



**EMPLOYMENT
CORNER BULLETIN**

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We welcome you to the 1st Edition of Volume 3 of IndusLaw's Employment Corner Bulletin. The bulletin highlights the key statutory and judicial updates for the period between December 2022 and February 2023. This edition also brings to your attention certain key trends that are being discussed and debated amongst employers, employees and the HR community.

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LEGAL UPDATES

STATUTORY UPDATES

Amendment to Andhra Pradesh Maternity Benefit Rules, 1966

The Government of Andhra Pradesh via a notification dated December 8, 2022, has brought certain significant amendments to the Andhra Pradesh Maternity Benefit Rules, 1966. The key amendments are as follows:

- (a) The number of nursing breaks for women employees have been increased from 2 to 4.
- (b) Every establishment with 50 or more employees is required to establish a creche facility within 250 meters from the place of work.
- (c) Women employees should be issued appointment letters with details of the creche facility, and these details should also be displayed in a prominent place at the establishment.

Karnataka Government passes the Factories (Karnataka Amendment) Bill, 2023

The Karnataka Legislative Assembly on February 22, 2023, passed the Factories (Karnataka Amendment) Bill, 2023 which proposes certain amendments under the Factories Act, 1948 ("FA"). Some of the critical proposed amendments are as follows:

- (a) Maximum daily working hours of employees will be extended from 9 hours to 12 hours inclusive of the period of rest, subject to the maximum weekly limit of 48 hours.
- (b) As per Section 59 of the FA, a worker may be entitled to overtime wages, if they work: (i) for more than 9 hours a day or more than 48 hours a week, working for 6 days in a week, (ii) for more than 10 hours a day or more than 48 hours a week, working for 5 days in a week, (iii) for more than 11.5 hours a day working 4 days a week or works on paid holidays.
- (c) for more than 11.5 hours a day working 4 days a week, or works on paid holidays.
- (d) It has been proposed that women employees can work beyond 7:00 PM or before 6:00 AM in factories, subject to their consent and certain safety measures implemented by the employer.

SEZ rules amended to liberalise WFH for SEZ units

The Ministry of Commerce and Industry via a notification dated December 8, 2022, amended the provisions of the Special Economic Zone Rules, 2006, thereby providing certain relaxations under the pre-existing work from home guidelines for eligible employees working in SEZ (Special Economic Zone) units. Our detailed analysis of the amendment is available [here](#).

Tamil Nadu Government notifies the Tamil Nadu Transgender Persons (Protection of Rights) Rules, 2022

On December 26, 2022, the Tamil Nadu Transgender Persons (Protection of Rights), Rules, 2022 under the Transgender Persons (Protection of Rights) Act, 2019 was published. The rules inter alia provide for: (a) the procedure for issuance of certificate of identity to transgender persons (including a detailed application process); (b) provisions prohibiting discrimination against transgender persons; (c) mandatory implementation of measures undertaken by an employer to provide for an equal opportunity environment in establishments; (d) provisions for setting up a grievance redressal mechanism and appointment of a complaints officer by establishments.

Further, the Tamil Nadu Social Welfare and Women Empowerment Department released a glossary of terms relating to the LGBTQIA+ community. Please refer to our info alert [here](#) for further information on this.

Ministry of Labour and Employment classified the Uranium industry as a 'Public Utility Service'

The Ministry of Labour and Employment on January 9, 2023, declared the uranium industry as a public utility service for a period of 6 months under the Industrial Disputes Act, 1947.

Government of Gujarat amends the Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972

The Government of Gujarat on February 20, 2023, amended the Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972 thereby providing a period of 45 days for grant of registrations and licenses on receipt of such application.

Haryana Government permits women employees to work during night shifts

The Government of Haryana via a notification dated February 21, 2023, permitted women employees to work from 08:00 PM to 06:00 AM, subject to certain terms and conditions. The permission has been granted for 1 year only to IT and ITeS establishments, banking establishments, 3 star or above rated hotels, 100% export-oriented establishments, logistics and warehousing establishments, registered under the Punjab Shops and Establishments Act, 1958. The conditions for grant of exemption include measures for security and safety of women employees, prevention of acts of sexual harassment, provision for transportation facilities, the requirement of prior consent from women workers, among other things.

Introduction of unified portal for principal employers to check EPF compliances

The Employees' Provident Fund Organisation ("EPFO") via a circular dated December 28, 2022, released an advisory to all principal employers requiring them to login and view their Employees' Provident Fund ("EPF") compliances for their contractors and contract workers through the unified portal (<https://unifiedportal-emp.epfindia.gov.in/epfo/>). The principal employers are advised to register their details on the EPFO portal and regularly check their contractors' statutory compliances under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act") and corresponding schemes.

EPFO issued directions pursuant to the Supreme Court's judgment dated November 4, 2022

The Supreme Court of India in the case of *EPFO and Ors. v. Sunil Kumar and Ors.*, on November 4,

2022,¹ upheld the validity of the Employees' Pension (Amendment) Scheme, 2014 ("**EPS Amendment**"), which had introduced certain far-reaching changes to the Employees' Pension Scheme, 1995 ("**EPS**"). Thereafter, pursuant to the above judgment, the EPFO issued few circulars. The key takeaways of the Supreme Court's decision and the subsequent relevant circulars of the EPFO have been examined and summarised by us in our info alert which can be accessed [here](#). In addition to the previous circulars, on February 20, 2023, the EPFO reiterated that members will be entitled to an additional extension of 4 months (up to May 3, 2023) to exercise their option for a higher pension under the EPS.

'Silpasathi,' a single window portal for several registration and licenses in West Bengal

The Government of West Bengal, via a notification dated December 27, 2022, listed 13 services of the Labour Department under the FA, the Contract Labour (Regulation and Abolition) Act, 1970 ("**CLRA**"), the Shops and Establishment Act, 1963, among other legislations, to be entirely integrated with their State single window portal called the 'Silpasathi' portal. The notification clarified that the services listed will be exclusively routed through the Silpasathi portal instead of the standalone online systems with effect from January 1, 2023.

Subsequently, the Government of West Bengal, via a notification dated February 2, 2023, observed that common citizens were facing problems to obtain a 'Certificate of Enlistment' (Trade License) on the Silpasathi portal. To obtain the trade license, citizens are directed to exclusively use the e-district portal with effect from February 2, 2023, instead of the Silpasathi portal, until further orders.

ESIC announces change of domain name of ESIC website

The Employees' State Insurance Corporation ("**ESIC**") on December 7, 2022, issued a press release to announce a change in domain name of its websites - 'www.esic.nic.in' and 'www.esic.in'. The new unified ESIC website is 'www.esic.gov.in'. The services available on the erstwhile websites are now available on the new unified website.

¹ AIR 2022 SC 634

ESIC provides information on benefits and modifications of the 'AAA+ Mobile App'

The ESIC on January 31, 2023, issued a circular regarding the 'AAA+ Mobile App', to list the reasons for the low adoption and usage of the application. In an attempt to facilitate the usage of the application, the circular shed light on the modifications introduced to ease the process of seeking appointment and consultation while

using the application. The modifications include (a) easier IP authentication by logging in via OTP sent on user mobile phone numbers, (b) same day appointment for users, (c) self-check-in facility for the day on which the user may be availing an appointment, (d) priority pharmacy access for those consulting a doctor via the application, (e) access to 8 regional languages including English, Hindi, Gujarati, Punjabi, Malayalam, Marathi, Kannada and Tamil, among other things.



THE LABOUR CODES: STORY SO FAR

The Ministry of Labour and Employment on December 12, 2022, via a press release discussed the status of implementation of the Labour Codes, namely the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020. The Ministry re-confirmed that the Central Government and several State Governments have published the draft Rules, inviting comments from all stakeholders. As part of the information shared with the Lok Sabha, the salient provisions surrounding strengthening the protection available to workers, social security and healthcare of workers was also highlighted.

On January 20, 2023, the Government of Mizoram notified the Mizoram Code on Wages Rules, 2022 under the power conferred by the Code on Wages, 2019, in supersession of the Mizoram Payment of Wages Rules, 1992 and the Mizoram Minimum Wages Rules, 1992.



JUDICIAL DEVELOPMENTS

SUPREME COURT OF INDIA

Sl. No.	Ratio	Brief details
1.	Regularisation of the services of contract labourers by principal employer cannot be allowed when it is statutorily prohibited, or when the contract between principal employer and contractor not proven to be a sham (December 5, 2022) <i>Kirloskar Brothers Limited v. Ramcharan and Ors.</i> ²	The Supreme Court held that unless it has been established by an industrial adjudication that a contract between a principal employer and a contractor is a contract of sham and contract labour has not been prohibited by the appropriate authority under Section 10 of CLRA, the question of directing the principal employer to absorb or regularise the services of the contract labourers does not arise.
2.	The ESI Act to be applicable to factories and establishments irrespective of the number of persons employed (January 20, 2023) <i>The Employees' State Insurance Corporation v. Radhika Theatre</i> ³	The Supreme Court reiterated the position of law by stating that as per Section 1(6) of the Employees' State Insurance Act, 1948 (" ESI Act "), a factory or an establishment will be governed by the ESI Act even if the number of employees fall below the specified limit at any given time.
3.	Payment of all outstanding employees' provident and gratuity dues of the corporate debtor is necessary for a resolution plan to be compliant (January 30, 2023) <i>Jalan Fritsch Consortium v. Regional Provident Fund Commissioner</i> ⁴	The Supreme Court upheld the order of the National Company Law Appellate Tribunal (NCLAT), which directed the consortium to pay provident fund and gratuity amounts due to an airline's former employees as part of the resolution plan formulated upon a successful corporate insolvency resolution process. The NCLAT held that a resolution professional must ensure that the resolution plan is aligned with applicable labour laws.
4.	Employees cannot alter their date of birth at the 'fag end' of their career (February 17, 2023) <i>The General Manager Southeastern Coalfields Ltd. and Ors. v. Avinash Kumar Tiwari</i> ⁵	The Supreme Court stated that employees cannot seek to alter their date of birth in the service records after a long delay and especially towards the end of their career.

2. SLP (C) No. 8446-8447 of 2022

3. Civil Appeal No. 312 of 2023

4. Civil Appeal No. 407 of 2023

5. SLP (C) No. 14238 of 2022

HIGH COURTS

Sl. No.	Ratio	Brief details
1.	<p>Failure to complete inquiry within stipulated timeframe is not a ground to quash a sexual harassment complaint (January 5, 2023)</p> <p><i>CA Nitesh Parashar v. Institute of Chartered Accountants of India (ICAI)</i>⁶</p>	<p>The Delhi High Court observed that inquiry proceedings conducted pursuant to a sexual harassment complaint cannot be quashed merely because the Internal Complaints Committee failed to complete inquiry proceedings within the stipulated 90 days under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”).</p>
2.	<p>Maternity benefits cannot be denied on the basis of interpretations and technicalities (January 12, 2023)</p> <p><i>Tamil Nadu State Transport Corporation (Coimbatore) Ltd. v. B. Rajeswari</i>⁷</p>	<p>The Madras High Court held that even if it is assumed that a female worker’s working days were lesser than the statutory requirement, the Maternity Benefit Act, 1961 is a welfare legislation and cannot be denied merely on the basis of interpretations and technicalities. The Court further relied on a Supreme Court judgement⁸ and observed that female workers, even working on a casual basis or on muster roll on a daily-wage basis, should be given maternity benefit.</p>
3.	<p>Covid-19 vaccination cannot be insisted upon by an employer (January 18, 2023)</p> <p><i>Isha v. State (NCT of Delhi) and Ors.</i>⁹</p>	<p>The Delhi High Court held that Covid-19 vaccination cannot be insisted upon by the employer and granted relief to a government school lecturer seeking permission to teach and undertake other responsibilities without being forced to take the said vaccine.</p>
4.	<p>Offence of cheating not attracted upon mere non-remittance of EPF contributions by an employer (January 23, 2023)</p> <p><i>CH K.S. Prasad @ K S Prasad v. State of Karnataka</i>¹⁰</p>	<p>The Karnataka High Court held that contribution towards EPF by an employee is a statutory deduction and its non-remittance by the employer in the employee’s account with the EPFO will not merely attract the offence of cheating.</p>
5.	<p>FIR can be quashed in a criminal sexual harassment matter when IC could not establish a case of sexual harassment (January 25, 2023)</p> <p><i>Ashish Chauhan v. State (Government of NCT of Delhi) and Anr.</i>¹¹</p>	<p>The Delhi High Court quashed an FIR filed for sexual harassment where the Internal Committee (IC) under the POSH Act was unable to establish a case of sexual harassment. The complaint of sexual harassment was withdrawn before completion of inquiry by the IC. However, the IC had gone ahead and completed the inquiry. The Court quashed the FIR filed in relation to this matter.</p>
6.	<p>Employers cannot escape liability for delaying constitution of ICC for inquiring into sensitive sexual harassment complaints (February 3, 2023)</p> <p><i>P. v. Union of India</i>¹²</p>	<p>The Delhi High Court observed that constitution of an Internal Complaints Committee (ICC) is of utmost importance and needs to be completed in all aspects under the POSH Act. The Court further held that employers cannot escape liability for delaying sensitive sexual harassment complaints under the POSH Act on the mere ground that the ICC was constituted incorrectly and thus requiring a re-examination of the proceedings at hand. In the present case, the Court directed the organisation to pay INR 1 lakh for its irresponsible behaviour.</p>

6. W.P.(C) 88/2023

7. W.A. No. 1692 of 2022

8. *Municipal Corporation of Delhi v. Female Workers (Muster-roll) and Anr.* 2000 (2) LLN 390 (SC)

9. W.P. (C) 12985/2021

10. Criminal Petition No. 195 of 2020

11. WP (Criminal) 2802 of 2019

12. WP (C) No. 3056 of 2021

WHAT'S TRENDING?¹³

DREAM11 INTRODUCES 'UNPLUG POLICY' FOR ITS EMPLOYEES

Indian fantasy sports platform Dream11 has implemented an 'Unplug policy' to ensure employees enjoy their holidays without having to address work emails, messages and calls. The policy allows employees to "cut off" from company systems and work-related emails, messages, calls and even their colleagues, for a week. Employees who reach out to other employees of the organization during their leave days will be penalised with a fine of INR 1,00,000.

PFIZER INDIA ANNOUNCES 12-WEEK PATERNITY LEAVE POLICY FOR MALE EMPLOYEES

Pfizer India announced a 12-week paternity leave policy for its employees as part of its diversity and inclusion initiative. The policy has been made effective from January 2023 and offers birthing and non-birthing fathers the flexibility to avail the leaves over 2 years.

ZOMATO ANNOUNCES 'REST POINTS' FOR DELIVERY PARTNERS

Zomato announces the launch of 'Rest Points' for its delivery partners to recharge and rest. The rest points are being built across India and will be equipped with high-speed internet, first aid support, phone recharging stations, washroom and clean drinking water facilities. Delivery partners from other organizations may also avail the benefits of the rest points.

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OUR OFFICES

BENGALURU

101, 1st Floor, "Embassy Classic" # 11
Vittal Mallya Road
Bengaluru 560 001
T: +91 80 4072 6600
F: +91 80 4072 6666
E: bangalore@induslaw.com

HYDERABAD

204, Ashoka Capitol, Road No. 2
Banjarahills
Hyderabad 500 034
T: +91 40 4026 4624
F: +91 40 4004 0979
E: hyderabad@induslaw.com

CHENNAI

#11, Venkatraman Street, T Nagar,
Chennai - 600017 India
T: +91 44 4354 6600
F: +91 44 4354 6600
E: chennai@induslaw.com

DELHI & NCR

2nd Floor, Block D
The MIRA, Mathura Road, Ishwar Nagar
New Delhi 110 065
T: +91 11 4782 1000
F: +91 11 4782 1097
E: delhi@induslaw.com

9th Floor, Block-B
DLF Cyber Park
Udyog Vihar Phase - 3
Sector - 20
Gurugram 122 008
T: +91 12 4673 1000
E: gurugram@induslaw.com

MUMBAI

1502B, 15th Floor
Tower – 1C, One Indiabulls Centre
Senapati Bapat Marg, Lower Parel
Mumbai – 400013
T: +91 22 4920 7200
F: +91 22 4920 7299
E: mumbai@induslaw.com

#81-83, 8th Floor
A Wing, Mittal Court
Jamnalal Bajaj Marg
Nariman Point
Mumbai – 400021
T: +91 22 4007 4400
E: mumbai@induslaw.com