



# EMPLOYMENT CORNER BULLETIN

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We welcome you to the 2nd Edition of Volume 3 of IndusLaw's Employment Corner Bulletin. The bulletin highlights the key statutory and judicial updates for the period between April and June of 2023. This edition also brings to your attention certain industry practices that are significant for both employers and employees.

For the **PRIDE MONTH** of June, we have also dedicated a section in this bulletin where we have discussed the Same Sex Marriage case which was heard by the Supreme Court of India recently, and the initiatives taken by multiple organizations to make their workplace diverse and inclusive.

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## STATUTORY UPDATES

### Ministry of Labour and Employment classifies certain sectors as public utility service.

The Ministry of Labour and Employment, via a notification dated June 23, 2023, has declared the uranium industry as a public utility service for the purposes of the Industrial Disputes Act, 1947 for a period of 6 months starting from July 09, 2023. Similarly, the copper mining industry has also been declared as a public utility service via a notification dated June 05, 2023. This status is to remain in effect for 6 months starting from June 28, 2023.

### SEBI lays down additional guidelines for listed entities.

On June 14, 2023, the Securities and Exchange Board of India (SEBI) issued the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 which set out rules regarding appointment/reappointment of Key Managerial Personnel ("KMPs") in listed companies in addition to certain other guidelines. A few of the key amendments are as follows:

- (a) In case of vacancy for the position of a CEO, Managing Director, Compliance Officer, Chief Financial Officer, whole-time directors, manager, or any director, every listed company is required to fill in such vacancies within 3 months.
- (b) From April 1, 2024, a director is required to seek the approval of the shareholders in a general meeting to continue as a part of the board of a company. Such approval should be obtained at least once in every 5 years from the date of their appointment/reappointment. Further, if a director is serving on the board of a listed company as on March 31, 2024, without the approval of shareholders in the last 5 years or more, she/he would have to seek the approval in the first general meeting of the company after March 31, 2024.

The amendment also carves out an exception for certain directors of the company (such as whole-time directors, managing director, independent directors and certain other categories of directors) from complying with the above requirement.

- (c) In the event of resignation of a KMP, the letter of resignation along with detailed reasons for the resignation must be disclosed to the stock exchange within 7 days.
- (d) In case the Managing Director or the CEO is indisposed or unavailable to fulfil the requirements of the role in a regular manner for more than 45 days in any rolling period of 90 days, this along with the reasons for such indisposition or unavailability, must be disclosed to the stock exchange.
- (e) The amendment also stipulates mandatory disclosures of: (i) frauds or defaults by KMP; (ii) the announcement of any material information of the listed entity by KMP where such information has not already been made public; (iii) action initiated against KMP by any statutory, enforcement, regulatory or judicial body; and (iv) agreements entered into by KMP or employees of the entity that have an impact on the listed entity.

### Ministry of Education relaxes eligibility criteria for registration of degree/diploma graduates as apprentices under NATS.

The Ministry of Education, via a circular dated June 12, 2023, has relaxed the eligibility criteria for degree/diploma graduates to register as apprentices under the National Apprenticeship Training Scheme. Graduates earlier could join as an apprentice within 3 years from the date of passing the qualifying examination. However, the graduates can now join as an apprentice within 5 years from the date of passing the qualifying examination.

### ESIC clarifies 'inactive' option for companies not meeting the threshold under the ESI Act.

The Employees' State Insurance Corporation ("ESIC"), via a circular dated June 02, 2023, has clarified concerns of compliance posed by employers, who are not meeting the requisite employee threshold under the Employees' State Insurance Act, 1948 ("ESI Act"). As per a previous circular of the ESIC dated November 11, 2022, employers registered on the Ministry of Corporate Affairs portal, without meeting the employee threshold limit under the ESI Act, could be declared as dormant so as to not meet

compliance obligations for 6 months or till they meet the threshold, whichever was earlier. These companies can extend the option further before the expiry of 6 months, depending on the status of the company.

### **Shops and commercial establishments in Punjab permitted to remain open for 365 days a year.**

The Government of Punjab, via a notification dated June 02, 2023, has permitted all shops and commercial establishments to stay open for 365 days in a year for 1 year till May 31, 2024. The exemption is subject to the following conditions:

- (i) Every employee must be given 1 day's holiday in a week, and a timetable of holidays for a month shall be displayed on the notice board.
- (ii) Every employee is to be given a rest period of 1 hour after 5 hours of continuous work.
- (iii) No employee is required to work for more than 9 hours in a day or 48 hours in a week.
- (iv) Proper safety and security arrangements must be ensured for employees and visitors after 10 PM on any day.
- (v) New staff may be appointed for extended timing.
- (vi) Female employees are to be provided separate lockers, adequate security measures, and rest rooms at the workplace.
- (vii) Employers hiring female employees are to constitute Internal Complaints Committees as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (viii) Female employees should not be asked to work after 8 PM. If needed, their consent must be taken, and adequate safety and security arrangements must be made.
- (ix) The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 must be implemented.
- (x) Consent letter is to be collected from all employees and kept on record at the workplace.
- (xi) The spread over of an employee is not allowed to exceed 11 hours in a day.
- (xii) Employees must be provided national and festival holidays with wages.

(xiii) The wages along with overtime wages must be credited to the savings bank accounts of employees.

### **ESIC notifies implementation of AADHAAR seeding of insured persons.**

On May 25, 2023, the Employees' State Insurance Corporation (ESIC) notified the implementation of an online facility within the ESIC employee portal, wherein existing employees can seed their AADHAAR number for themselves as well as their family members on a voluntary basis. The ESIC had previously, on April 17, 2023, provided an online facility for seeding AADHAAR number for newly insured persons, ESIC employees and pensioners. The ESIC had made it mandatory for all employees to link their AADHAAR with their UAN (Universal Account Number) to prevent fraudulent transactions.

### **Tax exemption limit for encashment of earned leaves has been increased to INR 25,00,000.**

The Central Board of Direct Taxes, via a notification dated May 24, 2023, has increased the limit for tax exemption on encashment of earned leave from INR 3,00,000 to INR 25,00,000 for non-government salaried employees. The exemption is claimed on superannuation or otherwise and is specified under Section 10 (10AA) (ii) of the Income Tax Act, 1961.

### **Tamil Nadu government amends the Tamil Nadu Shops and Establishments (Amendment) Act, 2018.**

The Tamil Nadu government, on May 17, 2023, has notified the Tamil Nadu Shops and Establishments (Amendment) Amendment Act, 2023, thereby amending the Tamil Nadu Shops and Establishments (Amendment) Act, 2018. The latest amendment has prescribed the payment of fees for submitting as well as for amending the application for registration. Additionally, the procedure for applying for a duplicate registration certificate (in the event of loss or destruction of the original registration certificate) has also been laid down.

## Chhattisgarh government notifies rules under the Rights of Persons with Disabilities Act, 2016.

The Chhattisgarh Government, via a notification dated May 16, 2023, has notified the Chhattisgarh Rights of Persons with Disabilities Rules, 2023 ("**Rules**") under the Rights of Persons with Disabilities Act, 2016. The key provisions of the Rules are as follows:

- a) All organizations are required to appoint 1 employee as the nodal officer to deal with the grievances of persons with disabilities. The details of such grievances must be relayed to the State Commissioner for Persons with Disabilities.
- b) Private establishments employing more than 20 persons shall initiate action in response to such grievances, and the matter should be redressed within 90 days.
- c) All establishments shall publish the equal opportunity policy on their website and in the absence of a website, at a conspicuous place in the workplace. In establishments hiring more than 20 employees, facilities and services provided to persons with disabilities, list of concerned persons, preference given in manner of selection to concerned persons etc. must be included in the policy.
- d) All establishments must maintain records of the details of persons with disabilities, the nature of their work and the facilities provided to them by the establishment. This needs to be submitted to the Social Welfare department annually in January.

## All shops and commercial establishments in Telangana permitted to remain open for 365 days.

The Government of Telangana, via a notification dated May 15, 2023, has permitted all shops and establishments to remain open for 365 days in a year for a period of 3 years from June 16, 2022. The exemption is subject to the establishments complying with certain conditions such as:

- i) No employee will be required to work for more than 8 hours in a day and 48 hours in a week. A record of overtime must be maintained in the Wages Register separately.
- ii) Employees should be provided weekly offs on a rotation basis.

- iii) The exemption will be cancelled if the employees are found working on any holiday or after working hours without indent of overtime or if there is a statutory violation.
- iv) Working hours of the shop/establishment must be between 9.00 AM and 11.00 PM.
- v) Transport arrangements must be made for women employees working beyond 8.30 PM, and exhibited at the entrance of the shop, in Telugu and English.
- vi) All employees are to be provided with appointment letters which must be shown to the jurisdiction Inspector for verification.
- vii) The visit book must be maintained with a copy of the exemption for verification by the Inspector.
- viii) The wages of the employees are to be credited to their savings bank accounts.
- ix) Contributions made towards the Employees' Provident Fund ("**EPF**") and the Employees' State Insurance Fund must be deducted with respect to the eligible employees.
- x) The employer should implement the conditions mentioned as well as other requirements under the Telangana Shops & Establishments Rules, 1990.

## Delhi Government clarifies procedure for seeking exemption under the Delhi Shops and Establishments Act, 1954.

The Delhi Government, on May 09, 2023, has clarified the procedure for establishments to seek an exemption under the Delhi Shops and Establishments Act, 1954, from the provisions pertaining to opening and closing hours, close day and employing young persons and women. According to the notice, employers can file applications for exemption only through the specified portal. Additionally, if the information provided in the application is not consonant with the information provided in the registration certificate of the establishment, the application would be kept in abeyance till the certificate is updated or a fresh application is submitted.

## Andhra Pradesh Government notifies amendment to the Andhra Pradesh Labour Welfare Fund Rules, 1988.

The Government of Andhra Pradesh, on May 04, 2023, has notified the latest amendment ("**AP LW Amendment**") to the Andhra Pradesh Labour Welfare

Fund Rules, 1988 (“**AP Rules**”). The AP LW Amendment notified designated authorities (not below the rank of Assistant Commissioner) as well as appellate authorities (not below the rank of Deputy Commissioner of Labour) under the AP Rules to deal with non-adherence with directions of the Labour Welfare Board. Additionally, the AP LW Amendment provides guidance on the appeal provisions as well.

### Government of Goa notifies the Factories (Goa Amendment) Act, 2019.

The Government of Goa, on April 18, 2023, notified the Factories (Goa Amendment) Act, 2019, thereby amending the Factories Act, 1948 (“**Factories Act**”). The key amendments are as follows:

- (a) The Chief Inspector (as appointed under the Factories Act) can now make exemptions to the working hours of workmen in a factory beyond the control of the State Government. This exemption is inapplicable if the total number of working hours of the workmen in a week exceeds 72 hours.
- (b) Women are allowed to work in factories or any manufacturing process between 7 PM and 6 AM provided the employer implements adequate measures for their safety.
- (c) The court can now take cognizance of offences under the Factories Act upon the complaint of the Chief Inspector.
- (d) The limitation period for a complaint to be initiated by the Inspector has been increased to 6 months.

### Government of Maharashtra amends various State specific labour laws.

On April 11, 2023, the Maharashtra Government notified the Maharashtra Labour Laws (Amendment) Act, 2022 (“**MH Labour Laws Act**”), thereby revising penal provisions under various state specific labour laws. The key provisions are as follows:

- (a) **Maharashtra Industrial Relations Act, 1947:** the penalty of imprisonment under the legislation has been substituted with fines for the offences of illegal change in standing orders, instigating illegal strikes, lockouts, etc.

- (b) **Maharashtra Labour Welfare Fund Act, 1953:** the penalty of imprisonment has been substituted with fines for the offences of obstructing the duties of an inspector, failure to produce documents for inspection before the inspector etc.

- (c) **Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969 and Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981:** the penalty of imprisonment has been replaced with appropriate fines for the offence of non-adherence with schemes for regular employment of unprotected workers and security guards respectively. Additionally, the general penalty for violations under these legislations have also been increased to INR 5 lakhs and to INR 5000 for continued contravention.

- (d) **Maharashtra Workmen’s Minimum House-rent Allowance Act, 1983:** the penalty for contravening the provisions of this Act or the corresponding Rules has been changed from imprisonment to appropriate fines.

### Maharashtra Government amends the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975.

The Government of Maharashtra, on April 06, 2023, notified the Maharashtra State Tax on Professions, Trades, Callings and Employments (Amendment) Act, 2023, which was brought into effect from April 1, 2023. The key amendments are as follows:

- (a) The amended provision in Schedule I categorises employees/wage earners based on their gender. Female employees who are earning up to INR 25,000 per month are exempted from depositing professional tax. Further, female employees earning above INR 25,000 per month are now covered in the class of eligible persons for payment of professional tax with the same rate of tax as that for male employees who earn more than INR 10,000 per month.
- (b) This amendment has imported the definition of ‘benchmark disability’ from the Rights of Persons with Disabilities Act, 2016, and has exempted such persons from depositing professional tax.

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## Madhya Pradesh Government notifies the Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralikiran Adhyadesh, 2023.

The Government of Madhya Pradesh on April 06, 2023, notified the Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralikiran Adhyadesh, 2023 ("**MP Act**"). The key provisions are as follows:

(a) A State Level Empowered Committee has been constituted to (i) notify areas within which interested

persons can apply for an acknowledgment certificate for setting up an industrial unit; and (ii) *inter alia* facilitate amicable settlement of disputes between an industrial unit and any competent authority under the MP Act. The acknowledgment certificate shall have the effect of an approval for a period of 3 years from the date of issuance.

(b) The Madhya Pradesh Industrial Development Corporation Limited has been notified as the nodal agency under the MP Act.



## THE LABOUR CODES: STORY SO FAR

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.	Rajasthan	<p><b>The Rajasthan Industrial Relations Rules, 2023</b> under the Industrial Relations Code, 2020 (<i>published on May 17, 2023</i>)</p> <p><b>The Rajasthan Code on Social Security Rules, 2023</b> under the Code on Social Security 2020 ("<b>SS Code</b>") (<i>published on May 09, 2023</i>)</p>	<p><b>Draft stage</b></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>
2.	Mizoram	<p><b>The Mizoram Occupational Safety, Health and Working Conditions Rules, 2022</b> under the Occupational Safety, Health, and Working Conditions Code, 2020 (<i>published on May 04, 2023</i>)</p>	<p><b>Draft stage</b></p> <p>The government has invited comments and suggestions from employers' organizations and trade unions recognized by the state government within a period of 45 days post which the draft rules shall be finalised. The stakeholders have been asked to send in their input latest by June 15, 2023.</p>





## NOTABLE DEVELOPMENTS UNDER THE EPF ACT

On November 04, 2021, the Supreme Court of India in the case of *Employees Provident Fund Organisation & Ors. v. Sunil Kumar B. & Ors.*<sup>1</sup>, upheld the validity of the Employees' Pension (Amendment) Scheme, 2014 ("**EPS Amendment**"). The EPS Amendment had sought to introduce certain amendments to the Employees' Pension Scheme, 1995 ("**EPS**") (such as an increase in the wage ceiling (INR 15,000) for contributions and the requirement to submit a fresh option for members who sought to contribute in excess of the wage ceiling).

The Apex Court held that only employees who were members of the EPS as on September 01, 2014, and had either exercised an option under the EPS or contributed on higher wages to the EPF, would be eligible for higher pension. For a detailed analysis of the Supreme Court's judgment and circulars issued by the Employees' Provident Fund Organisation ("**EPFO**") explaining the eligibility criteria for higher pension, please refer to our Info Alert available [here](#).

The key developments following the Supreme Court's judgment and the steps taken by the EPFO to implement the Apex Court's directions are summarized below:

- (a) Extension of Deadline:** Since setting up the online facility for submission of application for validation of joint option, the EPFO has given various extensions to the deadline for submission. On June 26, 2023, the EPFO extended this deadline up to July 11, 2023.
- (b) Relaxation of Requirement to Submit Option under EPF:** The Kerala High Court<sup>2</sup> passed an interim order directing the EPFO to make provisions in their online facility to allow for the submission of applications for higher pension without insistence on proof of exercise of joint option under the Employees' Provident Fund Scheme, 1952 ("**EPF Scheme**"). In view of similar challenges faced by pensioners who did not have their joint requests under Para 26 (6) of the EPF Scheme readily available, the EPFO, via a circular dated June 14, 2023, laid down an alternate procedure which has done away with the requirement to produce the joint request.

**(c) Manner of Validation of Joint Options:** On April 23, 2023, the EPFO issued a detailed circular explaining the manner in which applications for validation of joint options would be scrutinized by its officers. With respect to correcting errors in the joint application, the EPFO on May 03, 2023, announced the inclusion of a 'Delete Application' functionality on its online portal for rectifying the applications. This functionality can only be used by pensioners whose options have not been acted upon by the employer.

**(d) Developments under the Code on Social Security, 2020, vis-à-vis the Supreme Court judgment:**

On May 03, 2023, the Ministry of Labour and Employment notified certain provisions under the SS Code relating to the EPS. The provisions were notified to allow higher employer contributions with retrospective effect i.e., from September 01, 2014, without violating the Supreme Court's judgment which held that the requirement to contribute 1.16% of salary exceeding the wage ceiling was ultra vires the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("**EPF Act**").

In exercise of the powers under the SS Code, the Ministry of Labour and Employment increased the share of employer's contribution under the EPF Act towards EPS, from 8.33% to 9.49%, with effect from September 01, 2014. By incorporating the 1.16% additional contribution into the employer's share, a greater sum will be transferred from the employee's EPF account to the EPS with retrospective effect. However, no additional contributions would be required from the employer due to this change.

The EPFO, via an order dated June 02, 2023, has prescribed the constitution of the committees in charge of framing the drafts of the EPF Scheme, the EPS, and the Employees' Deposit Linked Insurance Scheme ("**Schemes**") under the SS Code. The first drafts of the Schemes were to be submitted by June 23, 2023.

1. AIR 2022 SC 634.

2. Writ Petition No. 9465 of 2022.

(e) **Changes in computation of pension:** On May 11, 2023, the EPFO issued a circular with a detailed explanation on the manner of calculation of EPS dues in light of the retroactive increase in employer's share of contribution towards EPS. Thereafter, on June 01, 2023, the EPFO issued a circular for computation of pension on higher wages where the date of commencement of pension is prior to and post September 01, 2014. Prior to September 01, 2014, the pension is to be calculated based on average monthly pay drawn during contributory period of service in the span of **12 months** preceding the

date of exit from the membership of the EPS. Post September 01, 2014, pension shall be calculated in the span of **60 months** preceding the date of exit from membership of the EPS.

(f) **Revised process for joint option under EPF Scheme:** On June 02, 2023, the EPFO issued a circular laying down the process for submission of joint option by existing and prospective members to contribute on wages in excess of the wage ceiling (INR 15,000) under the EPF Scheme. Employees must now submit a joint request with their employer in the prescribed form to the relevant regional office.



## JUDICIAL DEVELOPMENTS



### SUPREME COURT OF INDIA

Sl. No.	Ratio	Brief details
1.	A constitutional court cannot re-appreciate evidence during judicial review of departmental inquiry proceedings (May 17, 2023) <i>The Indian Oil Corporation &amp; Ors. v. Ajit Kumar Singh &amp; Anr.</i> <sup>3</sup>	The Apex Court held that it cannot re-appreciate evidence from a departmental proceeding at the stage of an intra-court appeal. A constitutional court can only evaluate the decision-making process and not the merits of the decision itself to ensure fairness in treatment.
2.	The Supreme Court issues directions to strengthen the implementation of the POSH Act (May 12, 2023) <i>Aureliano Fernandes v. State of Goa and Ors.</i> <sup>4</sup>	The Supreme Court has instructed all Union, State and Union territory administrative, statutory, and judicial authorities to constitute Internal Complaints Committees under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (" <b>POSH Act</b> "). The Court has also directed the concerned bodies to undertake awareness sessions to familiarise employees with the POSH Act. Please refer to our article <a href="#">here</a> for a detailed analysis of the judgment.

### HIGH COURTS

Sl. No.	Ratio	Brief details
1.	Maternity leave is a fundamental right (June 12, 2023) <i>State of HP v. Sita Devi.</i> <sup>5</sup>	The Himachal Pradesh High Court held that maternity leave is the fundamental right of every woman, irrespective of her employment status. Denial of maternity benefits to any woman, whether she is a permanent or a daily wage employee, would amount to a violation of the principles of equality enshrined under the Indian Constitution.

3. Civil Appeal No. 3663 of 2023.

4. Civil Appeal No. 2482 of 2014.

5. CWP No. 647 of 2020.

## HIGH COURTS

Sl. No.	Ratio	Brief details
2.	Software development and repair services come within the ambit of "manufacturing process" under the Factories Act, 1948 (June 07, 2023)  <i>Academy of Computer Technology v. The Deputy Director, Employees State Insurance Corporation.</i> <sup>6</sup>	The Bombay High Court (Nagpur bench) held that a company engaged in the development, repair and sale of software services is liable to make contributions under the ESI Act, as their services come within the ambit of "manufacturing process" under the Factories Act, 1948.
3.	Excess payment negligently made to an employee from the employer cannot be recovered when the employee is unaware that the payment was in excess (June 06, 2023)  <i>State of Kerala &amp; Ors. v. Seena M.</i> <sup>7</sup>	The Kerala High Court opined that any excess payments negligently made to an employee by an employer cannot be recovered if the employee was unaware that such payment was more than what she/he was entitled to.
4.	Disputes arising out of employment agreements cannot be given the flavour of a commercial dispute (June 02, 2023)  <i>Mr. Sanjay Kumar v. Elixir India Food Services LLP.</i> <sup>8</sup>	The Karnataka High Court held that disputes arising out of an employment agreement cannot be brought before a commercial court, as they do not fall within the scope of "commercial dispute" under the Commercial Courts Act, 2015.
5.	Adherence to principles of natural justice is not mandatory for terminating the services of a probationary employee via a non-stigmatic order (May 30, 2023)  <i>Gramin Yuvak Vikas Shikshan &amp; Anr. v. Shivnarayan Datta Raut &amp; Anr.</i> <sup>9</sup>	The Bombay High Court held that the principles of natural justice need not be followed where the services of a probationer have been terminated unless the termination order is stigmatic.
6.	Gratuity to be calculated on the basis of date on which it becomes payable, and not on date of disbursement (May 22, 2023)  <i>K. Rajendra Prasad v. State of Kerala.</i> <sup>10</sup>	The Kerala High Court held that the maximum amount of gratuity payable under the Payment of Gratuity Act, 1972 must be calculated based on the date when gratuity became payable (date of retirement) and not as given on the date of disbursement of the amount (where the gratuity payment has been delayed).
7.	Interim settlement arrived at in conciliation proceedings binding on both parties (April 18, 2023)  <i>Karnataka General Labour Union v. Government of India &amp; others.</i> <sup>11</sup>	The Karnataka High Court held that during conciliation proceedings in respect of an industrial dispute, if the employer and the employee arrive at an interim settlement, it is mandatory for both parties to adhere to it.
8.	Dismissed workman to be reinstated where his dismissal was initiated without following principles of natural justice (April 03, 2023)  <i>Novartis India Limited v. The Chairman cum Presiding Officer of Industrial Tribunal Cum Labour.</i> <sup>12</sup>	The Andhra Pradesh High Court ordered an employer to reinstate the services of a workman who was dismissed from her/his services for misconduct without any inquiry.

6. MANU/MH/2075/2023.

7. OP(KAT) No.95 of 2023.

8. Writ Petition No.2584 of 2023.

9. Writ Petition No. 5998 of 2019.

10. WP(C) No. 19171 of 2012.

11. Writ Petition No. 9465 of 2022.

12. W.P.No.15696 of 2009.

# PRIDE MONTH INITIATIVES<sup>13</sup>

## BACKGROUND

The fight for equality and legal recognition is a constant battle being fought by every member of the LGBTQIA+ community. Prior to 2009, same-sex relationships were punishable with imprisonment under Section 377 of the Indian Penal Code, 1860 (“**IPC**”). In 2009, the Delhi High Court partly struck down Section 377 as unconstitutional and decriminalized homosexuality.<sup>14</sup>

Pursuant to an appeal challenging the Delhi High Court judgment, in 2013, the Supreme Court reversed the Delhi High Court’s decision, holding that the Legislature should deliberate on the matter.<sup>15</sup>

Since then, there have been certain significant positive developments for the LGBTQIA+ community:

1. In 2014, the Supreme Court legally recognized third gender identities who fall outside of the male/female binary.<sup>16</sup>
2. In 2018, the Supreme Court struck down Section 377 as unconstitutional and discriminatory in its application to homosexual sexual intercourse between consenting adults.<sup>17</sup>
3. Currently, the Supreme Court is hearing petitions to recognize the rights of same-sex couples to marry under the Special Marriage Act, 1954 (“**SMA**”). On May 03, 2023, the Solicitor General informed the Supreme Court of the possibility of the Government setting up a committee to deliberate on the concerns raised by the petitioners. The Supreme Court, after hearing both sides, reserved the matter for judgment, with the Supreme Court considering the prospect of declaring a constitutional right to marry without reading down the SMA. The Apex Court had also noted that if found in favour of the petitioners, the judgment would have widespread impact on employment law. Currently, in the event of death of an employee, provident fund

and pension contributions are paid only to ‘family’ which recognizes solely heterosexual marriages and with the legalization of same-sex marriage, the definition of ‘family’ would also change. Please refer to our article [here](#) which provides a detailed analysis of the case and its potential implications under Indian employment laws.

We have also highlighted a few of the key initiatives taken by various employers to make their workplace diverse, inclusive and LGBTQIA+ friendly.

1. Godrej group provides a wide range of benefits and facilities to its employees such as confidential health risk assessments, specialised counselling services, medical insurance for gender-affirming surgeries, specialized internship opportunities and certain same-sex partnership benefits.
2. PepsiCo India introduced an ongoing 2 month paid internship opportunity called ‘Sambhav’ for LGBTQIA+ talent across different departments. Through this program, the company aims to foster possibilities of communication, engagement, and association with the LGBTQIA+ talent in India.
3. Cummins India has introduced an initiative called ‘Proclaim Thy Pronouns’, which actively encourages the employees to share and honour their preferred pronouns on their email signatures, social profiles, zoom screen names, etc. The company has also curated and shared a video - ‘Know Thy Pronouns’ dedicated to embracing and respecting preferred pronouns.
4. Synchrony India has given an open call to LGBTQIA+ community members to apply for jobs and has provided links for eligible candidates to apply on their LinkedIn page.

13. *The contents herein are meant for informational purposes only and are intended but not promised or guaranteed to be correct, complete, or up to date. IndusLaw does not warrant that the information is accurate or complete, and hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident, or any other cause. The information provided under Sections E and F has been sourced from data and information available in the public domain. The information provided under these sections is not intended to be a source of advertising or solicitation and the contents herein should not be construed as a legal opinion of IndusLaw or its interpretation of the law.*

14. *Naz Foundation v. NCT of Delhi (2009) 111 DRJ 1 (DB).*

15. *Suresh Koushal and Anr v. Naz Foundation and Others 2014 1 SCC 1.*

16. *National Legal Services Authority v Union of India (2014) 5 SCC 438.*

17. *Navej Singh Johar and Ors. v Union of India 2018 10 SCC 1.*

# WHAT'S TRENDING?

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## **SULA COMMITS TO WORK LIFE BALANCE FOR EMPLOYEES WITH NEW 'TIME OFF' INITIATIVE.**

Sula provided a week-long holiday in May for its employees as a way to relax and recharge. The initiative was introduced with the slogan 'Work Hard, Holiday Harder' to reaffirm Sula's commitment to the welfare and productivity of its employees. This break was provided in addition to the paid time off that the employees are generally entitled to.

## **PERNOD RICARD INDIA CELEBRATES COMPLIANCE WEEK.**

Pernod Ricard India celebrated its first compliance week from April 17, 2023 to April 20, 2023. The initiative sought to educate the employees on the importance of complying with the internal code of conduct as well as various policies of the company in a fun and entertaining manner through games and such other activities.

## **INCREASED EMPHASIS ON COMPLIANCE WITH THE APPRENTICES ACT, 1961.**

The Apprentices Act, 1961 ("**AA**"), *inter alia*, requires employers to engage apprentices equal to at least 2.5% of their workforce (which includes contract staff) and comply with certain other obligations under the AA. In recent times, the regional Boards of Apprenticeship Training have been actively requiring all employers to comply with the provisions of the AA and its rules and are also engaging in one-on-one discussions with the employer's representatives to assist and guide them with the necessary compliances. In light of the above, several employers are now evaluating their internal compliances under the AA along with their legal counsels and consultants.

## **HARYANA LIQUOR POLICY TO ALLOW FOR DRINKING ALCOHOLIC BEVERAGES IN CORPORATE OFFICES.**

As per the new 2023-24 liquor policy approved by the Haryana Council of Ministers on May 09, 2023, low-content alcoholic drinks such as beer, wine and ready to drink beverages have now been permitted to be served at corporate offices from June 12, 2023. This permission is applicable for corporate offices having at least 5000 employees and a minimum covered area of 1 lakh-square feet in single premises (self-owned or leased). The license will be granted for a corporate office if the minimum area of canteen or eatery is not less than 2000 square feet.

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