



Welcome to the sixth edition of the e-Bulletin (Volume II) brought to you by the Employment, Labour and Benefits (ELB) practice group of Khaitan & Co. This e-Bulletin covers regulatory developments, case law updates and insights into industry practices that impact businesses from a sector agnostic standpoint.



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## REGULATORY UPDATES

### COVID-19 round-up: What employers should know

Against the backdrop of measures to contain COVID-19 outbreak, there have been continuing developments in India in the form of orders and notifications, both at the Central and the state levels. Khaitan & Co has developed a dedicated [portal](#) on COVID-19 for sharing these developments with its clients and the public at large.

From an employment and labour law standpoint, a summary of important regulatory developments related to the containment of COVID-19 outbreak for the period upto 15 June 2020, are set out below:

- The extended lockdown: The nation-wide lockdown originally imposed until 14 April 2020 was first extended until 3 May 2020 and thereafter has been extended several times until the present one which is operative till 30 June 2020. However, gradual relaxations have been made through revised guidelines and exemptions. While earlier orders primarily permitted only essential activities to continue, the latest guidelines applicable currently (available [here](#)) provide for a phase-wise resumption of activities carried out in non-containment areas. Importantly, the restrictions on inter-state and intra-state movement of persons and goods have been lifted and, accordingly, no separate permit would be required in this regard. Note that these guidelines allow state governments to place stricter restrictions basis their assessment of the situation.
- Mandatory social distancing measures: The Central guidelines provide that all establishments permitted to continue operations must strictly follow a set of social distancing and safety measures prescribed through the standard operating procedure (SOP) under Annexure I of the guidelines. In addition to the above, the Ministry of Health and Family Welfare, Government of India, has *inter alia* developed several SoPs for [offices](#), [restaurants](#), [shopping malls](#), and [hospitality sector](#).
- Temporary reduction in EPF contribution rate: The Ministry of Labour and Employment, Government of India, issued a notification dated 18 May 2020 providing that for the wage months of May 2020, June 2020 and July 2020, the rate of the contributions under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, shall be 10% instead of 12%. The said measure has been taken with a view to increasing the liquidity in the hands of the employer and the employee.

Other than the above, Central and state governments have introduced several relaxations for easing the compliance requirements applicable to employers. These have been captured in our previous e-bulletins for the months [April 2020](#) and [May 2020](#).

### Goa adopts provisions for fixed-term employees and allows self-certification by factories

*Fixed-term employment*: By way of a notification in the Official Gazette published on 21 May 2020, the Government of Goa has adopted the Central amendments made in the Industrial Employment (Standing Orders) Central Rules, 1946, in relation to employment of employees on a fixed-term basis. Therefore, as regards establishments located in Goa, it has now been specifically provided that hours of work, wages, allowances and other

benefits in respect of fixed-term employees shall be not less than those available to a permanent workman, and that such employees shall be eligible for all statutory benefits available to a permanent workman proportionately according to the period of service rendered by them even if their period of employment does not extend to the qualifying period of employment required in the statute. For instance, even though the Payment of Gratuity Act, 1972, requires an employee to complete 4 years and 240 days of continuous service to be able to receive gratuity benefits, the fixed-term employee would nonetheless be entitled to gratuity upon exit due to expiry of the fixed term contract notwithstanding the non-completion of the stipulated period.

*Self-certification scheme:* In the same gazette notification, the Government of Goa introduced a 'Self Certification Scheme' for factories located in the state which are covered under the Factories Act, 1948. The scheme will, however, not apply to factories categorized as 'major accident hazards installations' as defined under the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989. Few salient features of the scheme are set out below:

- The occupier of a factory willing to avail the benefits of the scheme is required to make an application to the Chief Inspector of Factories and Boilers along with the processing fees stipulated in the scheme. Once enrolled, the benefits of the scheme can be enjoyed for a period of 5 years.
- An enrolled factory can file annual returns on the online state [portal](#).
- The enrolled factory will not be required to maintain certain registers in *physical format* such as leave book, register of compensatory holidays, overtime muster roll, register of adult workers, register of child workers, register of leave with wages etc. These registers can be maintained in a digital form.
- Once an inspection has been conducted in a factory, the same factory shall not be inspected for the remainder of the term of the scheme unless a fatal accident or an accident causing serious bodily injury occurs in the factory. Inspections based on complaints / grievances may be conducted nonetheless, but only after due authorization from the Chief Inspector of Factories and Boilers or any other person authorized in this behalf.

## CASE UPDATES

### **Disciplinary process in case of a retired employee: Supreme Court takes a pro-employer stance**

In a recent judgment of the Supreme Court of India in the matter of *Chairman-cum-MD, Mahanadi Coalfields Limited v Rabindranath Choubey* [Civil Appeal Number 9693 of 2013], the court adjudicated upon the issue whether the employer could continue with a disciplinary inquiry against a retired employee which was initiated while the employee was in service. The court noted that if the service rules applicable to the employee provide that the disciplinary proceeding, initiated during service, can continue post retirement, the same would be allowed.

The court reasoned that in such cases, a *legal fiction* is created and the concept of *deemed continuance in service* would have full play, and the order of removal can be passed after finalisation of the departmental proceeding (which order will apply prospectively and allow the employer to withhold gratuity in accordance with Section 4 of Payment of Gratuity Act, 1972). For a detailed analysis of the judgment, please refer to our [ERGO](#).

### **No coercive action until further orders: Supreme Court's interim relief in the controversial MHA order case**

In the now well-known case of *Ficus Pax Private Limited v Union of India* [Diary Number 10983/2020], the Supreme Court has passed an interim order that no coercive should be taken against the employers on the basis of the order dated 29 March 2020 of the Union Ministry of Home Affairs (Impugned Order). The matter has been posted for hearing in the last week of July 2020.

It is worth mentioning that the Impugned Order, passed seemingly to protect the interests of migrant workers, was couched in rather vague terms to provide that no employer shall deduct the wages of its workers during the period of lockdown (irrespective of whether they worked in the establishment). The Impugned Order was challenged not only because of the apparent unreasonableness, but also because the same was passed under the Disaster Management Act, 2005, a statute that aims to prevent and mitigate the effects of a disaster.

### **EPF contribution on back wages? Kerala High Court answers in the affirmative**

The case of *The Manager, Wallardie Estate, Harrisons Malayalam Limited v Regional Provident Fund Commissioner, Employees Provident Fund Organization* [WP (C) No. 40468 of 2018 (G)] relates to a domestic inquiry that was conducted by the petitioner against one of his employees. Basis the findings of the enquiry, the employee was dismissed from service. The employee challenged the dismissal before the Industrial Tribunal, which ordered the petitioner to reinstate the employee with back wages and all consequent benefits.

While certain amount was remitted, the employees' provident fund contribution in respect of such back wages was not deposited. The employee approached the Regional Provident Fund Commissioner for relief. The authority made a finding in favour of the employee.

The Kerala High Court noted the above facts and ruled that in a case of invalid termination, the employer is ordered to reinstate the concerned employee on the basis that the employer unlawfully took away the employee's right to work. Further, upon such reinstatement, the employer is required to pay the wages which the employee has been improperly deprived of. The only conclusion, then, is that the employer should make the necessary employees' provident fund contribution on such wages and also pay all other benefits to which the employee was legitimately entitled. On this basis, the court held that no interference is required in the order of the respondent.



## Claim for minimum wages after settlement with employer: Andhra Pradesh High Court denies relief to the employee

In the case of *Bommidala Brothers Limited v Presiding Officer* [2020 LLR 498 (Andhra Pradesh High Court)], an employee against whom a disciplinary inquiry had commenced was verbally informed by the employer about the termination of his employment, which would be effectuated without any notice or severance compensation.

The above was followed by a settlement between the employer and the employee as recorded by the Assistant Commissioner of Labour under Section 12(3) of Industrial Disputes Act, 1947. Note that Section 12(3) sets out the provision relating to settlement of an industrial dispute through conciliation proceedings. As part of the settlement, while the management dropped the disciplinary action against the employee, the latter received an amount towards full and final settlement of his claims to his satisfaction.

Four years later, the employee filed a claim for recovery of minimum wages. Two years thereafter, he also filed a claim for reinstatement of his services in the establishment. The employee was granted relief in the form of reinstatement and a direction to the employer to make the requisite payment. This order was challenged by the employer before Andhra Pradesh High Court on the basis that having accepted payment to his satisfaction, the employee could not have approached the authority to claim minimum wages. However, the employee argued that this would lead to contravention of Section 25 of the Minimum Wages Act, 1948, which provides that any contract whereby an employee relinquishes or reduces his right to a minimum rate of wages, shall be void. The Andhra Pradesh High Court denied relief to the employee, holding that unless the settlement is manifestly unjust or mala fide, the same should be given effect to.

It is interesting to note that the employee also argued that his termination was without notice or compensation and hence not valid. The court, however, observed:

*"Having accepted all the benefits, including gratuity, bonus etc., the workman cannot now turn around and say that his termination was illegal, without challenging the settlement/conciliation. Having regard to the above, issuing a notice etc., would not arise, as he voluntarily settled the issues with the employer and left the company. Further, if really he was aggrieved by the acts of his employer, there is no justification for him to wait for six years before initiating the impugned proceedings."*

## INDUSTRY INSIGHTS

### Companies assist employees in finding an alternative employment in COVID-19 times

As the government begins to unlock the nation, businesses are recuperating from the impact of the lockdown. Numerous companies, especially start-ups, have had to terminate the services of their employees due to unfavourable business conditions. As the Economic Times [report](#) indicates, employers are assisting their employees find alternative employment opportunities. Other goodwill measures being taken up by these companies include creating talent directories for potential employers, helping employees with their resumes and providing medical insurance and counselling services to ease the transition for the employees. A Business Standard [report](#) highlights that some companies have also



engaged the services of outplacement agencies for smoother transition for their employees.

The above-mentioned measures may go a long way in maintaining an employer's goodwill during this critical phase when it may have to adopt certain cost-cutting measures to mitigate the effects of closure of its operations.

### Resuming operations in Unlock 1.0: Companies take a cautious route

As nation prepares to unlock, companies across India are resuming office operations in a phased manner. As per a Business Standard [report](#), the IT services sector will majorly stick to a work from home model for a larger portion of their employees. As for resuming work from offices, this sector is considering having shorter working hours over 6 working days, strictly documenting external meetings, conducting temperature checks, implementing contact-less attendance and following the 1-1.5 meter distance requirement in common spaces such as office canteens and conference rooms.

Meanwhile in the manufacturing sector, an Economic Times [report](#) showcases that factories are resuming work on site gradually and not aiming to reach full operational capacity. Companies are also heavily investing in training their staff to strictly adopt and monitor social distancing at the premises. To avoid the risk of contagion, companies are also considering having their own transport arrangements where adequate and frequent sanitization could be carried out under the supervision of a designated team.

We hope the E-Bulletin enables you to assess internal practices and procedures in view of recent legal developments and emerging industry trends in the employment and labour law and practice landscape.

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