



EMPLOYMENT CORNER BULLETIN

November – December 2024

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We welcome you to the November-December 2024 Edition of IndusLaw's Employment Corner Bulletin, where we discuss the key statutory and judicial updates for the period between November and December of 2024. This year has brought significant changes in the realm of legislative developments and evolving employment practices. In this regard, we also discuss some of the more critical statutory developments and prominent HR practices that employers and HR leaders should take into consideration while strategizing on their organizational practices and compliances for 2025. We have also dedicated a section in the Bulletin to highlight important D&I and HR initiatives being implemented by employers across India.

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LEGAL UPDATES

STATUTORY UPDATES

CENTRAL

Employees' Provident Fund Organisation sets January 15, 2025, as Deadline for UAN Activation and Aadhaar-Bank Account Seeding under Employment Linked Incentive Scheme

The Employees Provident Fund Organisation ("EPFO") has issued instructions dated November 22, 2024, regarding the Employment Linked Incentive Scheme ("ELI Scheme") announced in India's Union Budget 2024-25. The ELI Scheme introduces groundbreaking programs to boost formal employment in India. It includes a direct benefit transfer of one-month salary (in 3 equal monthly instalments) by the Government to first-time joiners in all formal sectors, with the maximum benefit amount capped at INR 15,000, subject to further clarifications by the Government.

The EPFO has made it mandatory for every subscriber to have an activated Universal Account Number ("UAN") linked with Aadhaar, and their bank accounts seeded with Aadhaar. Employers are directed to ensure compliance by January 15, 2025, particularly for employees who joined in financial year 2023-24. The UAN activation process can be completed through Aadhaar-based One Time Password verification, enabling employees to access various online services including their Provident Fund ("PF") passbook viewing, claiming submissions, and real-time tracking. The Aadhaar-bank account seeding requirement is essential as the ELI Scheme benefits will be disbursed through direct benefit transfer.

The EPFO has emphasized that these measures are part of its ongoing commitment to improving the delivery of social security benefits and enhancing service accessibility through its online portal to all members.

Employees' Provident Fund Organisation revises Guidelines for Physical Claims Settlement without Aadhaar Seeding – Guidance for International Worker Claims

The EPFO has issued instructions dated November 29, 2024, clarifying the settlement of physical claims for specific categories of members who are unable to seed

and authenticate their Aadhaar, a challenging matter for members who are not comfortable with electronic dealings.

The instructions also address concerns raised by EPFO field offices regarding claim settlements for International Workers ("IW"), overseas migrants, and citizens of Nepal and Bhutan. While UAN generation remains mandatory, these specified categories are now exempt from Aadhaar seeding requirements, an important aspect for Indian employers engaging foreign employees. These instructions allow for alternative identification documents such as (i) passports for IWs who have left India without obtaining an Aadhaar and Indian workers who permanently migrated to a foreign country and subsequently obtained their citizenship; and (ii) Citizenship Identification Certificates for Nepalese and Bhutanese workers.

For settlements exceeding INR 5 lakh, additional identity verification by employers is required. The directive emphasizes that claims must undergo proper due diligence, including bank account verification, and requires officer-in-charge approval through e-office documentation. This change aims to facilitate prompt settlement of genuine claims while maintaining proper verification protocols for members who cannot obtain Aadhaar due to their specific circumstances.

Central Government amends Employees' Deposit-Linked Insurance Scheme, 1976 to revise Death Benefit Calculations

The Ministry of Labour and Employment amended the Employees' Deposit-Linked Insurance Scheme, 1976 ("EDLI Scheme") via notification dated November 18, 2024, which is deemed effective from April 28, 2024. The amendment modifies paragraph 22 of the EDLI Scheme, revising the calculation of death benefits for eligible employees. To be eligible, employees must have been in continuous employment for 12 months preceding their death. As per the amendment, eligible beneficiaries will now receive an amount equal to 35 times the deceased employee's average monthly wages (as compared to the previously allowed 30 times) drawn during the 12 months prior to their death (capped at INR

15,000), plus 50% of such deceased employee's average provident fund balance from the same period, subject to a ceiling of INR 1,75,000. The EDLI Scheme ensures a minimum assurance benefit of INR 2.5 lakhs while capping the maximum benefit at INR 7 lakhs. For part-time employees working in multiple establishments, the benefit will be calculated based on their aggregate wages across all qualifying workplaces.

Employees' State Insurance Corporation issues Strict Directive on Online Submission of Cash Benefit Claims

The Employee State Insurance Corporation ("ESIC") has issued a significant directive dated November 5, 2024, regarding the submission of cash benefit claims by covered employees, following a review of claim submissions from April to August 2024. Despite previous instructions to facilitate online claims through the Insured Person Portal ("IP Portal"), many branch offices continue to process claims physically rather than encouraging insured persons to use the online platform. The directive specifically addresses 2 key issues: the continued creation of claims by branch offices instead of insured persons using the portal, and branch managers' practice of requesting physical copies of documentation even when claims are submitted online. The ESIC has mandated immediate action to eliminate offline claim submissions and has instructed branch managers to stop requesting physical copies of documents already submitted through the IP Portal. The directive emphasizes that while verification can be done directly with dispensaries or hospitals when needed, benefit payments should not be delayed by requiring hard copies of certificates, an initiative that will assist claimants.

STATE

Gurugram District issues Comprehensive Compliance Directives and Reporting Requirements under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – Changes from Requirements under the POSH Act

The Haryana government has issued significant directives regarding compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") for Gurugram

(Gurgaon). Through a notification dated November 4, 2024, the District Officer of Gurugram revised the deadline for filing annual reports on workplace sexual harassment cases to February 28th of each year, changed from the previously notified date of April 30th of each year. Both government and non-government organizations must comply with this new timeline, with a penalty of INR 50,000 for employers who fail to submit their reports by the deadline. Organizations are required to use the compliance checklist available on www.gurugram.gov.in.

Subsequently, on December 12, 2024, the Additional Deputy Commissioner of Gurugram issued a comprehensive compliance directive under the POSH Act, applicable to all organizations, companies, schools, and hospitals in Gurugram. The directive mandates that organizations submit their POSH Act annual reports covering the period from January 1 to December 31, 2024. The compliance framework encompasses 7 key areas: organizational policies, workplace notices, employee awareness programs, Internal Committee ("IC") formation, complaint handling procedures, reporting mechanisms, and annual report submissions. Organizations must demonstrate their compliance by publishing internal POSH policies, forming ICs with properly qualified members, conducting regular awareness workshops, and displaying notices in multiple languages. They must also maintain detailed records of complaints received, resolved, and pending, along with documentation of awareness programs conducted throughout the year. This is a supplement to the POSH Act provisions in relation to the annual report, which should contain the details relating to (i) number of complaints of sexual harassment received in the year; (ii) number of complaints disposed off during the year; (iii) number of complaints pending for more than ninety days (along with reasons for delay); (iv) number of workshop or awareness programmes against sexual harassment carried out; and (v) nature of action taken by employer or District Officer. The directive also emphasizes that non-compliance with any of these provisions will result in penalties.

Karnataka Government announces Deadline for Contributions under the Karnataka Labour Welfare Fund Act, 1965

The Karnataka Government has announced an important update to the Karnataka Labour Welfare Fund's contributions for calendar year 2024 vide a press note dated December 24, 2024. Under the Karnataka Labour Welfare Fund Act, 1965 ("KLWF Act"), employers are required to remit a total contribution of INR 60 per employee (INR 40 from the employer, INR 20 from the employee) by January 15, 2025. This mandate applies to various establishments including factories, IT/BT companies with over 50 workers, plantations, motor services, and organizations registered under the Karnataka Shops and Commercial Establishment Act, 1961. All payments must be made exclusively through the official online portal at www.klwb.karnataka.gov.in. Employers should note that delayed payments will incur penalties, with interest rates of 12% per annum for the

first 3 months, escalating to 18% thereafter. Additionally, non-compliant establishments may face inspections from the Welfare Commissioner and Labour Department officers, potentially leading to legal proceedings.

The Government of Karnataka Seeks to Amend the Karnataka Labour Welfare Fund Act, 1965

The Karnataka Government on December 12, 2024, has tabled a bill seeking to amend the KLWF Act. Under the KLWF Act, for every employee in an establishment, contributions must be paid to the Karnataka Labour Welfare Board, which includes contributions from the employer, employee and the State Government which forms part of the fund. The proposed changes to the contribution rates are as follows: the employer's contribution will increase from INR 40 to INR 100, the employee's contribution will increase from INR 20 to INR 50, and the state government's contribution will also increase from INR 20 to INR 50.



JUDICIAL DEVELOPMENTS



SUPREME COURT

Sl. No.	Ratio	Brief details
1.	<p>The continuous service and essential roles of the appellants justified regularization of employment.</p> <p><i>Jaggo v. Union of India</i>¹</p>	<p>In this case, the appellants, who had been working for an extended period, sought regularization of employment. The Delhi High Court relied on the principle laid down in <i>Secretary, State of Karnataka v. Uma Devi</i> [(2006) 4 SCC 1] ("Uma Devi") and concluded that the petitioners were part-time workers who were neither appointed against sanctioned posts, nor had they performed a sufficient duration of full-time service to satisfy the criteria for regularization. Aggrieved by the decision of the High Court, the appellants filed an appeal before the Supreme Court of India.</p> <p>While discussing <i>Uma Devi</i>'s judgement, the Supreme Court distinguished between "illegal" and "irregular" appointment. The Court set aside the order of the High Court and made a significant ruling regarding the employment status of long-term temporary workers in government institutions and emphasized that when workers perform essential and ongoing functions within an organization, they cannot be denied claims to regularization merely because they are classified as "temporary" or "part-time" employees. The Court held that the actual nature of work must take precedence while considering workers' rights to regularization.</p>
2.	<p>Affirmation that the aggrieved woman was a "concerned party" and has an unquestionable right to access the enquiry report under Section 13(1) of the POSH Act.</p> <p><i>Ms. X v. Union of India</i>²</p>	<p>A female constable at Border Security Force ("BSF") filed a workplace sexual harassment complaint against a senior officer at BSF under the POSH Act. Pursuant to the preliminary investigation, no evidence was found, and the respondent was discharged of all charges. However, a follow-up detailed investigation was conducted under the Border Security Force Act, 1968 ("BSF Act"), which resulted in the accused officer receiving 3 penalties: (i) 89 days of rigorous imprisonment, (ii) a 5-year promotion freeze, and (iii) forfeiture of 5 years of pension</p>

1. SLP (C) No.5580/2024

2. Writ Petition (Criminal) No. 284/2020

SUPREME COURT

Sl. No. Ratio

Brief details

service. Although these punishments were carried out, the aggrieved woman argued that the punishment was too lenient, and the punishment should have been imposed under the POSH Act. The aggrieved woman also raised concerns about not receiving the enquiry report. In view of this, the aggrieved woman sought court intervention.

In relation to non-furnishing of the enquiry report, the BSF contended that the report was not furnished to the aggrieved woman as she was not the accused, and the report did not have any material against the respondent.

The Court dismissed this justification, affirming that as a victim, the aggrieved woman had an unquestionable right to access the enquiry report under Section 13(1) of the POSH Act. The Court penalised the BSF with a fine of INR 25,000 for failing to provide the enquiry report to the victim constable.

3. Guidelines and directives for the proper and effective implementation of the POSH Act by the Supreme Court of India.

*Aureliano Fernandes v. the State of Goa & Ors.*³

In this case, the Supreme Court addressed significant concerns about the implementation of the POSH Act. The Court issued comprehensive directions for the effective implementation of the POSH Act on May 12, 2023. Noting the non-implementation of the previous directions issued on May 12, 2023, the Court on December 03, 2024, issued further directions for the effective implementation of the POSH Act, establishing a clear timeline for both public and private sectors.

For the facilitation of complaints, the bench suggested that every state should institute a SHe-Box portal. It also directed that both the public and private sector must establish ICs and the survey report made by the District Officer should be submitted to the Court by March 31, 2025. The Court further outlined a structure for handling the complaints related to sexual harassment and directed the States/Union Territories ("UTs") to appoint District Officers by December 31, 2024, who will then constitute Local Complaints Committee ("LCC") by January 31, 2025. It further directed the District Officers to appoint Nodal Officers at taluk level to facilitate the processing of such complaints. The Court mandated all the nodal officers of each State/UTs to provide their name and designation to be accessible on the SHe-Box portal.

4. The employer has the right to take an action against the employee where the employee abandons his job without informing the employer about his whereabouts, after the employer has made attempts to reach out to the employee.

*Life Insurance Corporation of India v. Om Prakash*⁴

The respondent employee was an Assistant Administrative Officer at Life Insurance Corporation ("LIC"), who remained absent from duty since September 25, 1995, without notice, which amounted to abandonment of service as per the LIC Staff Regulations. Despite multiple notices and show cause notice, the employee neither responded to the notices nor did he provide information about his whereabouts for over 90 days. The disciplinary authority considered it as a case of abandonment of services and ordered termination of the employee. The respondent employee filed a writ before the Himachal Pradesh High Court which held that the termination of the employee was invalid as due opportunity to be heard was not provided to him.

3. 2023] 7 S.C.R. 772

4. Civil Appeal No. 4393/2010

SUPREME COURT

Sl. No. Ratio

Brief details

The Supreme Court, however, held that treating the respondent to have abandoned his service and taking appropriate action against him, in terms of the LIC Staff Regulation, cannot be faulted and accordingly, set aside the order of the High Court.

5. The Supreme Court applied the fourfold test established in *Vidya Drolia v. Durga Trading Corporation* as the framework for assessing whether a dispute could be resolved through arbitration. Applying this test, it observed: *"the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s) such as the PW Act and ID Act which designate exclusive forums for adjudication."*

*Dushyant Janbandhu v/s M/s Hyundai Autoever India Pvt. Ltd.*⁵

In this case, the employee, an assistant manager at Hyundai Autoever India ("**Company**") claimed unpaid wages after his termination. He sought payment of unpaid wages under the Payment of Wages Act, 1936 ("**PW Act**") and challenged the termination order under the Industrial Disputes Act, 1947 ("**ID Act**"). The Company, however, invoked an arbitration clause from the employment agreement and filed an application before the authority under the PW Act seeking reference of dispute to arbitration. The authority rejected the application. Aggrieved by the same, the respondent approached the High Court of Madras seeking appointment of an arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The High Court appointed an arbitrator despite the employee's objection that employment disputes with statutory remedies cannot be arbitrated. This led to an appeal before the Supreme Court, challenging whether employment matters protected by statutory provisions can be subject to arbitration even with a contractual arbitration clause.

The Supreme Court held that employment disputes involving wage recovery cannot be arbitrated as the PW Act expressly prohibits Civil Courts and Arbitral Tribunals from hearing wage-related disputes. While acknowledging minimal judicial interference under Section 11(6) of the Arbitration Act, the Court emphasized that arbitrability must be evaluated at the initial stage, by applying the four-fold test established in *Vidya Drolia v. Durga Trading Corporation* [(2021) 2 SCC 1]. Further, costs of INR 5 lakhs were imposed on the Company for pursuing arbitration in bad faith despite clear statutory restrictions.

6. On December 6, 2024, the Supreme Court issued a notice to the Ministry of Women and Child Development, Ministry of Corporate Affairs and Women and National Commission for Women seeking their reply on a plea to declare private sector IC members under the POSH Act as public servants. The next hearing is scheduled on January 24, 2025.

*Janaki Chaudhry & Anr. v. Ministry of Women and Child Development & Ors*⁶

Former IC member and retired journalist Olga Tellis filed a Public Interest Litigation ("**PIL**") before the Supreme Court seeking protection of IC members in private workplaces. The petition highlights that IC members in private companies are vulnerable to arbitrary termination and retaliation in case they make decisions unfavourable to senior management. Unlike public sector IC members, private sector members lack security of tenure and grievance redressal mechanisms. The petitioners argue that this disparity creates an environment where independent decision-making is compromised, effectively undermining the purpose of IC. It is contended in the petition that this disparity violates the constitutional rights enshrined under Article 21 (right to life and personal liberty) and Article 19(1)(g) (right to practice any profession). The PIL seeks to address this by designating private sector IC members as "public servants" to ensure parity in service conditions and protections with public sector IC members.

5. Civil Appeal No. 14299/2024

6. W.P.(C) 796/2024; On December 6, 2024, the Supreme Court issued a notice to the Ministry of Women and Child Development, Ministry of Corporate Affairs and Women and National Commission for Women seeking their reply on a plea to declare private sector IC members under the POSH Act as public servants. The next hearing is scheduled for January 24, 2025.

SUPREME COURT

Sl. No.	Ratio	Brief details
7.	<p>Mere allegations of harassment, without proof of direct or proximate incitement, does not amount to abetment to suicide. Courts should ascertain on the basis of the materials on record whether there is anything to indicate even prima facie that the accused intended the consequences of the erstwhile Indian Penal Code, 1860, i.e., suicide.</p> <p>We have analysed this case in detail and have outlined the approach to mitigate the liability of employers in such cases here.</p> <p><i>Nipun Aneja and Ors v State of Uttar Pradesh</i>⁷</p>	<p>In this case, a First Information Report (“FIR”) was filed against the executives of the employer for abetment of suicide of an employee under Section 306 of the Indian Penal Code, 1860 (“IPC”). The executives filed an application before the Allahabad High Court to quash the criminal proceedings which was dismissed. Following this rejection, the executives filed an appeal before the Supreme Court, challenging the High Court’s decision. The Supreme Court outlined the key legal elements needed to establish abetment to suicide within the context of employment and held that (i) there should be direct instigation or provocation; (ii) there should be sufficient evidence to showcase such provocation; and (iii) the provocation should be proximate to the time of occurrence of suicide, leaving the employee with no option but to commit suicide.</p>

HIGH COURT

Sl. No.	Ratio	Brief details
1.	<p>Every court is assumed to have all the powers necessary to ensure the effectiveness of its orders.</p> <p><i>Nagaraj G.K. v. The Hon’ble Addl. Labour Commissioner Appellate Authority Under POSH Act, 2013, Diary Circle and Ors</i>⁸</p>	<p>After receiving unfavourable recommendations from the IC pursuant to a workplace sexual harassment complaint filed against the petitioner and the consequent order of the employer to transfer the petitioner, the petitioner filed an appeal before the appellate authority under the POSH Act. The petitioner also filed an application for stay. When the appellate authority failed to grant the stay, the petitioner filed a writ before the Karnataka High Court stating that he has no remedy under the law, as the appellate authority under the POSH Act lacks power under Section 18 of the POSH Act read with the rules thereunder to consider the stay application.</p> <p>The Court noted that while the POSH Act and the rules do not contain any provision regarding granting of interim relief, the POSH Act does not prohibit the appellate authority from passing an interim order. The Court applied the legal principle “every court must be deemed to possess by necessary intendment all such powers as are necessary to make its order effective”. Accordingly, the Court held that despite the absence of specific provision, the appellate authority would have the power to consider the interim application.</p>
2.	<p>While the authority has discretionary power to extend time limits, it cannot go beyond the maximum statutory timeframe provided under the POSH Act.</p> <p><i>Dr. Nirmal Kanti Chakraborti v. Vaneeta Patnaik & Ors.</i>⁹ (NUJS case)</p>	<p>In this case, a complaint relating to sexual harassment was filed before the LCC against the Vice-Chancellor (“VC”) of National University of Juridical Sciences. The LCC rejected the complaint on the ground of limitation. In this regard, it is important to note that under the POSH Act, a woman subjected to sexual harassment at the workplace has a right to file a complaint either to the internal committee, if so constituted, or local committee,</p>

7. Criminal Appeal No. 654 of 2017

8. W.P. No 2836/ 2024

9. FMA 873 of 2024 With CAN 1 of 2024

HIGH COURT

Sl. No. Ratio

Brief details

in case it is not so constituted, within three months from the date of the incidents and in case of series of incidents, within three months from the date of the last incident. The respondent aggrieved employee filed a writ before the Calcutta High Court against the decision of the LCC.

The Calcutta High Court observed that a distinction must be made between a statutory provision that grants the authority the right to condone the delay for any period and one that restricts the exercise of such power by setting a maximum time limit. In a former case, the court may condone an inordinate delay upon being satisfied that the litigant was prevented from filing the appeal within prescribed time limit due to sufficient cause. In contrast, in the latter scenario, the time limit cannot exceed beyond the maximum limit provided under the law.

The Court upheld the LCC's decision to dismiss the complaint, noting that it was filed in December 2023, well beyond the three-month limitation period from the last alleged incident of sexual harassment in April 2023. While arriving at the conclusion, the Court analysed whether the series of incidents were in relation to "sexual harassment".

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3. Recovery of excess payments from employees is legally impermissible when: (i) the excess payment has been made for over 5 years before the recovery order; and (ii) when recovery would be iniquitous or harsh to an extent that outweighs the employer's right to recover.

*Smt. Draupati Devi v Union of India & Ors.*¹⁰

The case concerns a writ petition filed before the Delhi High Court seeking release of INR 9 lakhs withheld by Shri Guru Nanak Dev Khalsa College (the "College") from leave encashment dues of the petitioner's deceased husband. The petitioner's husband, who worked as an associate professor in the College's mathematics department, passed away due to COVID-19 in May 2021, shortly before his scheduled superannuation in February 2022. The College withheld the amount claiming excess payment recovery for stepped-up pay received from 2001 onwards.

The Court applied the Supreme Court's judgment in *State of Punjab v. Rafiq Masih (AIR 2015 Supreme Court 696)*, which establishes that recovery of excess payments is impermissible when made for a period exceeding 5 years before the recovery order, or when recovery would be iniquitous or harsh. The Court noted that the College had given the stepped-up pay benefit from 2001 but only sought recovery in August 2021, after the employee's death. The Court ordered the College to release the withheld leave encashment with 6% interest from the due date.

10. W.P.(C) 8675/2022 & CM APPL. 66870/2023

WHAT'S TRENDING

Tech companies placing Artificial Intelligence ("AI") on their agenda

AI stands at the forefront of strategic priorities for most companies. The integration of AI technologies into core business functions is seen as essential for remaining competitive in the global rapidly evolving market. Google, for example, aims to establish Gemini as a core product alongside its established services, targeting an extensive user base of 500 million. For companies not directly developing AI products, there is still a widespread push to integrate AI in other critical business operations, such as automating certain functions. One of the most notable areas of AI implementation is in recruitment and hiring. AI-driven tools and algorithms are being used to streamline the hiring process, from screening resumes to conducting initial interviews and even predicting candidate success. This push may have an impact on the employment landscape in India, where it may lead to redundancies owing to AI. Another aspect for employers to examine is ensuring that any AI tool used in the hiring process is diversity, equity and inclusion compliant.

Employee well-being continues to be a key focus for governments and employers

With a view to promote work-life balance, the Government of Australia introduced "the Right to Disconnect". This right empowers employees to disengage from work-related electronic communications during non-work hours. The concept has gained significant traction globally, with countries like France at the forefront having implemented comprehensive legislation in 2017. Australia has taken a particularly stringent stance, introducing legislation which imposes penalties of AUD 19,000 for an individual or AUD 94,000 on companies for the violation of employee's right to disconnect. While this is a global trend, India needs to catch up in addressing and adopting such measures.

It is interesting to see that the employers are also looking at options which promote employee well-being by supporting employees throughout their parenting journey. For instance, Google recently launched

Family- Benefit Programme which caters to employees regardless of their gender, sexual orientation, life stage or family structure. The program offers a three-pronged approach to family planning and parenthood:

- Pre-parenthood guidance encompassing cycle tracking, fertility treatments, and preservation options.
- Access to expert consultations for second opinions, adoption and surrogacy guidance, and mental health support.
- Extensive postnatal care including birthing assistance and feeding guidance.

Return-to-office mandate, a new normal: Delayed.

Amazon had announced its return-to-office mandate in September 2024. It required the employees to work from the office five days per week starting January 2, 2025, which is an increase from the previous three-day requirement. This transition has encountered challenges, and the primary obstacle appears to be workspace capacity constraints across multiple United States cities. This implementation has been pushed to May 2025, to accommodate the full workforce at its increased capacity. The delay highlights the complex logistical considerations involved in transitioning a large corporate workforce back to full-time office presence.

The surge of Human Metapneumovirus ("HMPV") infections has raised new health and safety concerns. Depending on the severity related to HMPV, employers may want to further consider the extension of work from home or a hybrid policy from an occupational, health and safety standard perspective.

Opportunity fee: An unconventional hiring approach.

In an unconventional hiring approach, Zomato in India published a posting for a chief of staff with a unique condition: candidates must pay a INR 20 lakh

“opportunity fee,” which will be donated to the charity Feeding India, and work without salary for the first year. While the role typically commands INR 50 lakh salary, Zomato will instead donate this amount to the selected candidate’s chosen charity. From the second year onward, the position will offer a salary exceeding INR 50 lakh, with specific terms to be discussed later.

While the approach aims to attract candidates genuinely interested in learning rather than those seeking prestige or compensation, positioning the role as an accelerated learning program rather than a traditional job opportunity, the employers should be cautious prior to adopting the same approach for all roles – as there could be concerns from Indian employment law standpoint.



WHAT TO EXPECT IN 2025

We have highlighted a few latest developments in the Indian labour and employment space that employers should closely monitor:

A Comprehensive Overview of the Labour Codes

The year 2025 marks a pivotal moment in India's employment landscape as the country prepares for the complete implementation of its reformed labour laws. This major overhaul aims to consolidate numerous existing labour laws into four comprehensive codes, each addressing specific aspects of employment and worker welfare.

Implementation Status

The Central Government has already published rules for all four codes. Currently, 31 out of 36 states and union territories in India have drafted their regional rules, while the remaining states are being urged by the Parliamentary Standing Committee on Labour to expedite their rule-making process to ensure nationwide uniformity in implementation. All 36 states and union territories are expected to complete harmonization and pre-publication of draft rules by March 31, 2025.

Key Features of Each Code:

- **Code on Wages:** Under the extant laws, the definition of "wages" varies across legislations. This fundamental reform standardizes the definition of "wages" thereby directly impacting statutory and retirement related benefits. The Code on Wages lays down the list of exemptions which do not form part of the term 'wages' which inter alia includes the value of house accommodation, bonus payable under any law, contributions to a pension or provident fund, sums paid to defray special expenses, remuneration payable under any award or order of a court/tribunal or settlement between parties, overtime allowance, gratuity payable, retrenchment compensation, ex gratia, and other retiral benefits (the "**Excluded**

Components"). In the event the aggregate of the Excluded Components (except gratuity, retrenchment, ex gratia, and retiral benefits) exceeds more than 50% of the remuneration paid to the employee, then the amount in excess will be treated as wages.

- **Industrial Relations Code:** This code aims to bring significant changes to employment terms and business operations. At present, closure, lay-off and retrenchment for a factory, mine or plantation require prior permission from the appropriate government if it employs more than 100 workmen. This requirement now applies to establishments employing more than 300 workers. The code also formalizes fixed-term employment and establishes mandatory notice periods for staff reductions.
- **Code on Social Security:** In a landmark move toward protecting the growing gig economy workforce, this code aims to extend social security benefits to gig workers mandating employers to contribute to a dedicated social security fund for these workers.
- **Occupational Safety Health and Working Condition Code:** Under this code, a worker's safety takes centre stage with enhanced protective measures, particularly in hazardous industries. The code also aims to strengthen safeguards for contract and migrant workers, ensuring better working conditions.

Impact and Implications

Employers will need to prepare for significant changes, specifically concerning payroll structures, workforce management practices and compliance mechanisms. These reforms require proactive preparation to ensure smooth implementation and avoid potential penalties.

The introduction of these labour codes represents a significant step toward modernizing India's employment landscape, emphasizing both employer accountability and worker welfare.

Karnataka's Landmark Gig Workers Protection Bill: A Progressive Approach to Platform Economy

Current Status and Timeline

The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024 (the "**Gig Workers Bill**"), initially introduced via public notice on June 29, 2024, has been deferred from the current Assembly Session to the March 2025 Budget Session. This strategic postponement aims to allow the government to conduct interactive sessions with gig workers, reflecting a commitment to inclusive policy-making in a sector that is projected to employ 23.5 million workers by 2029-30 (as per NITI Aayog).

Comprehensive Scope and Coverage

The Gig Workers Bill takes a sector-specific approach, covering 8 key areas, namely: ride-sharing services; food and grocery delivery; logistics operations; E-marketplace platforms; professional services; healthcare delivery; travel and hospitality sectors; and content and media services.

Key Innovations and Protections

Unlike the broader national Code on Social Security, the Gig Workers Bill introduces several concrete protections including mandatory fair contracts in simple language (available in Kannada, English, or other constitutional languages); a 14-day notice period for contract changes; protection against arbitrary algorithmic terminations; transparent earnings deduction systems; right to refuse work assignments without penalties; and unique identification numbers valid across all platforms.

Importantly, the Gig Workers Bill is designed to complement rather than replace existing protections under the Code on Social Security or other applicable laws. In cases where benefits overlap between central and state schemes, workers will be entitled to the more favourable provisions, ensuring maximum protection while avoiding regulatory conflicts.

Given the high concentration of aggregators in Karnataka, the development of Gig Workers Bill needs to be closely monitored as the aggregators will be required to make significant changes to their current practices. For a detailed analysis of the Gig Workers Bill, please refer to our article [here](#).

Proposed amendment to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

A new private member bill (the "**2024 Bill**") introduced in the Rajya Sabha on February 2, 2024, aims to strengthen the POSH Act through 2 significant amendments.

The first change addresses the timeframe for filing complaints. Currently, the POSH Act allows victims to file a complaint within 3 months, which can be extended by another 3 months if the IC finds sufficient cause. The 2024 Bill proposes extending this period to 1 year, with provisions for further extensions based on circumstances. This is in line with the Madras High Court's observation in *R Mohanakrishnan v Deputy Inspector General of Police (2024 SCC OnLine Mad 2123)*, where the Court noted that "*there could be several considerations and deterrents for an aggrieved subordinate when they consider reporting the sexual misconduct of a superior*". Therefore, this proposed change aims to give victims more time to come forward and report incidents.

The second amendment seeks to remove the existing conciliation provision from the POSH Act. This change is proposed due to concerns that the current conciliation mechanism may pressurize the aggrieved woman to opt for conciliation. The 2024 Bill suggests that removing this option would better protect victims' interests and ensure more thorough investigation of complaints.

This legislative effort follows a similar bill introduced in 2022 that had also proposed modifications to the complaint filing timelines under the POSH Act, showing ongoing legislative interest in strengthening workplace harassment protections.

Karnataka High Court's Landmark Ruling on Gig Workers and POSH Act Compliance

In a groundbreaking judgment (*Ms. X v. Internal Complaints Committee, ANI Technologies Private Limited and Ors., 2024 SCC OnLine Kar 102*) dated September 30, 2024, the Karnataka High Court addressed crucial questions about workplace sexual harassment protection in the gig economy. The case arose when a female passenger faced harassment from an unauthorized Ola driver operating through "swapping," and Ola's Internal Committee ("**Ola's**

IC”) refused to investigate the complaint stating that Ola’s IC did not have jurisdiction to take cognizance of the complaint of the female passenger on the ground that the drivers were not its “employees” but were “independent contractors”.

Key Aspects of the Ruling:

- **Employee Classification:** The Court rejected Ola’s defence that it was merely a technology intermediary and that drivers were independent contractors. The judgment highlighted that Ola’s comprehensive control over driver operations, including fare setting, route determination, booking management, and revenue collection, established an employer-employee relationship.
- **POSH Act’s Broad Coverage:** The Court emphasized that the definition of “employee” under the POSH Act is intentionally broad and cannot be circumvented through contractual clauses labelling workers as independent contractors. This interpretation reinforces worker protections regardless of formal employment status.
- **Unauthorized Driver Liability:** Significantly, the Court ruled that Ola’s IC must investigate complaints even in cases of unauthorized driver swapping, citing the definition of “employee” under the POSH Act which includes contractor with or without the knowledge of the principal employer.
- **Court Order:** The Court ordered Ola to conduct a thorough investigation of the complaint, while awarding INR 5,00,000 as compensation and INR 50,000 as litigation expenses to the victim.

Immediate Impact:

While the order is currently stayed pending appeal, scheduled for March 17, 2025, this ruling has far-reaching implications for India’s gig economy. It potentially requires digital platforms to implement stronger safety measures, establish robust harassment complaint mechanisms, recognize broader worker protections, and accept greater responsibility for user safety.

The judgment sets a significant precedent for worker classification and could reshape how gig economy platforms operate across India, particularly in terms of their obligations toward both workers and users under protective legislation like the POSH Act.

Karnataka High Court’s Landmark Ruling on International Workers’ Provident Fund Scheme

The Karnataka High Court in *Stonehill Education Foundation vs the Union of India and Others* (WP No.18486/2012) has delivered a significant judgment affecting IWs provident fund regulations in India by striking down 2 key provisions: Paragraph 83 of the Employees’ Provident Fund (“EPF”) Scheme and Paragraph 43-A of the Employees’ Pension Scheme. These provisions, introduced in 2008, had created a distinct treatment system for PF contributions towards IWs.

The Discrimination Issue

At the heart of the ruling was the discriminatory treatment where employers were required to make uncapped PF contributions towards IWs regardless of their basic wages and domestic workers’ contributions were capped at a monthly threshold of INR 15,000. This disparity in treatment formed a key basis for the Court’s decision to strike down these provisions as unconstitutional.

Current Status

The EPFO has acknowledged the judgment and is “actively evaluating the course of action in response,” while expressing their “highest regard for the Court’s decision”. The judgment has been challenged by the EPFO before a larger bench of the Karnataka High Court (WA 887/2024).

Potential Impact

Employers may see relief from the financial burden of uncapped PF contributions for IWs. The possibility of refunds for excess contributions has emerged, though the process remains undefined. The ruling could influence similar cases in other jurisdictions across India, potentially leading to a nationwide reassessment of PF contribution requirements for IWs. Employers and IWs alike are watching this closely as this development could significantly impact how global workforce management is structured in India moving forward.

Tamil Nadu's 24/7 Operations Exemption: Timeline Update

On June 2, 2022, Tamil Nadu's Labor Welfare and Skill Development Department (the "**Department**") issued a notification allowing certain establishments registered under the Tamil Nadu Shops and Establishment Act, 1947, to operate on 24/7*365 basis. This flexibility has provided registered establishments with the ability to operate round-the-clock, marking a significant shift from

traditional operating hours. However, the exemption granted for a 3-year period is set to expire on June 5, 2025. Consequently, we wish to highlight that continuation of 24/7 operations beyond June 5, 2025, is not allowed unless the State Government renews this exemption. Given the approaching expiration date, establishments currently operating under this exemption should monitor any announcements from the Department regarding potential renewal or modification of these provisions.



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