KHAITAN &CO ADVOCATES SINCE 1911

ELB E-BULLETIN

March 2025 | Volume VII | Issue III

Welcome to the third 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.

Karnataka Government introduces the draft Karnataka Factories (Safety Audit) Rules, 2024 (Factory Audit Rules)

By way of a notification dated 1 February 2025, the Karnataka Government has published the draft Factory Audit Rules in the Official Gazette which is applicable inter alia to factories engaging more than 50 workers and factories undertaking hazardous activities. The proposed rules outline (i) standards for conducting safety audits; (ii) the qualifications required for safety auditors; (iii) requirement of the occupiers to notify authorities before commencing a safety audit; and (iv) requirement of the safety auditors to submit audit reports. Additionally, the draft Factory Audit Rules provide for re-audits in cases where authorities find the reports unsatisfactory and also provide exemptions for certain establishments from the applicability of the draft Factory Audit Rules.

Haryana Government revises the quantum of labour welfare fund contributions

Through a notification dated 7 March 2025, the Haryana Government has revised the rates for employees and employers concerning the deposit of labour welfare fund contributions, effective from 1 January 2025.

As per the amendment, the maximum limit for the employees' contribution has been increased to INR 34, calculated at the rate of 0.2% of their monthly salary, wages, or remuneration, from the previous limit of INR 31. Consequently, the employers' contribution for each employee will be calculated at twice the employee's contribution, will be maximum of INR 68.

Tamil Nadu declares export-oriented industrial units and special economic zones (SEZ) based industrial units as public utility services (PUS)

Through a notification dated 12 March 2025, published by the Government of Tamil Nadu in Official Gazette has declared all industrial units whose entire production is exported and the units located in the SEZ, to be considered as PUS for the purposes of applicability of the Industrial Disputes Act, 1947 (IDA). This classification will remain in effect for a period of 6 months from the date of publication of notification in the Official Gazette. This notification assumes relevance because Section 22 of the IDA provides special protection to organisations notified as PUS, vis-à-vis strikes by workmen employed with such PUS. As per the same, no employee working in a PUS is permitted to go on a strike without providing the employer with prior notice in the prescribed manner as set out in the IDA.

Andhra Pradesh exempts information technology enabled services (ITES) and information technology establishments (ITE) from certain provisions of the Andhra Pradesh Shops and Establishments Act, 1988 (Andhra Pradesh S&E Act)

As per the notification dated 25 March 2025, published in the Official Gazette, the Government of Andhra Pradesh has introduced exemptions under the Andhra Pradesh S&E Act, effective for 5 years commencing from 25 March 2025, applicable to ITES and ITE operating in Andhra Pradesh.

Through this notification, the applicability of Sections 15 (opening and closing hours of establishment), 16 (spread over hours of work), 21 (employment of young persons), 23 (employment of women), 31 (other holidays) and 47 (1), (2), (3) and (4) (conditions pertaining to termination of employment of an employee and payment of service compensation) on all ITES and ITE has been done away with i.e., employers engaged in these sectors are no longer required to ensure compliance with these provisions vis-à-vis their employees based in the state of Andhra Pradesh. However, this exemption is subject to the employer ensuring compliance with the stipulated working hours, ensuring adequate safety measures for women working in the night shifts, adopting adequate welfare measures for employees, providing employees with weekly and compensatory offs, etc.

Additionally, the government reserves the right to revoke these exemptions if any conditions are violated or found to be detrimental to the welfare of the employees

Maharashtra Government has introduced Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) (Amendment) Act, 2025 (Amendment Act)

By way of a notification published in the Official Gazette dated 19 March 2025, the Government of Maharashtra has introduced the Amendment Act. The Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (Mathadi Act) regulates the provisions

concerning employment of unprotected manual workers, including mathadi workers and hamals engaged in loading, unloading, and related tasks in Maharashtra.

The Amendment Act introduces several key changes, notably defining 'manual work,' which was previously undefined in the Mathadi Act. Manual work is defined as any physical labour performed without machine assistance, including tasks such as loading, unloading, stacking, carrying, weighing, and measuring in scheduled employments. Furthermore, the definition of an 'unprotected worker' has been expanded to expressly include mathadi workers and hamals while excluding those engaged in manufacturing processes within factories, establishments, or industries where tasks are performed using mechanical, automated, or machine-assisted procedures. Another significant change is the increase in the minimum working age from 14 to 18 years, ensuring child labour protections.

Case Updates

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

Washing and cleaning classified as 'manufacturing process' under the Factories Act 1948 (Factories Act): Supreme Court

In the case of State of Goa and Another v Namita Tripathi Special Leave Petition (Criminal) Number of 1959 of 2022, the Supreme Court held that activities such as washing, cleaning, and dry-cleaning fall within the definition of a 'manufacturing process' under the Factories Act, even if these activities do not result in the creation of a new product.

In this case, the respondent operated a professional laundry service on premises where more than nine workers were employed without obtaining a factory license under the Factories Act. The respondent argued that washing and dry-cleaning did not constitute a 'manufacturing process' and that their laundry business was a service rather than a manufacturing activity and was duly registered under the state-specific shops and establishments legislation (S&E Act).

The court emphasized that the Factories Act is a piece of social welfare legislation intended to protect workers and should be interpreted in a manner that upholds this objective. It noted that, based on a plain reading of the definition of 'manufacturing process,' the activities of washing and cleaning any article or substance clearly fall within its scope. Moreover, the court reaffirmed the principle that when a statute explicitly defines a term, courts are bound to apply that definition unless an exceptional case arises where the context demands otherwise.

Employee cannot be reinstated after illegal termination of employment if past the age of superannuation: Bombay High Court

In the case of M/s J Fibre Corporation v Shri Maruti Harishchandra and Others Writ Petition Number of 10454 of 2024, the Bombay High Court held that in cases of illegal termination of employment, if proven, an employee who has already surpassed the retirement age cannot be reinstated and is only entitled to compensation for the period between the illegal termination of employment and retirement.

In the present case, the petitioner, a partnership firm engaged in the manufacturing of non-woven fabric, nylon, and monofilament yarn, had employed the respondent as a shift supervisor. Due to cost-cutting measures and a decline in production work, the respondent's services were terminated. The respondent challenged this termination, and the labour court ruled in his favour, ordering reinstatement, even though the respondent had already surpassed the age of retirement.

The court, while acknowledging that the termination was improper, held that reinstatement was not possible since the respondent had already crossed the retirement age. The court further noted that although the petitioner had failed to follow the prescribed procedure for retrenchment, there was no defect in their reasoning regarding the loss of production work. Therefore, instead of ordering back wages and reinstatement, the court directed the petitioner to provide the respondent with a lump sum compensation.

Merely forming an association does not entitle self-employed persons to be classified as 'employees' under the Employees' State Insurance Act, 1948 (ESI Act): Kerala High Court

In the case of P N Uma Shankar v The Deputy Director and Others Insurance Appeal Number 12 of 2023, the Kerala High Court held that since members of the appellant society work independently and receive remuneration directly from customers, they cannot be considered 'employee' for the purpose of receiving benefits under the ESI Act.

In the present case, the appellant's society was registered under the Travancore-Cochin Literary and Charitable Societies Act, 1955 and also had obtained registrations under both the ESI Act and the S&E Act. However, following an inspection by the social security officer, the appellant's registration under the ESI Act was blocked and could not be reinstated, leading to the present appeal.

The court found that the individuals registered as employees under the ESI Act by the appellant were, in fact, members of the society who were self-employed. These individuals provided services directly to customers and received payments without any involvement from the appellant society. The court held that merely forming an association does not entitle self-employed persons to be classified as 'employee' under the ESI Act. Additionally, the court emphasized that the ESI Act is a beneficial legislation and welfare measures under the ESI Act must be strictly applied to eligible persons only. The court also clarified that merely obtaining a registration certificate under the S&E Act does not automatically qualify an entity as a 'shop' for the purposes of receiving benefits under the ESI Act.

Employees are entitled to receive gratuity despite the corporate insolvency proceedings: Calcutta High Court

In the case of M/s Stesalit Limited v Union of India and Others Writ Petition Number 532 of 2025, the Calcutta High Court held that gratuity payments are distinct from other liabilities under the Insolvency and Bankruptcy Code, 2016 (IBC) and cannot be discharged solely through a resolution plan.

The respondent in the present case, an ex-employee of the petitioner, had worked for the period from 18 September 2002 to 3 December 2014. Meanwhile, the petitioner underwent a change in management following corporate insolvency resolution process proceedings under the IBC. While the respondent's total claim was admitted by the Interim Resolution Professional, the amount awarded was only INR 38,808

under the approved resolution plan. This resulted in proceedings initiated by respondent under the Payment of Gratuity Act, 1972 (Gratuity Act) and the controlling authority subsequently ruled in favour of the respondent, thereby directing the petitioner to pay total gratuity dues to the respondent, which led to the petition in this case.

The court, however, held that gratuity obligations are distinct from other liabilities governed by the IBC. It emphasized that Section 36(4)(a)(iii) of the IBC expressly excludes gratuity funds from being considered part of the corporate debtor's estate. Furthermore, the court noted that since the petitioner company had not undergone liquidation and had only experienced a change in management, its obligations under labour laws remained intact and could not be extinguished.

Authorities must provide reasoned orders when imposing damages under Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act): Calcutta High Court

In the case of Central Board of Trustees, through the Regional Provident Commissioner-1 Regional Office Howrah v The Registrar, Central Government Industrial Tribunal, Kolkata & Another Writ Petition Number 1945 of 2025, the Calcutta High Court held that orders passed by authorities under Section 14B of the EPF Act (pertaining to recovery of damages) must be reasoned and should expressly detail how the assessed amounts were determined.

In this case, the respondent, Aditya Birla Vani Bharti (School), was an exempted establishment under the EPF Act for the period from 1 March 2005 to 31 March 2011. However, in 2016, the Assistant Provident Fund Commissioner (Commissioner) passed an order under Section 14B of the EPF Act, imposing damages of INR 9,17,552 on the school for delayed payment of certain employees' provident fund contributions. The school challenged this order before the Central Government Industrial Tribunal (CGIT), Kolkata. The CGIT ruled in favour of the school, declaring the Commissioner's order illegal as it lacked proper reasoning for the calculated amount, resulting in the present petition.

The court reaffirmed that under Section 14B of the EPF Act, the Commissioner has the authority to recover damages from employers who fail to make timely payments of contributions, including provident fund, pension fund, and insurance fund contributions as prescribed under the EPF Act. However, it observed that the Commissioner's order failed to provide any details regarding the rationale for the levy of the damages. As a result, the court upheld the CGIT's order, holding that the Commissioner's decision was arbitrary and not in accordance with the law. It further emphasized that the power exercised under Section 14B of the EPF Act is quasi-judicial in nature, and therefore, any order passed under this provision must be a speaking order that adheres to the principles of natural justice.

Passing comments on colleague's hair does not constitute sexual harassment: Bombay High Court

In the case of Vinod Narayan Kachave v The Presiding Officer (ICC) and Another Writ Petition Number 17230 of 2024, the Bombay High Court held that commenting on a colleague's hair does not constitute sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).

In the present case, the internal committee (IC) constituted under the POSH Act examined three allegations of sexual harassment against the petitioner, one of which pertained to his comments on the complainant's hair. The IC concluded that the petitioner's conduct was unprofessional and did not contribute to a conducive work environment, thereby amounting to sexual harassment. Consequently, the petitioner was found guilty by the IC.

However, the court observed that the petitioner's remarks about the complainant's hair were not made with any intent to sexually harass her and the same was not perceived adversely by the complainant. Therefore, the court concluded that this allegation could not be classified as sexual harassment under the POSH Act. Further, the court clarified that the report prepared by the IC was vague as it did not delve into discussion of the evidence presented on record.

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 hiring persons with disabilities (PwD) as part of social and business strategy

Amid growing commitments to diversity, equity, and inclusion initiatives, India Inc is increasingly hiring persons with disabilities (PwD), both as a social responsibility and a strategic business decision. Organizations across various industries are enhancing workplace accessibility by implementing features such as ramps, dedicated walkways, braille-enabled elevators for visually impaired employees, and text-to-speech software for improved digital accessibility. These measures enable companies to integrate PwDs into diverse job roles, fostering an inclusive work environment. Additionally, with government-backed initiatives such as tax benefits for PwDs and a growing emphasis on environmental, social, and governance focused hiring, the representation of PwDs in the formal workforce is expected to double in the coming years.

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 (Senior 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 300+ 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