KHAITAN & CO ADVOCATES SINCE 1911

ELB E-BULLETIN

February 2025 | Volume VII | Issue II

Welcome to the second 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.

Additionally, the Union Budget 2025 highlighted that gig workers associated with online platforms play a crucial role in driving dynamism within the modern services economy. Recognizing their contributions, the Central Government will facilitate issuance of their identity cards and registration on the e-Shram portal along with entitlement to healthcare benefits under the Pradhan Mantri Jan Arogya Yojana (health insurance scheme providing financial protection for secondary and tertiary healthcare).

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.

In the case of Indian Federation of Application-Based Transport Workers (IFAT) v Union of India and Others Writ Petition (Civil) Number 1068 of 2021, the Supreme Court while addressing concerns regarding the delay in implementing the Code on Social Security, 2020, has directed the Central Government to file an affidavit specifying the timeline for the implementation of the Code on Social Security, 2020.

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.

To foster investment, generate employment, and enhance workforce development, the Government of Karnataka introduced the Karnataka Industrial Policy 2025-2030

The Government of Karnataka, on 11 February 2025, introduced the Karnataka Industrial Policy 2025-2030 to attract investments and generate approximately twenty lakh jobs during the policy period. The policy aims to position Karnataka as a leader in the sunrise and new-age sectors by focusing on innovation-driven industries such as advanced manufacturing, aerospace and defence, future mobility, and virtual reality.

A key focus of the policy is fostering workforce inclusion, particularly increasing women's participation, to leverage human capital for economic growth and innovation. Additionally, it emphasizes the development of future-ready talent through comprehensive skilling and training initiatives. This includes increasing the adoption of Industrial Training Institutes in collaboration with the industry by developing curated curriculum with industry leaders and conducting skill-gap studies within key manufacturing clusters. The policy sets thresholds for minimum employment for establishments to avail benefits or subsidies, with additional incentives for industries providing extra employment, and offers higher benefits for micro, small, and

medium enterprises that employ individuals from special categories such as SC / ST, women, minorities, physically challenged individuals, and ex-servicemen. Further, the policy also prioritizes refresher training for trainers to streamline skilled labour sourcing, ultimately enhancing Karnataka's industrial growth and global competitiveness, among other initiatives.

Meghalaya introduces 'Online Single Window System' (OSWS) to streamline business regulations and labour law compliances

Through a notification dated 5 February 2025, the Government of Meghalaya to simplify business regulations, to enhance ease of compliance with labour laws, and to ensure transparency and accountability in information dissemination and implementation, has introduced the OSWS. This system facilitates the issuance of registrations and licenses under various labour laws, including the Contract Labour (Regulation and Abolition) Act, 1970, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and Meghalaya Shops and Establishments Act, 2003 etc.

The OSWS portal enables users to submit online applications, make payments, track application status, download certificates, licenses, and other documents, thereby eliminating the need for physical submission. Applicants will receive SMS / email notifications at every critical stage of processing. Additionally, the government has implemented a 'Single Integrated Return' system for all relevant labour laws. Under this system, contractors, principal employers, and establishments in Meghalaya must submit annual returns through the online platform. To further enhance transparency, an online dashboard will be introduced, displaying real-time data on applications received, approvals granted, processing time, and associated fees. This initiative aims to improve efficiency, reduce bureaucratic delays, and boost compliance with labour regulations.

Draft of Haryana Transgender Persons (Protection of Rights) Rules, 2024 (Transgender Persons Rules) published by Government of Haryana

By way of a notification dated 31 January 2024, the Haryana Government published the draft Transgender Persons Rules in the Official Gazette under Section 22 of the Transgender Persons (Protection of Rights) Act, 2019. The draft rules are to be considered final after 30 days from their publication in the Official Gazette, along with any objections or suggestions received from the public. The proposed rules outline provisions for obtaining identity certificates for transgender persons, procedures for communication in case of application rejection, the right to appeal, and the cancellation of issued certificates. Additionally, the proposed rules include welfare measures, anti-discrimination provisions, guidelines for establishments to ensure equal opportunities, and a grievance redressal mechanism for transgender individuals.

Case Updates

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

Jurisdiction of the labour court under Section 33(C)(2) of the Industrial Disputes Act, 1947 (ID Act) only to enforce pre-existing rights: Gujarat High Court

In the case of Jayanti Ishwarbhai Parmar v Sheth Shri Sabbir Mohammed Zubair Special Civil Application Number 17361 of 2024, the court examined the jurisdiction of labour courts under Section 33(C)(2) of the ID Act. The court noted that the jurisdiction of the labour court under this section is analogous to that of an executing court, which lacks the authority to determine new claims or entitlements.

In the present case, the petitioner filed a recovery application seeking the sum of INR 3,03,750 for certain benefits that were denied by the respondent. The petitioner was appointed in 2002, and his services were terminated in 2013. Following his termination, he initiated a dispute before the labour court, which resulted in an award directing the respondent to pay 25% of wages from 2014 until the date of superannuation, along with other entitled benefits. Subsequently, the petitioner filed a recovery application, which was rejected, leading to the present petition.

The court, upon reviewing the records, found that no award had been passed by the labour court directing the respondent to pay the claimed wages. Furthermore, it determined that the petitioner had failed to establish a pre-existing right to the amounts claimed. Consequently, the court held that no error had been committed in rejecting the petitioner's application and reiterated that Section 33(C)(2) of the ID Act is intended for the enforcement of pre-existing rights rather than the adjudication of new claims.

Criminal conviction not required for forfeiture of gratuity in cases of misconduct involving moral turpitude: Supreme Court

In the case of Western Coal Fields Limited v Monohar Govinda Fulzele Civil Appeal Number 2608 of 2025, the Supreme Court ruled that an individual's gratuity can be forfeited in the event of termination due to misconduct, provided the misconduct constitutes an offence involving moral turpitude. The court clarified that such forfeiture does not require a prior criminal conviction or even the initiation of criminal proceedings.

We have analysed this case law in detail in our ERGO which may be accessed here.

Interest liability under the Employee's Compensation Act, 1923 is triggered upon the employer's default, requiring the application of 12% simple interest per annum: Supreme Court

In the case of Shanti and Others v National Insurance Company Civil Appeal Number 2586 of 2025, the Supreme Court held that the employer is liable to pay interest at the rate of 12 % per annum under Section

4(A)(3) of the Employees' Compensation Act, 1923 (Compensation Act) in cases where compensation is not paid within one month from the date it falls due.

The present case involved the death of an individual employed as a cleaner in a truck owned by his father. The claimants, including the mother and siblings of the deceased, sought compensation. The primary issue before the court was whether the mandatory 12% interest must be applied in cases of default on provisional compensation payments. Initially, the Commissioner under the Compensation Act had awarded compensation with 6% interest per annum, along with a 40% penalty, which was to be paid by the insurance company.

The court clarified that under Section 4A(3) of the Compensation Act, interest liability arises immediately upon default in payment of the admitted compensation within one month. The court also noted that the statutory rate of 12% interest per annum is mandatory, with discretion only to impose a higher rate, ensuring it does not exceed the lending rate of scheduled banks.

Since the insurance company had not challenged the award, the court upheld the petitioner's claim for a higher interest rate. Accordingly, it modified the award, directing the interest to be paid at 12% per annum from the date of the accident.

Complaint lacking allegation around sexual harassment does not constitute 'sexual harassment' under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act): Kerala High Court

In the case of X v The Kerala State Financial Enterprises Limited and Others Writ Petition (Civil) Number 24876 of 2024, the Kerala High Court held that when a complaint or allegation against an individual does not fall within the definition of 'sexual harassment' under the POSH Act, the complaint cannot be pursued under the provisions of the POSH Act.

In the present case, proceedings were initiated against the petitioner by the internal committee (IC) based on a complaint filed by the third respondent. The third respondent, who was not employed at the branch headed by the petitioner, along with other union members, forcibly entered the petitioner's cabin and allegedly misbehaved with him. Subsequently, the third respondent filed a complaint with the Presiding Officer of the IC, alleging that the petitioner misbehaved with her and insulted her in the presence of others, requesting strict action against him.

The court held that the IC is only empowered to determine whether an employee's conduct amounts to sexual harassment under the POSH Act and may make recommendations accordingly. The court emphasized that it cannot interfere with IC proceedings at a preliminary stage unless the complaint itself fails to disclose allegations of sexual harassment as defined under the POSH Act. Upon reviewing the complaint, the court found that the allegations pertained only to the petitioner's language and insult, without any claims of physical contact, advances, demands for sexual favours, or other qualifying conduct under the POSH Act. Consequently, the court allowed the petition and set aside the notice issued by the IC against the petitioner.

Employers to conclude departmental inquiries within a reasonable timeframe: Rajasthan High Court

In the case of Sardar Mal Yadav v State Elementary Education and Others Single Bench Civil Writ Petition Number 807 of 2012, the Rajasthan High Court held that all employers, whether in the public or private sector, must prioritize and conclude departmental inquiry proceedings within a reasonable timeframe, ideally within 6 months.

In the present case, a chargesheet was served on the petitioner in 2011, but the proceedings remained pending despite the passage of considerable time, prompting the petitioner to approach the court. The

state contended that the inquiry pertaining to the charge sheet was completed in 2014; however, no final order was passed by the disciplinary authority.

The court observed that a disciplinary authority is required to pass final orders promptly upon receiving the inquiry report. However, in this case, no order was passed even after 12 years. Emphasizing the importance of timely disposal of disciplinary proceedings, the court directed that every employer, whether in the public or private sector, must make efforts to conclude such inquiries within 6 months. If unavoidable circumstances prevent adherence to this timeframe, the court stressed that the inquiry should still be concluded within a reasonable extended period, depending on the nature and complexity of the case.

Sales promotion employees are covered under the ID Act through Section 6(2) of the Sales Promotion Employees (Conditions of Service) Act, 1976 (Sales Promotion Employees Act): Madras High Court

In the case of S Raja v Dr Rajesh Jain and Another, Panacea Biotec Pharma Limited Writ Petition Number 352 of 2024, the Madras High Court held that sales promotion employees, including medical representatives, are not directly covered under the definition of "workmen" under the ID Act. However, Section 6(2) of the Sales Promotion Employees Act allows these employees to be treated on par with workmen, thereby making the provisions of the ID Act applicable to them. The court emphasized that a reading of Section 6(2) leaves no doubt that if an individual qualifies as a 'sales promotion employee', the ID Act shall apply to them as though they were workmen under the ID Act.

In the present case, the petitioner was employed by the respondent in 2014 as an 'Area Business Manager – Institutional Sales'. His employment was terminated in 2020, leading him to raise a dispute. As conciliation efforts failed, he filed the present petition. The respondent contended that the petitioner had been transferred to Udaipur in 2020 but failed to report for duty despite multiple communications. Consequently, his services were terminated, and a full and final settlement was paid. The respondent further argued that the petitioner did not qualify as a workman under the ID Act, asserting that sales promotion employees and medical representatives are not covered under Section 2(s) of the ID Act.

The court, however, reaffirmed that while sales promotion employees do not fall within the definition of workmen under Section 2(s) of the ID Act, Section 6(2) of the Sales Promotion Employees Act extends the applicability of the ID Act to them. The court noted that the designation of an employee is irrelevant in determining their classification as workmen. It observed that since the petitioner had no subordinate employees under him, he could not be considered to be in a supervisory or managerial role. Based on this reasoning, the court held that the petitioner was entitled to the protections under the ID Act.

Claims under the ID Act cannot be rejected solely due to non-registration of trade union: Madras High Court

In the case of M/s Nitya Packaging Private Limited v The Presiding Officer and Others Writ Petition Number 4868 of 2010, the Madras High Court ruled that basis Section 2(h) of the Trade Unions Act, 1926, read with Section 2(k) of the ID Act, a claim under the ID Act cannot be dismissed solely because the trade union was registered after the demand was raised or during subsequent proceedings.

In the present case, petitioner challenged the labour court's order directing the reinstatement of 25

workmen with back wages and consequential benefits. The workmen, who had been employed with the petitioner since 1997, formed a trade union in November 2000, while its registration was still pending. Subsequently, the petitioner denied employment to 19 workmen and withheld wages from 6 workmen, prompting them to file a claim. The petitioner contended that the trade union was unregistered at the time of raising the dispute and, therefore, lacked the legal standing to represent the workers.

In the present case, the court emphasized that the right to collective bargaining is rooted in Article 19(1)(c) of the Constitution of India, 1950 and that the primary objective of the ID Act is to promote industrial peace through collective bargaining. The court held that once a trade union is registered, it retains the authority to represent workers, even if registration occurs after the dispute has been raised. Consequently, the court found no illegality in the representation of workmen by the trade union and upheld the labour court's ruling. However, instead of reinstatement with back wages, the court directed the petitioner to pay compensation to each respondent in lieu of reinstatement, considering the other circumstances.

Directions issued for the government to legalise the framework for protection of rights of the domestic workers: Supreme Court

In the case of Ajay Malik v State of Uttarakhand and Another Criminal Appeal Number 441 of 2025, the Supreme Court directed the Central Government to establish a legal framework to safeguard the rights and interests of domestic workers.

The case involved allegations of wrongful confinement and trafficking of a female domestic worker, leading to criminal proceedings against the petitioner. A key question for consideration was whether India's existing legal framework adequately protects domestic workers' rights.

The court observed that, despite multiple legislative efforts, there remain significant gaps in the legal protection of domestic workers. Various bills, such as Domestic Workers (Conditions of Employment) Bill of 1959, the House Workers (Conditions of Service) Bill of 1989, the Domestic Workers (Decent Working Conditions) Bill of 2015, the Domestic Workers (Regulation of Work and Social Security) Bill, 2017 etc., were proposed but never materialized into enforceable laws. The new labour codes, however, introduce minimum wage provisions for domestic workers, classify them as part of the unorganized workforce, and extend social security and health insurance benefits. Additionally, the e-Shram portal has been introduced to create a centralized database for migrant, domestic, and unorganized workers, improving access to welfare schemes.

Recognizing the lack of a comprehensive legal framework, the court directed the government - through the Ministry of Labour and Employment, in coordination with the Ministry of Social Justice and Empowerment, Ministry of Women and Child Development, and Ministry of Law and Justice, to establish an expert committee. This committee, composed of subject experts, will evaluate the feasibility of recommending a legal framework for the benefit, protection, and regulation of domestic workers' rights. The court left the composition of the expert committee to the discretion of the Central Government and its concerned ministries. It further emphasized that the committee should submit its report within 6 months, after which the Central Government may consider introducing a formal legal framework to address the issues faced by domestic workers.

Interim order against reduction of higher provident fund pensions: Kerala High Court

In the case of Balakrishna Pillai and Others v Union of India and Others Writ Petition (Civil) Number 2311 of 2025, the Kerala High Court issued an interim order preventing the reduction of higher provident fund pensions currently received by certain pensioners based on the pro-rata condition.

The court's order stemmed from a writ petition filed by 41 pensioners challenging the pro-rata order issued by the Employees' Provident Fund Organisation (EPFO) in 2014. Under this order, the EPFO divides a pensioner's service tenure into two periods, before and after 1 September 2014 and calculates

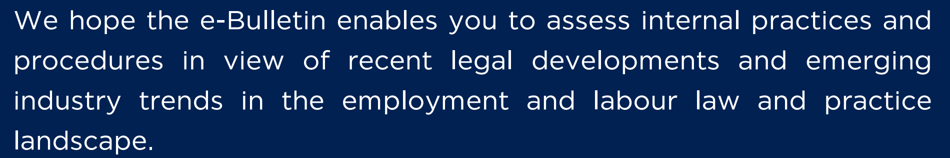
pensions separately for each. The petitioners approached the court after receiving notices from the EPFO indicating a reduction in their pension amounts due to these calculations. Previously, their pensions were based on their entire service period and were proportionate to their salaries. However, the pro-rata system disrupted the continuity of their service period, resulting in a lower final pension. The court issued an interim order directing the EPFO not to reduce the higher pension benefits drawn by the petitioners for a period of two months.

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 companies embrace artificial intelligence (AI) for employee rewards and retention

Indian Inc is increasingly exploring AI to enhance employee rewards and compensation strategies in the coming years. Businesses are shifting from traditional pay benchmarking and fixed incentive models to AI-driven salary benchmarking, real-time pay equity analysis, and customizable employee benefits. These AI-powered compensation platforms enable companies to personalize and optimize reward structures while ensuring pay equity across diverse workforce demographics. As salary increments remain steady, this approach becomes an essential strategy for attracting and retaining top talent. Furthermore, AI assistance streamlines the employee recognition process by automating tasks such as tracking achievements, sending notifications, and managing recognition workflows. However, while AI can streamline various processes around recognitions, it is crucial to review all AI-generated content to ensure accuracy and avoid false statements or overly generic responses. Additionally, companies must ensure that the employee data used by AI systems is handled with strict privacy and security measures.



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), Deeksha Malik (Principal Associate), Ajeta Anand (Associate), Varsha Sankara Raman (Associate) and Shubhangi Zite (Associate).

For any queries in relation to the e-Bulletin, please email to us at **elbebulletin@khaitanco.com**

ABOUT KHAITAN & CO

Khaitan & Co is a top tier and full-service law firm with over 1200 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.

To know more, visit www.khaitanco.com

Disclaimer

This document has been created for informational purposes only. Neither Khaitan & Co nor any of its partners, associates or allied professionals shall be liable for any interpretation or accuracy of the information contained herein, including any errors or incompleteness. This document is intended for non-commercial use and for the general consumption of the reader, and should not be considered as legal advice or legal opinion of any form and may not be relied upon by any person for such purpose. It may not be quoted or referred to in any public document, or shown to, or filed with any government authority, agency or other official body.

www.khaitanco.com | © Khaitan & Co 2025 | All Rights Reserved.