



EMPLOYMENT CORNER BULLETIN

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Welcome to the 4th edition of IndusLaw's Employment Corner Bulletin which covers key statutory and judicial updates for the months of October and November of 2021. We have also discussed certain market and industrial HR practices that have recently caught the attention of employers and HR professionals across all sectors in India.

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LEGAL UPDATES

STATUTORY UPDATES

The Haryana State Employment of Local Candidates Act, 2020

The Government of Haryana on November 6, 2021, notified the Haryana State Employment of Local Candidates Act, 2020 ("**Haryana Local Candidates Act**") which will come into effect on January 15, 2022. The Haryana Local Candidates Act is applicable to all private companies, societies, partnership firms, trusts, any person employing 10 or more persons in Haryana. The Haryana Local Candidates Act requires private sector employers to reserve 75% of job posts that offer a salary of less than INR 30,000 for individuals who are domiciled in Haryana. We have discussed the provisions of the legislation in detail in our article "**Overview Of The Haryana State Employment Of Local Candidates Act, 2020**", which can be accessed [here](#). Separately, vide a notification dated November 6, 2021, the Government of Haryana has also made it mandatory for employers to register their employees, who draw a gross monthly salary of not more than INR 30,000 via an online portal maintained by the Labour Department of Haryana, within 3 months of the Haryana Local Candidates Act coming into effect.

Amendment to the Delhi Shops and Establishment Rules, 1954

The Government of Delhi vide a notification dated November 15, 2021, has amended the Delhi Shops and Establishments Rules, 1954 ("**Delhi S & E Amendment Rules**") enacted under the Delhi Shops and Establishment Act, 1954.

Under the Delhi S & E Amendment Rules, the requirement to make offline submission to obtain registration of an establishment has been done away with. Now, an occupier of an establishment is required to file an online application to register its establishment via the shops and establishment portal maintained by the Labour Department of Delhi. Upon registration, the certificate of registration will also be made available on the portal and any further changes can also be done through the portal. We have also discussed the amendment in our article "**Simplified Shops and Establishments Registration Process for Companies In Delhi**", which can be accessed [here](#).

Extension for mandatory seeding of Aadhar numbers with UAN for filing ECR

The Employees' Provident Fund Organization ("**EPFO**"), vide a circular dated November 15, 2021, has extended the time limit for mandatory seeding of Aadhar numbers with the Universal Account Number(s) (UAN) of the employees for filing Electronic Challan cum Returns (ECR) from September 1, 2021, to November 30, 2021. We have also discussed the issue of mandatory seeding of Aadhar with UAN in our article "**Mandatory Linking of Aadhar Number with Provident Fund Account**", which can be accessed [here](#).

Tamil Nadu has revised the rates of contributions to the labour welfare fund

The Government of Tamil Nadu vide a notification dated October 1, 2021, has amended the Tamil Nadu Labour Welfare Fund Act, 1972 to increase the rate of labour welfare fund contributions from employees, employers, and the State Government. As per the amendment, every employee shall now contribute a sum not exceeding INR 50 per year and every employer and the Government in respect of every such employee, shall now contribute a sum not exceeding INR 100 and INR 50, respectively, per year.

RECENT DEVELOPMENTS UNDER THE LABOUR CODES

Under this Section, we bring to you the recent developments that have taken place under (i) the Social Security Code, 2020 ("**Social Security Code**"); (ii) the Code on Wages, 2019 ("**Wage Code**"); (iii) the Industrial Relations Code, 2020 ("**IR Code**"); and (iv) the Occupational, Safety, Health and Working Conditions Code, 2020 ("**OSHW Code**") (Collectively referred as, "**Labour Codes**").

Sl. No.	States/UT	Draft Rules	Current Status
1.	Gujarat	Code on Wages (Gujarat) Rules, 2021 under the Wage Code (<i>published on October 5, 2021</i>) The Industrial Relations (Gujarat) Rules, 2021 under the IR Code (<i>published on October 5, 2021</i>)	Final Stage The rules will be brought into force once the respective Labour Codes are brought into effect.
2.	Gujarat	Code on Social Security (Gujarat) Rules, 2021 under the Social Security Code (<i>published on November 16, 2021</i>)	Draft Stage The Government has invited suggestions/objections from all stakeholders within a period of 45 days, post which the draft rules shall be finalised.
3.	Himachal Pradesh	Himachal Pradesh Industrial Relations Rules, 2021 under the IR Code (<i>published on September 29, 2021</i>) Social Security (Himachal Pradesh) Rules, 2021 under the Social Security Code (<i>published on October 30, 2021</i>)	Draft Stage The Government has invited suggestions/objections from all stakeholders within a period of 30 days, post which the draft rules shall be finalised.
4.	Bihar	Occupational Safety, Health and Working Conditions (Bihar) Rules, 2021 under the OSHW Code (<i>published on November 8, 2021</i>)	Draft Stage The Government has invited suggestions/objections from all stakeholders within a period of 45 days, post which the draft rules shall be finalised.
5.	Mizoram	Mizoram Code on Wages Rules, 2021 under the Wage Code (<i>published on November 10, 2021</i>)	Draft Stage The Government has invited suggestions/objections from all stakeholders within a period of 30 days, post which the draft rules shall be finalised.
6.	Assam	Assam Wage Rules, 2021 under the Wage Code (<i>published on October 20, 2021</i>) Assam Social Security Rules, 2021 under the Social Security Code (<i>published on October 21, 2021</i>) Assam Industrial Relations Rules, 2021 under the IR Code (<i>published on November 17, 2021</i>)	Draft Stage The Government has invited suggestions/objections from all stakeholders within a period of 30 days, post which the draft rules shall be finalised.
7.	Delhi	Code on Wages (Delhi) Rules, 2021 under the Wage Code (<i>published on November 26, 2021</i>)	Draft Stage The Government has invited suggestions/objections from all stakeholders within a period of 45 days, post which the draft rules shall be finalised.

JUDICIAL DEVELOPMENTS

A person cannot be made liable under Section 22C of the Minimum Wages Act, 1948 solely because she/he is a director, manager, secretary, or any other officer of the company

The Supreme Court of India, in the case of **Dayle De' souza vs. Government of India** (Criminal Appeal No. 1319 of 2021 arising out of Special Leave Petition Crl. No. 3913 of 2020) held that a person cannot be punished under Section 22 C of the Minimum Wages Act, 1948, solely because of her/his status as a director, manager, secretary, or any other officer of a company, unless the offence was committed with **her/his consent, or due to her/his negligence.**

ESI contributions to exclude conveyance allowance

The Supreme Court of India, in the case of **ESIC vs. Texmo Industries** (SLP (C) No. 811/202) held that conveyance allowance or travelling allowance **does not fall under the definition of wages under the Employee's State Insurance Act, 1948** and therefore, no Employees' State Insurance contribution is required to be paid on it. The Employees' State Insurance Corporation vide a circular dated November 8, 2021, acknowledged the decision of the Supreme Court and instructed its regional and sub regional offices to strictly comply with it.

Civil Court lacks jurisdiction to entertain a dispute arising out of the Industrial Disputes Act, 1947

The Supreme Court, in the case of **Milkhi Ram vs. Himachal Pradesh State Electricity Board** (Civil Appeal No. 1346 of 2010), held that a **Civil Court lacks jurisdiction to entertain a suit structured on the provisions of the Industrial Disputes Act, 1947.**

Findings of an internal complaints committee entertaining a sexual harassment complaint against the employer are void

The High Court of Delhi, in the case of **A vs. B and Ors** (Writ Petition (Civil) Number 1103 of 2020) held that the Internal Complaints Committee ("**ICC**") constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redress) Act, 2013 ("**POSH Act**") **lacks jurisdiction to hear a complaint of sexual harassment against the employer and such findings by the ICC would be void.**

In this case, the primary contention was whether the ICC has jurisdiction to investigate a sexual harassment complaint against an employee of an organization who qualifies as an 'employer' under the POSH Act. The Delhi High Court stated that in the event a sexual harassment complaint has been filed against the 'employer', the **Local Committee** constituted under the POSH Act will be the appropriate authority to conduct an investigation pertaining to the complaint and therefore, the ICC will not have jurisdiction to investigate it.



WHAT'S TRENDING?

Under this section we bring to your attention key industry practices that have gained significant attention in recent times.

LUCRATIVE EMPLOYEE STOCK OPTIONS (ESOPs)

In an attempt to attract and retain talent in their workforce, many employers in India are exploring lucrative ESOP structures for their employees.

Recently, Meesho (an online e-commerce platform) has launched its **'MeeSop' program**, which provides an opportunity to its employees to purchase its ESOPs. The employees can purchase ESOPs of the company by contributing a certain percentile of their CTC, subject to certain monetary limitations. As per the 'MeeSop' program, once an employee opts for the ESOP, the ESOP grant happens immediately, and the exercise price is deducted from the employee's salary over the course of next few months. Further, the 'MeeSop' program also provides **differentiated benefits to its tenured employees** as a gesture to recognize their hard-work and contribution to the organization.

Similarly, Licious, a D2C meat and fish delivery company has implemented an *'everyday vesting, anytime liquidation'* ESOP scheme for 1/3rd of its workforce, allowing eligible employees to **liquidate their ESOPs at any point of time**, subject to the 1-year vesting period provided under law. Further, Teachmint, an ed-tech start-up, has also come up with a **continuous liquidity ESOP structure** for its employees which gives all eligible employees complete control of the liquidation of its vested shares over the period of next 1 year. Fintech organizations such as PhonePe and Innoviti Payment Solutions have also recently launched their stock options buyback programs, enabling liquidity of the vested options.

UNCONVENTIONAL RECRUITMENT STRATEGIES

ShopDoc, an Indian healthcare start-up, has shifted from the traditional strategies of hiring employees based on their resume, educational qualifications, and interview grades to a new concept wherein it requires all applicants

to submit at least **20 suggestions** for the organization to improve its operations and productivity. Based upon the submissions made by such applicants, ShopDoc rolls out employment offers to all the deserving candidates.



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EMPLOYERS ARE EXPLORING 'RETURNSHIP PROGRAMS' FOR WOMEN

Larsen & Turbo, India, has recently launched its initiative '*Renew: Career re-entry for women*', with an intention to provide job opportunities to women who had taken career breaks due to personal reasons. The initiative enables women to return to work in any of the following departments - audit, finance, accounting, engineering – design, project management, information technology,

human resource management, legal, and corporate social responsibility. Other organizations such as Axis Bank, Tata Steel, Vedanta, Amazon India, PayPal India and Godrej have similar policies in place to make their workplace more conducive and accessible to women who intend to restart their careers after a gap.

ORGANIZATIONS ARE OFFERING PAID MENSTRUAL LEAVES TO THEIR REPRESENTATIVES

With the intention of making workplace more diverse, inclusive and employee friendly, many organizations are offering **paid menstrual leaves** to their members. Recently, Swiggy announced a '*no questions asked two-day paid monthly period time-off policy*' for its women delivery executives. The women delivery partners who opt to avail the menstrual leave shall be entitled to

minimum earnings during the leave period. Last year, Zomato had also formulated a period leave policy for its women and transgender employees wherein such employees could avail up to 10 paid menstrual leaves every year in addition to the other paid leaves and holidays. Zomato's paid leave policy is only limited to its employees and is not applicable to its delivery partners.



OUR OFFICES

BANGALORE

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

DELHI

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

HYDERABAD

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