the complainant filed a complaint before the local committee (LC) in December 2023, alleging sexual harassment incidents from April 2023 against the vice-chancellor of the National University of Juridical Sciences. The LC dismissed the complaint on grounds of limitation and held that the alleged incidents did not constitute sexual harassment under the POSH Act. The complainant challenged the decision before the single bench, which set aside the LC's order, which led to the present appeal.

The court upheld the LC's decision, ruling that the complaint was filed beyond the three-month limitation period from the last alleged incident in April 2023. The court also noted that the series of incidents cited were not related to sexual harassment, thus rejecting the claim for delay condonation.

For deciding the quantum of back wages, factors like employee's service, period of non-employment, and duration of litigation to be considered: Madras High Court

In the case of the Special Officer, B Kumarapalayam v Appellate Authority and Another Writ Petition Numbers 14762 of 2005, 20347 of 2007, and 25602 of 2013, the petitioner bank appointed the respondent workman as a cashier, but he was later accused of forging signatures and misappropriating funds. Following an inquiry, the workman was found guilty and subsequently terminated from service.

The workman challenged his termination of employment under Section 41 (notice of dismissal) of the Tamil Nadu Shops and Establishments Act, 1947, resulting in an order setting aside his dismissal and directing his reinstatement. The petitioner bank, dissatisfied with this decision, appealed to the appellate authority, which initially remitted the case for fresh consideration. However, after reconsidering the matter, the appellate authority once again set aside the termination and upheld the workman's reinstatement. Consequently, the petitioner bank filed the present writ petition, which has remained pending for 19 years.

The court observed that no substantial evidence was presented to prove the charges against the workman and affirmed the order for reinstatement. The court further noted that, in cases where allegations against a workman are proven false, reinstatement is typically granted along with full back wages. However, the length of the workman's service, the period of non-employment, and prolonged litigation are key factors in determining the quantum of back wages.



Solicitor General's assistance to be sought on the issue of job security of IC members under POSH Act: Supreme Court

In the case of Janaki Chaudhry and Another v Ministry of Women and Chil Development and Others Writ Petition (Civil) Number 796 of 2024, the Supreme Court of India recognized the significance of the plea concerning job security for members of the IC constituted under the POSH Act. Acknowledging the importance of the issue, the court sought the assistance of the Solicitor General of India. Furthermore, the court referred to the notices previously issued to the Central Government in this matter, noting with concern that no representative had appeared on behalf of the government, nor had any reply been filed in response to the notices.

For completeness, the petition seeks to establish safeguards regarding fixed employment tenures and protection against arbitrary termination for IC members of private companies, on par with IC members in the public sector who are granted these benefits. We have been tracking this matter closely and are covering the developments across various editions of the bulletin.

Adoptive mothers of children older than 3 months are also entitled to maternity leave: Supreme Court

In the case of Hamsaanandini Nanduri v Union of India and Others Writ Petition (Civil) Number 960 of 2021, the Supreme Court of India reserved its judgment pertaining to whether only women adopting a child below the age of three months were eligible for maternity leave of 12 weeks under Section 5(4) of the Maternity Benefit Act, 1961. Hence, speculation remains if the mothers adopting a child above the age of 3 months will be eligible for maternity benefits or not. The court questioned the justification for restricting maternity benefits for adoptive mothers solely on the basis of the child's age.

[Please note that the order reserving the judgment of the Supreme Court of India was not uploaded to the court's website as of the time this update was prepared. The above information is based on the details available in the public domain].

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 is putting employee's health as a top priority

India Inc is increasingly [prioritizing employee health](#) and wellness through comprehensive corporate health programs. Companies are promoting physical activity with step challenges, running health awareness campaigns, and conducting preventive health check-ups. They are also introducing unlimited wellness leaves, establishing in-house fitness centres, onsite clinics, and dedicated zen spaces to support employee's well-being. Beyond physical health, there is a strong focus on mental and emotional wellness, fostering a holistic approach to employee care. This shift not only creates a more supportive workplace but also enhances productivity while reducing attrition and absenteeism. To implement these initiatives effectively, companies are partnering with wellness organizations, ensuring a well-rounded approach to employee well-being.



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