



# EMPLOYMENT CORNER BULLETIN

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## STATUTORY UPDATES

### CENTRAL

#### Central Government notifies CPPS for pensions under the Employees' Pension Scheme, 1995

The Union Minister of Labour and Employment and the Chairperson of the Central Board of Trustees, Employees' Provident Fund have approved the proposal for a Centralized Pension Payment System ("CPPS") for the Employees' Pension Scheme, 1995 as per the press release dated September 4, 2024 issued by the Press Information Bureau. This system will allow pension disbursement to be made through any bank and to any branch across India, marking a shift from the existing decentralized system, where each zonal/regional office of Employees' Provident Fund Organisation ("EPFO") maintains separate agreements with only three to four banks. This facility will be launched as part of the EPFO's ongoing IT modernization project, 'Centralized IT Enabled System' from January 1, 2025. In the next phase, the CPPS will enable a smooth transition to an Aadhaar-based payment system.

#### EPFO issues comprehensive guidelines for processing DSC and E-Sign Requests

On October 10, 2024, the EPFO issued detailed guidelines for processing Digital Signature Certificates ("DSC") and E-Sign requests from employers. The guidelines outline mandatory requirements that the field officer is required to verify before processing any DSC/E-sign request letter. Employers are now required to submit an online request letter via the EPFO's Unified Portal which must include 3 specimen signatures of the designated signatory. DSC/E-Sign request letters must be submitted on an official letterhead, countersigned and stamped by the employer. Additionally, it is mandatory to submit valid identification documents, such as Aadhaar or Universal Account Number ("UAN") cards and a current Form 5A (return of ownership) to complete the request. By complying with these requirements, employers can ensure that their DSC/E-Sign requests are processed smoothly and expeditiously. Field officers must process requests within 15 working days according to a specific role-timeline matrix for different officials. Notably, both

employers and their authorized signatories will be held jointly and severally liable for any misuse of the approved DSC/E-Sign.

#### ESIC mandates urgent implementation of Aadhaar seeding for all stakeholders

The Employees' State Insurance Corporation ("ESIC") has issued a crucial directive mandating immediate action on Aadhaar seeding for Insured Persons ("IPs"), ESIC employees, and pensioners. The directive, issued on October 21, 2024, introduces multiple channels for Aadhaar seeding, including the IP Portal, Employer Portal, and a new bulk Aadhaar seeding facility for employers. To facilitate easier compliance, ESIC has also launched the 'AAA+' mobile app featuring face authentication options for a more convenient user experience.

#### Update to RPD Rules: Introduction of color-coded UDID Cards

On October 16, 2024, the Ministry of Social Justice and Empowerment amended the Rights of Persons with Disabilities Rules, 2017 ("RPD Rules"). A significant change is the introduction of a color-coded Unique Disability Identity ("UDID") Card system based on the severity of disability. The new system introduces three categories of disability:

- White Band Cards for disability below 40%;
- Yellow Band Cards for disability between 40%-79%;
- Blue Band Cards for disability of 80% or above.

The amendment also streamlines the application process by enabling the use of Aadhaar as both identity and address proof. Additionally, it mandates the issuance of disability certificates and UDID cards within 3 months of diagnosis. As per the amended RPD Rules, if an application remains pending for more than 2 years due to reasons not attributable to the medical authority, it will be marked as inactive. In such cases, applicants will need to either submit a fresh application through the UDID portal or approach the medical authority to re-activate their pending application.

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## Registration of gig and platform workers on the e-Shram portal of the Ministry of Labour & Employment

The Ministry of Labour and Employment, issued a notification on September 16, 2024, urging the digital intermediaries and marketplaces that connect buyers or users to sellers or service providers (“**Aggregators**”) to register themselves as well as the gig and platform workers on the e-Shram portal. This initiative is a part of the Government of India’s effort to transform the e-Shram portal into a ‘One-Stop Solution’, providing workers with easy access to various social security schemes. Further, the directions require the Aggregators to link the UAN of the gig and platform worker in their database and to regularly update their details, including monthly work engagement and exit information.

### STATE

#### Karnataka permits shops and commercial establishments with 10 or more employees to operate 24/7 for 3 years, subject to conditions

In January 2021, the Government of Karnataka permitted shops and commercial establishments employing 10 or more persons to operate 24/7 throughout the year for a period of 3 years. This permission expired in January 2024. On September 27, 2024, the Government of Karnataka issued a fresh notification for the aforesaid permit for a period of 3 years, subject to prescribed conditions. The 2024 notification mirrors the conditions set out under the 2021 notification related to employee safety and welfare measures, including a mandatory rotational weekly holiday system, procuring consent from a woman employee for working during the night shift, and providing transportation facilities for shift workers with clear notices about these arrangements displayed at the establishment’s entrance.

Interestingly, the extant notification provides for the maximum work limit of 8 hours per day and 48 hours per week, which is contrary to the working hour provisions under the Karnataka Shops and Commercial Act, 1961 (“**KSEA**”). Under the KSEA, an employee is allowed to work for 9 hours in a day and 48 hours in a week. Considering that in 2021 the State Government issued another notification to align the January 2021 notification with the KSEA, it is anticipated that a similar amendment may be made to the current notification.

## Kerala issues Kerala Factories (Amendment) Rules, 2024

The Government of Kerala has amended the Kerala Factories Rules, 1957 by way of a notification dated September 11, 2024. Under the Kerala Factories Rules, 1957, the licence for a factory can be transferred to another person by the regulatory authorities, upon application by the holder along with the original licence and a fee receipt for the transfer. In an effort to support distressed industries, the amendment now exempts the transfer fee where a closed factory is taken over by another factory due to specific challenges such as financial crisis, insufficiency of raw material, non-profitable due to unsold products, shortage of labourers, industrial dispute, or environmental issues, duly certified by the regulatory authorities.

#### Tripura approves amendment to Tripura Shops and Establishment Act, 1970 allowing women to work night shifts in shops and establishments

The Tripura Government has approved the sixth amendment to the Tripura Shops and Establishments Act, 1970, marking a significant change in women’s employment regulations. The proposed amendment, approved on September 26, 2024, will allow women to work during night shifts in shops and commercial establishments located in Tripura, removing the existing restrictions on working hours. This progressive change aims to promote ease of doing business while ensuring that women’s rightful privileges remain protected. The amendment will enable employers to operate their establishments for longer hours without compromising workers’ rights, and notably, will not impose any financial liability on the government exchequer as all associated costs will be borne by the employers.

#### Karnataka plans 6 days of menstrual leave per year

Aiming at creating a more inclusive and supportive work environment, the Government of Karnataka is considering implementing a policy under which women will be provided 6 days of paid menstrual leave per year. While there is no central law mandating paid menstrual leave to women employees, certain states like Odisha have introduced a one-day menstrual leave policy for

women employees in both the state government and private sector. A panel of 18 members are working on the proposed policy which will play a significant role in encouraging more women to join the workforce, particularly at a time when female workforce participation remains low. This initiative follows after the Supreme Court dismissed a petition in 2023 to make menstrual leave mandatory at the workplace, citing concerns that “mandating such leave will lead to women being shunned from the workforce.”

### **Goa amends Child and Adolescent Labour Rules to strengthen protection framework**

The Government of Goa has notified the Goa Child and Adolescent Labour (Prohibition and Regulation) (Amendment) Rules, 2024, on September 16, 2024, introducing comprehensive changes to strengthen the

protection of children and adolescents from exploitative labour practices. The amended rules establish strict guidelines for children assisting in family enterprises, which include prohibiting them from performing tasks during school hours or between 7 p.m. and 8 a.m., limiting work to 3 hours per day outside school hours and prohibiting them from performing hazardous tasks. The amended rules also introduce detailed protocols for child artists in entertainment, such as setting a maximum daily work duration of 5 hours, prohibiting participation of a child in any audio-visual or sports activity without their consent and will. The amended rules create a robust statutory monitoring system and mandate awareness campaigns, specify rehabilitation procedures, and establish a Child and Adolescent Labour Rehabilitation Fund to ensure financial security for rescued children.



## JUDICIAL DEVELOPMENTS



### HIGH COURTS

Sl. No.	Ratio	Brief details
1.	<p>It is necessary that the term 'employee' be extended to cover the persons like driver-subscriber, for the purposes of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("PoSH Act").</p> <p>Ride-hailing platforms such as OLA, being a private entity have obligations under the PoSH Act and the Karnataka Aggregators Rules, 2016 which constitutes "public law elements" making it amenable to the writ jurisdiction.</p> <p><i>MS (X) vs. Internal Complaints Committee ANI Technologies Private Limited and Ors<sup>1</sup></i></p>	<p>The Karnataka High Court addressed a significant issue concerning the intersection of workplace sexual harassment law and the gig economy. The case centred on whether drivers of the ride-hailing platform, OLA, qualify as 'employees' under the PoSH Act and whether they can be subject to writ jurisdiction under Article 226 of the Indian Constitution, being a private entity. A single bench of the court held that despite being a private entity, OLA has obligations under the PoSH Act and the Karnataka Aggregators Rules, 2016, which constitutes "public law elements" making it amenable to constitutional writ jurisdiction.</p> <p>A crucial aspect of the judgment was the court's analysis of the employer-employee relationship in the context of the gig economy. Despite OLA's contention that drivers were merely 'independent contractors' or 'driver-partners', the court pierced this contractual veil by examining the substantial control OLA exercised through its subscription agreement with the drivers, including mandatory device usage, operational guidelines, and unilateral termination rights. Consequently, OLA's claim of being merely an intermediary was rejected, establishing an employer-employee relationship for PoSH Act compliance. The Court determined that for the purposes of the PoSH Act, drivers should be considered as employees, particularly given the indispensable nature of drivers to its business model and the OLA's extensive 'Zero Tolerance Policy'.</p> <p>The Court issued comprehensive directions, including ordering OLA's Internal Committee to conduct an inquiry within 90 days from the date of the order. The Court also imposed substantial compensation of INR 5 Lakhs and INR 50,000 for litigation expenses payable to the petitioner and directed the licensing authority to review OLA's license status.</p>

1. W.P. No. 8127/2019

## HIGH COURTS

Sl. No. Ratio

Brief details

OLA has filed appeal, which is pending before the Karnataka High Court and is scheduled for hearing on November 26, 2024. This marks a critical juncture for India's gig economy. The final ruling will likely set significant precedents regarding platform companies' legal obligations toward both service providers and users.

2. Subsistence allowance cannot be stopped during suspension merely due to pendency of criminal proceedings.

*Abin Divakaran and Anr v. General Manager, Kerala State Cooperative Bank & Ors*<sup>2</sup>

The Kerala High Court ruled that an employee placed under suspension, whether due to disciplinary or criminal proceedings related to an alleged offence, is entitled to subsistence allowance, even while in judicial custody.

The Kerala Payment of Subsistence Allowance Act, 1972 ("**KPSA Act**") contains no provision that prohibits payment of subsistence allowance to a person who is confined in prison, whether as an under-trial prisoner or serving a sentence. When an employee in an establishment covered under the KPSA Act is suspended, they are entitled to subsistence allowance during the period of suspension. The allowance may only be withheld under specific conditions outlined in the legislation, such as if the suspended employee accepts employment in another establishment.

Denial of subsistence allowance cannot be based on the severity of charges against the employee, nor can delays in making the claim result in forfeiting the right to receive it. The statutory obligation to support dependents further strengthens the claim for subsistence allowance. The court directed the employer to pay the subsistence allowance to the employee for the specified period.

3. Under the Payment of Gratuity Act, 1972 ("**Gratuity Act**"), forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes as offence involving moral turpitude, and the employee is convicted accordingly by a court of competent jurisdiction.

*Baroda U.P Bank v Komal Ram & 2 Ors*<sup>3</sup>

The respondent employees were dismissed following disciplinary action for financial misconduct. When they sought gratuity under the Gratuity Act, the employer argued that they were not entitled to gratuity due to their dismissal. However, both the Controlling Authority and Appellate Authority ruled in favour of the employees, awarding gratuity based on their long service. In response, the respondent filed a writ petition before the High Court of Allahabad, citing the Supreme Court of India's decision in *Chairman-cum-Managing Director, Mahanadi Coalfields Ltd. v. Rabindranath Choubey*,<sup>4</sup> arguing that gratuity should be forfeited in cases of dismissal for misconduct.

The Allahabad High Court, however, upheld the authorities' decisions that the Gratuity Act grants employees a statutory right to gratuity for their period of service, which cannot be withheld except under specific circumstances outlined in Section 4(6) of the Gratuity Act. In order to forfeit gratuity that is payable to an employee, the terminated employee must be convicted for an offence for the time being in force and the offence must involve 'moral turpitude'. Unless the aforesaid two conditions are fully established by an employer, mere termination or dismissal does not ipso facto constitute an offence involving moral turpitude to invoke Section 4(6)(b)(ii) of the Gratuity Act.

2. W.P. (C) No. 15557 of 2024

3. W.P. (C) No. 20839 of 2024

4. Civil Appeal No. 9693 of 2013

## HIGH COURTS

Sl. No.	Ratio	Brief details
4.	<p>Where employees receive wages exceeding the minimum prescribed under the Minimum Wages Act, 1948 (“MW Act”), they are not entitled to overtime on the rate of wages fixed under the MW Act.</p> <p><i>Surat Municipal Corporation v. The Secretary, Sudhrai Majdoor Union (Lal Vatva)</i><sup>5</sup></p>	<p>The Gujarat High Court, relying on the Supreme Court of India’s decision in <i>Municipal Council Hatta vs Bhagat Singh</i>,<sup>6</sup> held that where employees receive wages more than the minimum rate of wages prescribed under the MW Act, they are not entitled to overtime based on the rate of wages fixed under the MW Act. Considering that the employees are paid more than the minimum wages stipulated under the MW Act, Section 14 of the MW Act (payment of overtime) will not be applicable.</p> <p>Further, the Gujarat High Court recognised that employers may compensate employees for extended working hours through special allowances and benefits, avoiding overtime obligations, provided the wage structure exceeds the statutory requirements.</p>
5.	<p>Statutory law supersedes subordinate legislation if the statute provides better or more favorable benefits for employees.</p> <p><i>Minakshi Chaudhary vs. Rajasthan State Road Transport Corporation (RSRTC)</i><sup>7</sup></p>	<p>The petitioner, a conductor at the Rajasthan State Road Transport Corporation (“RSRTC”), requested the RSRTC to grant her 6 months of maternity leave following the birth of her child, consistent with the leave granted to similarly situated employees in other services at the RSRTC. However, the RSRTC, granted her only 90 days, citing Regulation 74 of the RSRTC Employees Service Regulations, 1965 (“RSRTC Regulations”), which limits maternity leave to 90 days.</p> <p>The central issue was whether the petitioner was entitled to 180 days of maternity leave, as provided under the 2017 amendment to the Maternity Benefit Act, 1961 (“MB Act”), or if the 90 day limit under the RSRTC Regulations would prevail</p> <p>The Rajasthan High Court relied on several important legal principles in its analysis, including the petitioner’s fundamental rights to equality and dignity under the Constitution of India, the supersession of statutory law over outdated subordinate legislation, and the principles of social justice and welfare. The court emphasized that the right to bear or not bear children is protected under the Constitution of India, and that maternity leave is integral to the well-being of both the mother and the child.</p> <p>As a result, the Rajasthan High Court ordered RSRTC to either grant the petitioner 180 days of maternity leave or compensate her with an additional 90 days’ salary after adjusting the 90 days of maternity leave provided. The court further directed RSRTC to amend RSRTC Regulations to align with the 2017 amendment to the MB Act.</p>
6.	<p>The objective of the MB Act is to protect the interests of the mother and the child, and the legislation does not distinguish beneficiaries based on their employment status.</p> <p><i>Mrs. Sangeeta Kormel Yadav vs. Union of India &amp; 4 Ors</i><sup>8</sup></p>	<p>The petitioner employee filed a writ petition seeking to set aside the communication where she has been informed that maternity benefits and added benefits were available only to regular employees and did not extend to part time/contract employees.</p>

5. 2024 LLR WEB 321

6. Civil Appeal No. 4826 of 1991

7. S.B. Civil Writ Petition No. 15769/2016

8. W.P. (Civil)6973 of 2015



## HIGH COURTS

Sl. No. Ratio

Brief details

The Gauhati High Court relied on established legal principles, including the precedents in *Hindustan Antibiotics Ltd. vs. Workmen*<sup>9</sup> and *Dr. Kavita Yadav vs. Secretary, Ministry of Health*,<sup>10</sup> to rule that the MB Act does not distinguish between permanent, temporary, or contractual employees, and that statutory rights conferred by the MB Act cannot be waived contractually, as they are intended to protect the interests of the mother and the child. The court further held that the petitioner's entitlement to maternity benefits could extend beyond the duration of her employment contract, as the MB Act does not limit the benefits to the period of active employment.

The court directed the respondents to examine the petitioner's claim and provide her with the due maternity benefits within 2 months.

9. Civil Appeals No. 406 and 407 of 1964

10. Civil Appeal No. 5010 of 2023



## WHAT'S TRENDING

### CARS24 unveils groundbreaking workplace policies: The Compassionate Policy and Flow Time-Out Leave for women and transgender employees.

CARS24 has stepped forward towards creating a more inclusive and empathetic workplace by introducing the "Flow Time-Out Leave Policy" which is applicable to women employees, including transgender individuals. The policy allows them to take a day off during their menstrual period without requiring prior employer approval. The other addition is the "Compassionate Policy" which aims to provide financial, legal and emotional support to employees facing personal crisis. It includes provisions for both grants and advances, tailored to suit individual needs, particularly for employees facing severe medical emergencies, personal hardships, or legal issues.

### Deloitte appoints a Chief Happiness Officer

With a view to address work pressure and foster an open culture environment, Deloitte has appointed a Chief Happiness Officer. This initiative aims to address

employee well-being and create a supportive workplace atmosphere. The employer has also constituted an external committee to examine its work environment. These decisions follow the tragic death of a 26-year-old chartered accountant at a firm, who reportedly suffered a cardiac arrest owing to high stress and work pressure.

### Government of Odisha introduces surrogacy leave for state employees

The Government of Odisha has extended maternity and paternity leave benefits to state employees who become parents through surrogacy. The state government has approved 180 days of leave for female employees, applicable to both surrogate and commissioning mothers, and 15 days of paternity leave for male employees who become father through surrogacy.



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