



EMPLOYMENT CORNER BULLETIN

VOLUME 2: JUNE 2022 - JULY 2022

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We welcome you to the 3rd Edition of Volume 2 of IndusLaw's Employment Corner Bulletin. The bulletin highlights the key statutory and judicial updates for the period between June 2022 and July 2022 that are significant to employers, employees, and the HR community. This edition also brings to you a column on "HIV and AIDS Policy for Establishments".

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STATUTORY UPDATES

Women employees in Haryana can now work during night shifts

The Punjab Shops and Commercial Establishments Act, 1958 ("**S & E Act**") prohibits the employment of women at night shifts. Recently, the Government of Haryana, through a notification dated June 7, 2022, has laid down certain conditions for employers who have women employees during night shifts (i.e., between 07:00 PM and 6:00 AM).

IT and ITes establishments, banking establishments, three-star (or above) hotels, 100% export-oriented establishments, and logistics and warehousing establishments, registered under the S & E Act can apply for the exemption to employ women at night shifts. An employer must apply to the prescribed authority for exemption at least 1 month prior to the commencement of the period for which such exemption is sought. If granted, the exemption would be valid for a year. The conditions are as follows:

- a. Compliance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**Posh Act**"). Employer must take all appropriate steps to prevent instances of sexual harassment at the workplace. Additionally, the employer is also required to submit a copy of the annual return (required to be filed under Posh Act) to the Labour Commissioner of Haryana.
- b. Allow women employees to raise issues of sexual harassment during meetings, other fora or through a complaint box.
- c. Declaration must be obtained from each woman employee wherein they consent to work during night shifts. A copy of such declaration should be shared with the Labour Commissioner, Haryana.
- d. Ensure that women employees are employed in a batch not less than 10 in number and the total strength of women employees employed in the night shift is not less than 2/3rd of the total strength. At least 1/3rd of the supervisors shall be women.
- e. Provide sufficient women security during the night shift at the entry as well as exit point.
- f. Provide sufficient number of work sheds for the women employees to arrive in advance and also leave after the working hours.
- g. If the number of female employees is more than 50, separate canteen facility should be provided for them.
- h. Provide transport facilities, fitted with CCTV cameras and with a female security guard, to the women workers from their residence and back (and vice versa). The employer must ensure that a boarding register or a digitally signed computerized record is maintained. This must consist of the date, name of the model and manufacturing of the vehicle, the vehicle registration number, name, address and contact number of the driver, time of pickup of the women employees from the establishment destination.
- i. Ensure that there is at least 12 hours of gap between the last shift and the night shift, whenever a woman worker's shift is changed (from day shift to night shift or from night shift to day shift).
- j. The female workers who work at night shifts and regular shifts, through their representatives, should have a monthly meeting with the employer once in 8 weeks.
- k. The employer should send a half yearly report to the Labour Commissioner Haryana about the details of employees engaged during the night shift. The employer is also required to send a report immediately, whenever there is some untoward incident, to the Labour Commissioner and to the local Police Station.

Work from home guidelines for SEZ units

The Ministry of Commerce and Industry, through a notification dated July 14, 2022, issued the Special Economic Zones (Third Amendment) Rules, 2022 ("**SEZ Rules**") introducing a new rule on work from home arrangements for employees working in SEZ units. Please refer to our detailed analysis of the amendment available at <https://induslaw.com/publications/pdf/alerts-2022/Infoplex-News-Alert-SEZ-Amendment-Rules.pdf>

Work from home permission for SEZ units in Noida

The Deputy Development Commissioner, Noida SEZ, through a circular dated July 19, 2022, introduced a new procedure for obtaining permission for SEZ units seeking to provide work from home facilities to their employees. The circular gives effect to the newly introduced Rule 43A of the SEZ Rules and requires SEZ units to submit fresh applications for work from home through an email at least 15 days in advance specifying particulars such as the date of permission, the total number of employees, number of employees for whom work from home is being sought and the duration for which permission is sought.

Additionally, an excel sheet containing the respective employees' particulars such as their name, designation, SEZ ID Card number, expiry date of the SEZ ID Card and duration for which permission for work from home is required (where it is different from the general duration) must also be attached. The application for permission must be submitted within 90 days from the date of commencement of the SEZ Rules i.e., July 14, 2022.

Government of Andhra Pradesh releases draft amendment to Maternity Benefit Rules

The Government of Andhra Pradesh vide a notification dated July 19, 2022, has released the draft amendments to the Andhra Pradesh Maternity Benefits Rules, 1966 ("**Amendment Rules**") for public comments and suggestions: Few of the key amendments in the draft notification are as follows:

- a. The number of nursing breaks available to women employees who have recently delivered a child is set to increase from 2 to 4.
- b. The Amendment Rules provide for the establishment of a creche facility by every organization having 50 or more employees. The Amendment Rules also specify other details pertaining to the creche facility (such as distance from the establishment, infrastructure of the creche, equipment to be made available at the creche).
- c. The details of the creche facility should be specified in the appointment letter to be issued to female employees at the time of joining.
- d. A woman employee entitled to maternity benefit should submit an application to her employer in Form Q to request the employer to allow her to work from home during her pregnancy period.
- e. Notice to the employer should be given in Form P to enable commissioning mothers and adopting mothers to claim maternity benefit.

Shops and commercial establishments in Punjab to remain open on all days of the year

The Government of Punjab, through a notification dated June 8, 2022, has permitted all shops and commercial establishments, for a period of 1 year up to May 31, 2023, to remain open on all days of the year subject to the following terms and conditions:

- a. Every employee in the establishment should be given 1 paid holiday in a week. The holiday list should also be displayed on the notice board of the organization.

- b. Every employee should be given a rest period of 1 hour after every 5 hours of continuous work.
- c. No employee should be required to work more than 9 hours a day and 48 hours a week.
- d. If the establishment remains open after 10PM on any day, adequate safety and security arrangements has to be ensured for employees and visitors.
- e. As establishments are being given permission to open for all days and new staff members should be appointed for the extended timing.
- f. Female employees have to be provided with separate locker, security and rest rooms at the workplace.
- g. Every employer must constitute an internal complaints committee under the Posh Act.
- h. Female employees will not be allowed to work beyond 8PM. If allowed, their consent and adequate safety measures to be implemented.
- i. The Prevention of the Child and Adolescent Labour (Prohibition and Regulation) Act 1986 must be implemented at the establishment.
- j. Employees should be provided with all necessary facilities as mandated under applicable laws.
- k. Consent letters should be taken from all employees and records of it have to be duly maintained.
- l. The spread over of an employee cannot exceed 11 hours a day.
- m. Employees should be given national and festival holidays with wages.
- n. Wages including overtime wages must be credited to the savings bank account of employees.

The above exemption would be cancelled (subject to due process) if an employer fails to comply with the abovementioned conditions.

EPFO issues clarification on the status of student-trainees

The Employees' Provident Fund Organization (EPFO), through a circular dated July 27, 2022, has provided clarifications/guidelines with respect to the status of student-trainees under any of the government schemes

- a. The educational/technical institute/university and the academic course in which a student-trainee is enrolled shall be recognized by the competent authority.
- b. 'On-the-job-training' is an integral part of such course
- c. 'On-the-job-training' cannot exceed the period prescribed under such course.
- d. In case a student-trainee does not complete the training within the specified time including the period of extension (if any), she/he will cease to be a student-trainee.
- e. The industry has to engage student-trainees who are pursuing the course which are relevant to the industry.
- f. The number of student-trainees that may be engaged by a branch/factory of an establishment cannot exceed the percentage notified in a scheme or a similar scheme of the Central/State Government.
- g. Engagement of a student-trainee cannot be for any purpose other than the purpose specified under the course/scheme.
- h. Employers are required to declare the details of such student-trainees in the Electronic-challan-cum-returns (ECR) or furnish such details on a monthly basis as may be directed by the Commissioner.

THE LABOUR CODES: STORY SO FAR

On July 18, 2022, the Minister of State for Labour and Employment responded to a question relating to upcoming Labour Codes, their status and their expected impact on the workforce and industry stakeholders before the Lok Sabha. The response provided by the Minister indicated that the process of framing rules currently underway is at an advanced stage with most States having notified draft rules under the respective Labour Codes. In addition to this, some of the benefits being provided under the labour codes were also highlighted.

The Minister responded in the negative to a question speculating as to whether the Government intended to merge existing security schemes and stated that the administration of social security schemes would continue under respective social organizations.

A national level meeting of labour ministers and officials of the Central Government and State Governments respectively is scheduled to be held from August 25 and 26, 2022, at Tirupati. The conference aims to address issues surrounding the implementation of the labour codes in view of the fact that some States are yet to publish their respective draft Rules. The impending labour reforms have been delayed by the pandemic and there appears to be a divergence of opinion on the manner in which the labour codes should be rolled out. While some stakeholders are seeking simultaneous implementation of all 4 labour codes, others are inclined towards a staggered approach to make adoption easier.

Please find below the list of developments that have taken place with respect to the enactment of the State specific rules under the labour codes.

Sl. No.	States/UT	Draft Rules	Current Status
1.	Andhra Pradesh	<p>The Social Security (Andhra Pradesh Rules, 2022) under the Code on Social Security 2020 ("SS Code") (published on July 15, 2022)</p> <p>Code on Wages (Andhra Pradesh Rules, 2022) under the Code on Wages, 2019 ("Wage Code") (published on June 18, 2022)</p> <p>Industrial Relations (Andhra Pradesh Rules, 2022) under the Industrial Relations Code, 2020 ("IR Code") (published on June 18, 2022)</p> <p>Occupational Safety, Health and Working Conditions Rules 2022 under the Occupational Safety, Health, and Working Conditions Code, 2020 ("OSHW Code") (published on June 18, 2022)</p>	<p>Draft Stage</p> <p>The Government has invited suggestions /objections from all stakeholders within a period of 30 days for the Rules under the IR Code and 45 days respectively for the Rules notified under the other three Codes, post which the draft rules shall be finalised</p>
2.	Mizoram	<p>Industrial Relations (Mizoram) Rules, 2021 under the IR Code (published on June 17, 2022)</p>	<p>The Government has invited suggestions /objections from all stakeholders within a period of 45 days, post which the draft rules shall be finalised.</p>

JUDICIAL DEVELOPMENTS



HIGH COURTS

Sl. No.	Ratio	Brief details
1.	No fundamental right to be absorbed into the services of an organization (July 18, 2022) <i>Desh Deepak Srivastava vs. Delhi High Court and Ors</i> ¹ .	It was determined by the Delhi High Court that an employee that has been appointed in positions that are purely <i>ad hoc</i> / temporary and/or contractual for a fixed period of time has no fundamental right to claim that she/he has a right to be absorbed into the services of the organization
2.	Where an employee dies suddenly due to heart failure and there is no medical evidence of prior ill-health/cardiac disease, then such death shall be treated to have occurred during the course of employment (July 19, 2022) <i>National Insurance Co. Ltd. vs. Sambireddy Venkatramana and 5 ors</i> ² .	The Telangana High Court observed that the death of a workman shall be construed as death on account of stress and strain arising out of his employment when the workman died due to a sudden heart attack with no prior history of cardiac disease.
3.	Board of Control for Cricket in India is covered within the meaning of 'shop' for the purposes of the ESI Act, (June 24, 2022) <i>Board of Control for Cricket in India vs. Regional Director, Employees State Insurance Corporation and anr</i> ³ .	The High Court of Bombay held that Board of Control for Cricket in India (BCCI) comes under the ambit of a 'shop' under the Employees' State Insurance Act, 1948 (" ESI Act ") as it is carrying out systematic commercial activities and is engaged in providing services to public at large via its employees.
4.	A Commissioner in discharge of his powers under Section-7A of the EPF Act, is required to comply with the principles of natural justice (May 31, 2022) <i>Central Board of Trustees (EPFO) vs. Era Infra Engineering Ltd</i> ⁴ .	The Delhi High Court while quashing the order of the Tribunal and Adjudicating Authority, held that in proceedings initiated under Section-7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (" EPF Act ") where notice was not issued to the contractors or the beneficiaries, the Commissioner had failed to comply with the principles of natural justice.

1. W.P. (C) 9570/2015

2. Civil Miscellaneous Petition No. 864 of 2008

3. Appeal St No. 25980 of 2021

4. Writ Petition (C) No. 4083 of 2015

HIGH COURTS

Sl. No.	Ratio	Brief details
5.	<p>Failure of the Management to furnish the statements of witnesses to the employee and provide the employee with an opportunity to cross-examine them would result in the disciplinary proceedings being wholly vitiated (June 6, 2022)</p> <p><i>Tanaji Shankar Anuse vs. Maharashtra Rajya Doodh Sahakari Mahasangh Maahanand Dudh Shala</i>⁵.</p>	<p>The Bombay High Court held that in an inquiry involving adverse or penal consequences against an employee, the denial of opportunity to cross-examine witnesses constituted a denial of reasonable opportunity of defence to the employee. The Court also observed that the above denial of opportunity coupled with the failure to furnish statements by witnesses to the employee would result in the disciplinary proceedings being wholly vitiated.</p>
6.	<p>A person appointed as a professor on contract basis comes within the definition of 'employee' under the Payment of Gratuity Act, 1972 (July 4, 2022)</p> <p><i>Cochin University of Science and Technology vs. Dr. P.V. Sasikumar</i>⁶.</p>	<p>The Kerala High Court held that since the University is an establishment under Section-1(3)(c) of the Payment of Gratuity Act, 1972, the Respondent herein would be an employee thereunder and hence would be entitled to gratuity.</p>
7.	<p>Independent non-executive Directors cannot be prosecuted for offences punishable under Section-138 of the Negotiable Instruments Act, 1881 by invoking Section-141 of the NI Act (July 1, 2022)</p> <p><i>Satvinder Jeet Singh Sodhi and ors. vs. State of Maharashtra and anr</i>⁷.</p>	<p>The Bombay High Court while deciding a matter where independent, non-executive directors were impleaded in a case involving an offence under Section-138 of the Negotiable Instruments Act, 1881 ("NI Act"), committed by a company, held that since non-executive directors are not involved in the day-to-day affairs of the company and are not in charge/responsible for the conduct of the business of the company, they cannot be prosecuted.</p>
8.	<p>Mere allegation of pressure or harassment at workplace is not sufficient to attract Section-306 of the Indian Penal Code, 1860 (July 14, 2022)</p> <p><i>B. Sridevi vs. The State of Andhra Pradesh</i>⁸.</p>	<p>The Andhra Pradesh High Court held that a mere allegation of pressure does not attract the offence under Section-306 of the Indian Penal Code, 1960 unless such actions compelled the victim to commit suicide.</p>
9.	<p>Where the consequence of a transfer would result in the change of service conditions, the Fourth Schedule and Section 9A of the Industrial Disputes Act, 1947 shall be attracted. (June 10, 2022)</p> <p><i>B.M. Veena vs. The Divisional Controller, B.M.T.C. Volvo Division</i>⁹.</p>	<p>The Karnataka High Court held that compliance with Section-9A read with the Fourth Schedule of the Industrial Disputes Act, 1947 is mandatory where a change in service conditions arose as a consequence of transfer.</p>

5. Writ Petition No. 5356 of 2021.

6. Writ Petition (C) No. 7931 of 2022.

7. Criminal Application No. 74 of 2021.

8. Criminal Petition No. 4976 of 2022.

9. Writ Appeal No. 460 of 2022.

WHAT'S TRENDING¹⁰?

IT COMPANIES ARE IMPLEMENTING INVENTIVE POLICIES TO RETAIN EMPLOYEES

To combat the high attrition rates across departments, IT companies are implementing various employee retention strategies. These include hybrid working policies like the '25X25' policy implemented by TCS which stipulates that a maximum of 25% of company personnel will work from office at any given point of time. Other measures include quarterly promotions as introduced by Wipro and aggressive recruitment as envisaged by HCL, which seeks to hire approximately 30,000 freshers to combat high attrition rates

SWIGGY INTRODUCES 'WORK-FROM-ANYWHERE' POLICY

Swiggy extended its 'Future of Work Policy' and announced that an option to work from anywhere shall be provided to majority of its roles on a permanent basis. As per the policy, the company's corporate, central business functions and technology teams will continue to work remotely and converge once every quarter at their base location to foster team building. The decision is said to have been taken in view of feedback from a majority of managers and employees who vouched for the flexibility and increased productivity brought on by work-from-home during the Covid-19 pandemic.

SWIGGY LAUNCHES 'MOONLIGHTING' POLICY

Swiggy introduced 'Moonlighting Policy' for its full-time employees which allows them to take up other projects post working hours. Such secondary jobs will however not impact the employee's productivity while working for Swiggy and cannot have a conflict with the interest of Swiggy's business. Swiggy is likely to set out detailed guidelines soon.

COMPANIES ARE CREATING THEIR OWN RECRUITMENT PIPELINE TO OVERCOME TALENT SHORTAGE

Several corporations are adopting a more aggressive, proactive approach to developing their workforce in view of a supply-side shortfall in the availability of talent across various sectors. Measures adopted in this regard include creation of customized training modules, partnerships with colleges and technical training institutions for direct placement of job-ready candidates and implementation of reskilling programmes to utilize existing employees to fill gaps where there is a dearth of adequately skilled candidates.

URBAN COMPANY IMPLEMENTS 'PARTNER STOCK OWNERSHIP PLAN' (PSOP)

Urban Company plans to allot stock options worth approximately INR 150 crores to its gig workers over a five-to-seven-year period through a trust managed to administer the plan. While the company also operates in Australia, Singapore, Saudi Arabia and the UAE, the scheme is applicable only to the gig workers engaged in India. The move was welcomed by stakeholders as the company announced that the first tranche of shares worth approximately INR 75 crores will be disbursed over the next 3 to 4 years.

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MODEL HIV AND AIDS POLICY FOR ESTABLISHMENTS, 2022

The HIV/AIDS epidemic has always posed serious challenges from a work perspective as it impacts the supply of labour and performance of industries. Due to a low-risk perception and sometimes a lack of complete understanding of the disease, workplace interventions are generally limited.

On May 13, 2022, the Ministry of Health and Family Welfare released the Model HIV and AIDS Policy for Establishment 2022 ("**Model Policy**") for establishments engaged in production, supply or distribution of goods or services. The Model Policy has been notified under Section 12 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017. The Model Policy applies to both employers and employees (including job applicants) and their spouses, children or other dependent family, in the public as well as private sector. It is applicable at all workplaces and all aspects of work, whether formal or informal.

The Model Policy, based on principles of human rights, aims to guide the national response to HIV/AIDS in reducing and managing the impact of the epidemic in the world of work. Specifically, the Model Policy aims to:

- a. Prevent transmission of HIV infection amongst workers and their families.
- b. Protect rights of those who are infected and provide access to available care, support and treatment.
- c. Protect workers from stigma and discrimination related to HIV/AIDS by assuring them equity and dignity at the workplace.
- d. Ensure safe migration and mobility with access to information services on HIV/AIDS.

The Model Policy is based on the principles of non-discrimination and confidentiality and provides for a robust grievance redressal mechanism for persons infected and impacted with HIV and AIDS, including family members and co-habitants of infected persons ("**Protected Persons**").

The implementation of the Model Policy is certainly a step in the right direction to remove the stigma against Protected Persons at workplaces.

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