



EMPLOYMENT CORNER BULLETIN

VOLUME 2: AUGUST 2022 - NOVEMBER 2022

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We welcome you to the 4th Edition of Volume 2 of IndusLaw's Employment Corner Bulletin. The bulletin highlights the key statutory and judicial updates for the period between August 2022 and November 2022 that are significant to employers, employees, and the HR community.

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LEGAL UPDATES

STATUTORY UPDATES

Government of Madhya Pradesh releases draft amendment to factories rules

The Government of Madhya Pradesh on November 23, 2022 has released the draft amendment to the Madhya Pradesh Factories Rules, 1962 for public comments and suggestions. The amendments have been introduced to issue factory licenses for a period of 1 to 10 years or more, as chosen by the occupier. Earlier, the license was valid only for a calendar year.

Ministry of Skill Development and Entrepreneurship notifies the Apprenticeship (Amendment) Rules, 2022

The Ministry of Skill Development and Entrepreneurship has notified the Apprenticeship (Amendment) Rules with effect from November 15, 2022. The amendment clarifies that while the stipend will be paid to the apprentice by the employer as per the rates specified in Rule 11, the cost of stipend will be borne by both the Central Government and employer in accordance with the limits prescribed by the Central Government.

Government of Andhra Pradesh allows retail enterprises to remain open all days of the year

The Government of Andhra Pradesh vide notification dated November 1, 2022, has granted exemption to all retail enterprises from certain provisions of the Andhra Pradesh Shops and Establishments Act, 1988, thereby allowing them to remain open all days of the year, subject to the satisfaction of a set of specific conditions. The exemption is valid for 5 years.

Amendment to the Andhra Pradesh Labour Welfare Fund Act

The Government of Andhra Pradesh via a notification dated October 31, 2022, has amended the Andhra Pradesh Labour Welfare Fund Act, 1987 with effect from September 9, 2022. The key amendments are as follows:

- a. The monetary penalty for obstructing inspection, failure to produce documents or non-compliance with the directions of the Board has been considerably increased from INR 500 to INR 25,000 for the first offence and INR 1,000 to INR 1,00,000 for the second offence. Imprisonment as one of the consequences of non-compliance has been removed by the amendment.
- b. Provisions on cognizance of offences, offences by companies and limitation of prosecution have been omitted.
- c. The Andhra Pradesh Labour Welfare Fund (Second Amendment) Ordinance 2022 stands repealed.

Telangana Government permits women employees to work during night shifts in shops and commercial establishments.

The Government of Telangana, vide a notification dated October 13, 2022, has exempted all establishments covered under the Telangana Shops and Establishments Act, 1988 from the provision that restricts the employment of women employees at night shifts. This amendment now allows shops and commercial establishments to employ women at night shifts (8:30 PM to 6:00 AM), subject to the satisfaction of a set of specific conditions. If any establishment fails to comply with the prescribed conditions, it may lead to cancellation of the registration certificate and /or withdrawal of the exemption.

Amendment to the Gujarat building and other construction workers rules

The Labour Department of Gujarat via a notification dated September 17, 2022 has amended the Gujarat Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2003 ("Gujarat BOCW Rules"). The key amendments to the Gujarat BOCW Rules are as follows:

- a. The time limit for granting the registration certificate by the registering officer under the Building and Other Construction Workers Act, 1996 has been increased from 15 days to 30 days.
- b. The concept of deemed registration of establishment has been introduced once there is an expiry of 30 days from the date of receipt of the application.

Women employees in factories of Himachal Pradesh can now work during night shifts

The Government of Himachal Pradesh issued a notification on August 12, 2022, which now permits women workers in factories to work between 07:00 PM and 6:00 AM, subject to the satisfaction of a set of specific conditions. The notification is valid for 3 years.

Government of Kerala notifies the Kerala Shops and Commercial Establishments (Amendment) Rules, 2022

The Government of Kerala has notified the Kerala Shops and Commercial Establishments (Amendment) Rules, 2022 with effect from August 10, 2022. The amendments have been introduced to facilitate the ease of doing business and minimise regulatory compliances for establishments. For instance, the requirement to file quarterly returns in Form H has also been omitted.

EPFO releases Standing Operating Procedures for settling claims of death

The EPFO, Ahmedabad vide a circular dated August 3, 2022 has issued Standard Operating Procedures for settling provident fund claims in case of a death of an employee member due to an industrial accident. The EPFO had earlier advised employers to promptly provide all information related to deceased employees for settlement of claims on a priority basis.

Government of Madhya Pradesh mandates 1 day menstruation leave for women employees working in night shift

The Government of Madhya Pradesh through a notification dated August 1, 2022 has permitted women employees to work between 9:00 PM and 7:00 AM subject to certain terms and conditions. While the terms and conditions are substantively in line with similar notifications issued by other State Governments, one of the key considerations is that a woman employee will also be entitled to a paid holiday during her menstruation period. The menstruation leave is in addition to the other leaves a woman employee is entitled to.

THE LABOUR CODES: STORY SO FAR

To address the uncertainty regarding the implementation of the Labour Codes, on August 4, 2022, the Ministry of Labour and Employment issued a public statement that as a step towards implementation of the Labour Codes, the Central Government has pre-published the draft Rules and has invited comments from all stakeholders. Additionally, the Ministry's efforts to uplift the workers in the unorganized sector was also highlighted.

On August 25 and August 26, 2022, the Labour Ministry scheduled a discussion with certain officials of the Central Government and various State Governments at Tirupati. The discussions primarily revolved around the development and implementation of the Labour Codes as well as strategizing on building online portals for licensing, registrations, refunds etc. under the Labour Codes.



JUDICIAL DEVELOPMENTS

SUPREME COURT OF INDIA

Sl. No.	Ratio	Brief details
1.	Period during which the interest is payable under Section 39(5)(a) of Employees State Insurance Act, 1948 cannot be reduced (November 17, 2022) <i>The Regional Director/Recovery Officer and Anr. v. Nitinbhai Vallabhai Panchasara.</i> ¹	The Supreme Court held that Section 39(5)(a) of the Employees State Insurance Act, 1948 unambiguously states that the principal employer is obligated to pay interest on its failure to pay contribution. The Court noted that neither the authority nor the court have any right to waive or reduce the interest and/or the period during which such interest is payable.
2.	Provisions of the Employee's Pension (Amendment) Scheme, 2014 have been held as legal and valid. (November 4, 2022) <i>The Employees Provident Fund Organisation and Anr. v. Sunil Kumar B. and Ors.</i> ²	The Supreme Court upheld the validity of the Employees' Pension (Amendment) Scheme, 2014 with a few exceptions. The Court observed that the condition for additional rate of contribution by employees who are exercising the option to contribute beyond the ceiling limit was invalid. Extended period of 4 months has been granted to members who wish to exercise the option under the amended scheme.
3.	Employee dismissed pursuant to internal disciplinary proceedings cannot be reinstated merely because he was acquitted in a related criminal case (September 02, 2022) <i>State of Rajasthan v. Phool Singh.</i> ³	The Supreme Court has held that an employee who has been dismissed from employment pursuant to an internal disciplinary proceeding cannot be reinstated into services merely because he was acquitted in a related criminal case on technical grounds. The Court also observed that in case acquittal in a related criminal case is based on a finding of "not-guilty", reinstatement into services may be validly awarded.
4.	Woman employee cannot be declined maternity leave for having availed childcare leave for her non-biological child (August 16, 2022) <i>Deepika Singh v. Central Administrative Tribunal and Ors.</i> ⁴	The Supreme Court held that a woman cannot be declined maternity leave for nursing her biological child on the ground that she had already availed childcare leave for taking care of her children from her previous marriage. The Court recognised the increasing prevalence of atypical families in India and highlighted that such families are also entitled to the protection of law.

HIGH COURTS

Sl. No.	Ratio	Brief details
1.	Employer's right to utilize employee's service on promotion cannot be curtailed by general guidelines on routine transfers (November 01, 2022) <i>Sumit Dagar v. Union of India and Ors.</i> ⁵	The Delhi High Court held that the right of an employer to utilize the services of an employee pursuant to a promotion cannot be curtailed by general guidelines issued for regulating annual or routine transfers. Parameters applied while framing policy to regulate annual transfer of employees cannot be applied to transfers post promotions.

1. SLP (C) No. 16380/2022
2. SLP (C) No. 8658-8659 of 2019
3. Civil Appeal No.5930 of 2022.
4. Civil Appeal No.5302 of 2022.
5. WP(C)/12441/2022.

HIGH COURTS

Sl. No.	Ratio	Brief details
2.	Show cause notice is a must for forfeiture of gratuity on dismissal from service (October 10, 2022) <i>Siyaram Basanti v. Chhattisgarh Rajya Gramin Bank and Ors.</i> ⁶	The Chhattisgarh High Court held that gratuity of an employee cannot be forfeited without a show cause notice being issued to the employee. The Court observed that forfeiture of gratuity is only permissible for acts of misconduct causing financial loss to the employer. If no loss has occurred, non-releasing of gratuity would be deemed arbitrary.
3.	Employee not entitled to initiate criminal proceedings against an employer after termination of employment (September 19, 2022) <i>Samiulla B. vs. the State of Karnataka</i> ⁷	The Karnataka High Court held that an employee cannot initiate criminal proceedings against an employer as a way of challenging the termination of service. Grievances pertaining to termination of services must be brought before the appropriate forum.
4.	Mere emails and Form 16A not sufficient to establish employer-employee relationship (September 01, 2022) <i>Kaushak Kishor Singh v. M/S Sita Kuoni World Travel India Limited.</i> ⁸	The Delhi High Court has held that a freelancer cannot raise a claim for wrongful termination of employment by attempting to establish an employer-employee relationship through emails and Form 16A of the Income Tax Act, 1961. The Court also observed that a freelancer is a person who acts independently without being affiliated with or authorised by an organisation, and is hence distinguishable from part-time, full-time, or contractual employees.
5.	Deceased employee's gratuity to be disbursed amongst heirs including 'illegitimate sons' (August 26, 2022) <i>Anil Singh and Ors. v. State of Assam and Ors.</i> ⁹	The Gauhati High Court has held that the term "legal heirs" under the Payment of Gratuity Act, 1972 also includes illegitimate sons. This conclusion was derived from a conjunctive reading of the definition of "legal heirs" under the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956, both of which include illegitimate sons.
6.	Non-renewal of contract during probation does not amount to "retrenchment" under the Industrial Disputes Act, 1947 (August 10, 2022) <i>Chief Executive & Ors. v. Vanjibhai Laljibhai Chaudhary</i> ¹⁰	The Gujarat High Court has held that when an appointment has been made on probation/ad hoc basis for a specific period of time, and such appointment comes to an end by the efflux of time, the person holding such post cannot claim any right to continue in that post. The Court therefore noted that such termination on account of efflux of time does not amount to retrenchment under the Industrial Disputes Act, 1947.

6. WPS No. 503 of 2020.

7. Writ Petition No. 9520 of 2022.

8. WP(C) 11631/2018.

9. WP(C)/2770/2016.

10. C/SCA/10361/2008.

WHAT'S TRENDING¹¹?

GOVERNMENT OF TAMIL NADU PUBLISHES GLOSSARY OF DIGNIFIED TERMS TO ADDRESS INDIVIDUALS FROM THE LGBTQIA+ COMMUNITY

In a first-of-its-kind move, the Tamil Nadu Government has published a glossary of LGBTQIA+ terms in order to prevent derogatory references to LGBTQIA+ persons. The glossary was released at the direction of the Madras High Court which, through a series of its judgments, suggested to address persons belonging to LGBTQIA+ community with more dignity and respect. The High Court has also directed the media to address the community members by only using the terms that have been published in the gazette.

MEESHO ANNOUNCES 11 DAY 'MENTAL HEALTH' BREAK FOR EMPLOYEES

Meesho announced a 11-day company wide-break for its employees allowing them to completely disconnect from work and prioritize their mental health. The initiative is called "rest and recharge". Various other organizations such as Slice, OYO India and Swiggy have also implemented similar policies to protect the mental health of its workforce.

ORGANIZATIONS SEEKING HELP OF LAW FIRMS TO ADDRESS 'MOONLIGHTING'

While the industry's position on moonlighting is rather divided, several organizations are seeking legal advice to reshape their policies and employment contracts in order to enforce restrictions on moonlighting practices. Conflict of interest, exclusivity and confidentiality provisions are specifically being relooked at to ensure that employees are not taking up any additional job which conflicts with the organizations' interest or results in breach of confidentiality.

INFOSYS ALLOWS EMPLOYEES TO TAKE UP 'GIG JOBS' WITH CONSENT OF THEIR MANAGERS

Infosys India has permitted its employees to take up alternate 'gig' jobs while being employed with the organisation. However, the employees are only permitted to undertake such alternate 'gig' jobs with the prior written consent of their manager and subject to such alternate jobs not conflicting with the interest and business operations of Infosys India.

INDIA INC. ADDS EXTRA LEAVES AND WELLNESS DAYS TO EASE RETURN TO OFFICE

As organizations are focusing on getting employees to return to the workplace, employers are devising ways to make the transition better by offering a variety of time-off options, including long weekends, pens down days, wellness leaves, health, recharge leaves and flexible vacation policies. Organizations such as Microsoft, KPMG, Goldman Sachs, Deloitte, Cimpres, and InMobi are introducing programs to prevent burnout and help employees recharge.

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FINTECH START-UP INTRODUCES 'ATTITUDE BONUS'

EnKash, a FinTech start-up, has launched a unique incentive program called 'Attitude Bonus' which will reward its employees for their ownership and intrapreneurial attitude towards work and organization's growth. Employees would be encouraged to hone multifaceted skills, improve accountability and ownership and go 'beyond their call of duty'.

SWIGGY ANNOUNCES SEXUAL HARASSMENT POLICY FOR WOMEN DELIVERY EXECUTIVES

Swiggy announced a new sexual harassment policy which will apply to customers and third parties who were otherwise not covered under the existing anti-sexual harassment at workplace guidelines. The policy is formulated with the objective of providing emergency assistance as well as empower women delivery executives to report grievances with the assurance that concrete action would be taken.



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