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# EMPLOYMENT LAW UPDATES

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## LABOUR & EMPLOYMENT

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### **RAJASTHAN PLATFORM BASED GIG WORKERS (REGISTRATION AND WELFARE) BILL, 2023**

The Rajasthan Assembly has passed the Rajasthan Platform Based Gig Workers (Registration and Welfare) Bill, 2023 which seeks to constitute a Welfare Board, set up a welfare fund and provide social security to platform-based gig workers engaged by primary employers or aggregators in any one or more services specified in the Schedule to the Bill. The services include ride sharing services, food and grocery delivery services, logistics services, e-Market place (both marketplace and inventory model) for wholesale/retail sale of goods and/or services Business to Business /Business to Consumer (B2B/B2C), professional services provider, healthcare, travel and hospitality, and content and media services.

The Bill proposes to set up a Welfare Board for such gig workers with members including five representatives each from among the gig workers, and the aggregators, primary employers, owners and manufacturers. It further envisions both the registration of all gig workers in the state, issuance of unique IDs to them as well as the setting up of a welfare fund. The cess contributed by the aggregators/primary employers at such a rate as may be notified by the government shall be a part of the welfare fund. Further, all payments generated on platforms will be mapped on to a Central Transaction Information and Management System (CTIMS) administered and monitored by the Board.

Such workers shall also have access to general and specific social security schemes based on contributions made as may be notified by the Welfare Board and have an opportunity to be heard for any grievances. Every aggregator and primary employer shall be required to get registered with the Welfare Board within sixty days of enforcement of this Act, provide the Welfare Board with the latest data of all platform based gig workers engaged by him within sixty days of enforcement of this Act, update the Board about any changes, i.e., increase or decrease in numbers of platform based gig workers in the data provided within one month of such change, deposit the amount

of platform based gig workers welfare cess levied by the fifth day of each calendar month, and submit a monthly return in such form as may be prescribed by fifth day of each calendar month. The proposed Act prescribes a fine for contravention of its provisions of the primary employers and aggregators.

### **SIKKIM ANNOUNCES 12-MONTH MATERNITY AND 1 MONTH PATERNITY LEAVE**

Sikkim Chief Minister has announced maternity benefit for 12 months and paternity benefit of 1 month for the State government employees. The CM informed that appropriate amendments will be made to the service rules applicable to the government employees.

### **SUPREME COURT DIRECTIONS TO THE UNION GOVERNMENT TO FILL CGIT VACANCIES**

Taking note of the fact that 50% of all Central Government Industrial Tribunals (CGIT) are vacant and thousands of labour disputes are pending adjudication across India and the effect is felt not only by the poor labour and workmen but even the institutions and their management and also the lawyers practising in the CGIT, the Chief Justice of India, Justice D. Y. Chandrachud, directed the Union government to fill the vacancies by August 31, 2023.

### **MAHARASHTRA SHOPS AND ESTABLISHMENTS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) (AMENDMENT) RULES, 2023**

The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules, 2018, requires establishments operating in shift to display well in advance a shift schedule, along with weekly holidays showing the names and designation of all persons working in that shift. Such notice shall be in Form 'N' and shall be kept in every establishment and made available for inspection to the facilitator on demand. The notice shall be displayed on the website and at a conspicuous place on the premises of the establishment on the notice board. A copy of the same shall also be sent to the facilitator electronically or otherwise.

The Government of Maharashtra has introduced an amendment to the said Rules which allows the employers to either display the notice on the website or at a conspicuous place of the premises of the establishment on the notice board.

### **ANDHRA PRADESH NOTIFICATION WITH RESPECT TO "WORK IN CONFINED SPACES."**

The Andhra Pradesh Labour Factories, Boilers and Insurance Medical Services Department took note of the fact that certain maintenance related activities have a high potential for accidents owing to their very nature itself.

In order to facilitate the factory management in operationalising the safety measures with ease and better understanding in this regard and thereby prevent accidents in confined spaces in the future, detailed guidelines/instructions are issued to factories in the State. The guidelines/instructions are required to be followed by the factories in the State and;

The guidelines require that the occupier of a factory shall identify all confined spaces and the nature of hazard that is encountered in such places, normally or abnormally, and arrange to regulate the entry or work inside the confined spaces by following the work permit system for ensuring the safety and health at work. The guidelines detail out the safety precautions that are required to be ensured by the factories in respect of the confined spaces in the factories, including training of workers. The guidelines contain illustrative images for the guidance of factories.

### **SUPREME COURT DIRECTS STATES TO COMPLY WITH THE RIGHTS OF PERSONS WITH DISABILITIES ACT 2016**

The Supreme Court on Monday directed all State Governments to comply with the provisions of the Right of Persons with Disabilities Act 2016 ["RPwD Act"] expeditiously before September 30, 2023. The bench comprising CJI DY Chandrachud, Justice PS Narasimha, and Justice Manoj Misra also directed the



States to appoint Chief Commissioners for persons with disabilities by August 31, 2023.

The RPwD Act was enacted to ensure non-discriminatory work practices in certain establishments and requires an establishment to notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the Act in the manner as may be prescribed by the Central Government.

### **KARNATAKA GOVERNMENT EXEMPTS CERTAIN EMPLOYEES FROM PAYMENT OF PROFESSIONAL TAX**

The Government of Karnataka by notification dated July 13, 2023 has exempted certain categories of persons from the applicability of the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976. Persons exempted include owners of Transport vehicles (other than Autorickshaws) not exceeding two in number, run on their own or through others under permits granted; individual persons engaged in any profession, trades, callings and employment who are physically challenged who have total permanent disability of not less than 40% of both upper and lower extremity deformities subject to production of a certificate obtained from the Head of the orthopaedic department of Government Civil Hospital in the State, directors of companies registered in Karnataka and nominated by the financing agencies owned or controlled by the State Government or by other statutory bodies, foreign technicians employed in the State provided their appointments are approved by the Government of India for the purpose of exemptions from payment of income tax subject to a maximum of two years from the date of their joining duty, an ex-serviceman, etc.

### **THE JAN VISHWAS (AMENDMENT OF PROVISIONS) BILL, 2023**

Jan Vishwas (Amendment of Provisions) Bill, 2023 is passed in the Parliament to decriminalise and rationalise minor offences under certain enactments to further “enhance trust-based governance for ease of living and doing business”.

The Bill revisits the penalties provided under 42 enactments mentioned in the Schedule of the Bill,

including the Boilers Act, 1923, the Industries (Development and Regulation) Act, 1951, the Copyright Act, 1957, the Patents Act, 1970, the Trade Marks Act, 1999, the Motor Vehicles Act, 1988, the Legal Metrology Act, 2009, the Information Technology Act, 2000, the Air (Prevention and Control of Pollution) Act, 1981, the Environment Protection Act, 1986, The Public Liability Insurance Act, 1991, etc. The Bill proposes to increase by 10% of the minimum amount of fine or penalty, after the expiry of every three years from the date of commencement of the proposed Act.

### **AADHAAR AUTHENTICATION UNDER BUILDING AND CONSTRUCTION WORKERS ENACTMENT IN CHHATTISGARH**

As per the notification of the government dated June 30, 2023, an individual interested and eligible in availing benefits under the schemes under the Building and Other Construction Workers Welfare Cess Act 1996 read with the Chhattisgarh Building and Other Construction Workers Welfare Cess Rules 1998 shall be required to furnish proof of Aadhaar possession or undergo Aadhaar authentication. Whosoever does not possess Aadhaar or is yet to enrol for Aadhaar is required to enrol before availing benefits under the schemes.

In order to provide convenient and hassle-free benefits to the beneficiaries, the following arrangements will be made:

(i) Wide publicity through media and individual notice through development block officers or gram panchayats shall be given to the beneficiaries to make them aware of the requirements of Aadhaar under the schemes;

(ii) They may also be advised to get themselves enrolled for aadhaar at the nearest enrolment centre available in their areas, in case they are not already enrolled; and

(iii) The list of locally available enrolment centre shall be made available to them.



### **EPF RATE OF INTEREST DECLARED**

As per the Web Circulation issued by the Employees' Provident Fund Organisation (EPFO) dated July 24, 2023, the Ministry of Labour and Employment has conveyed the approval of the Central government under the Employees' Provident Fund Scheme, 1952 to credit interest at the rate of 8.15% for the year 2022-23 to the account of each member under the scheme.

### **ESIC ISSUES CLARIFICATION REGARDING THE CORRECTION OF THE DATE OF BIRTH OF THE INSURED PERSONS**

The Employees' State Insurance Corporation (ESIC) has implemented Aadhaar on a voluntary basis for registration and providing benefits to insured persons and beneficiaries under the Employees' State Insurance Act, 1948. In this regard, the ESIC has clarified that the online requests which are being received from insured persons relating to correction/update in their particulars specifically their date of birth (varying three years or more) may be accepted as per details in their Aadhaar Card which carries specific date of birth.

### **SUPREME COURT REFUSES TO INCLUDE RETALIATION OR VICTIMISATION OF THE COMPLAINANT OR WITNESSES AS A FACET OF SEXUAL HARASSMENT UNDER THE POSH ACT**

The Supreme Court [1], while refusing to entertain a Public Interest Litigation (PIL) seeking issuance of directions to protect complainants/witnesses/other persons in cases of complaints of sexual harassment from acts of retaliation/victimization by the accused persons or concerned organizations, observed that such general order would create a new offence under the POSH Act. The court remarked that the petitioner had to show specific instances where complainants/witnesses/other persons in cases of complaints of sexual harassment were being harmed by acts of retaliation/victimization by the accused persons.

### **POSH ACT CAN BE INVOKED BY THE AGGRIEVED WOMAN WORKING IN A DEPARTMENT AGAINST A MAN WORKING IN ANOTHER DEPARTMENT: DELHI HIGH COURT**

The Delhi High Court [2] has ruled that the scope of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (PoSH Act) is not limited to cases where a woman employee is sexually harassed by another employee working in her own office or department but also extends to cases where the delinquent employee is employed elsewhere. The court observed that under Section 13(3)(i), which requires the internal committee, on its finding that the complaint of sexual harassment has been proved, to recommend to the employer to take action for sexual harassment as misconduct in accordance with the service rules applicable to the respondent. The provision, therefore, caters to a situation in which the respondent is governed by independent service rules. If he is, the internal committee, which finds against him, would recommend, to his employer, to take action against him in accordance with the service rules to which he is subject.

### **TERMINATION OF TEMPORARY EMPLOYMENT DOES NOT AMOUNT TO RETRENCHMENT OR UNFAIR LABOUR PRACTICE**

The Allahabad High Court [3] has held that temporary employment of a worker by an employer is not an unfair labour practice under the Industrial Disputes Act, 1947. The court observed that the worker had failed to prove that he had worked continuously and without any break for the required period.

The court held that temporary/seasonal employees have no right to be absorbed or regularized unless there is a specific statutory provision or scheme to that effect. The court held that the services of the petitioner were co-terminus with the end of the period stipulated in the appointment letter and no termination letter was issued which could fall within the definition of "retrenchment".

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[1] Writ Petition(s)(Civil) No(s). 644/2023

[2] W.P.(C) 8624/2023 & CM APPL. 32735/2023, CM APPL. 32736/2023

[3] WRIT - C No. - 30049 of 2016

## **EMPLOYER IS ALONE RESPONSIBLE FOR INTEREST AND PENALTY ON DELAYED PAYMENT OF EMPLOYEES' COMPENSATION: J&K HIGH COURT**

The Jammu & Kashmir and Ladakh High Court [4] has held that an employer is liable to pay interest and penalty on the compensation awarded to an employee who died in a road accident, even if the employer had taken an insurance policy under the Employees' Compensation Act, 1923. The court rejected the contention of the employer that the liability to pay interest was solely on the insurer and not on the employer. The court observed that unless there is a specific contract of insurance between the employer and the insurer, the insurer would indemnify the employer in respect of interest and penalty also, no liability can be fastened on the insurer to indemnify the employer for the amount of interest and penalty that may become payable by the employer for committing default in making the payment of compensation due under the Act within one month from the date of accident.

## **A SETTLEMENT WILL NOT OVERRIDE THE MODEL STANDING ORDERS, UNLESS IT IS MORE BENEFICIAL TO THE WORKMEN [5]**

The case arose out of an appeal against the judgement of the High Court of Bombay in Writ Petition No. 2657 of 2017, which confirmed the award passed by the Central Government Industrial Tribunal (CGIT) rejecting the demand of the Appellant-Union for reinstatement with full back wages

The Appellant represented around 169 workmen temporarily engaged on a fixed-term contract by Jet Airways in various cadres like loader-cum-cleaners, drivers and operators. The Appellant contended that the workmen were treated as temporary despite completing 240 days in service and despite the nature of the work being permanent and regular.

The Trade Union had raised a charter of demands which, after negotiations, resulted in a settlement dated 02.05.2002. In the said charter of demands, Bhartiya Kamgar Sena gave up the demand for the grant of permanency and a comprehensive settlement dated

02.05.2002 was signed as a package deal that conferred many benefits on the workmen who gave up the said demand.

The CGIT, in its award dated 30.03.2017, while answering a reference framed the issue, whether the Union's demand for re-employment/reinstatement with full back wages of these 169 workmen in service of that first party is just and proper and answered it in the negative.

The Supreme Court held that any settlement, the employee Union enters into with the Employer would not override the Model Standing Order, unless it is more beneficial to the employees. Certified standing orders have a statutory force. The Standing Order implies a contract between the employer and the workman. The employer and workman cannot enter into a contract overriding the statutory contract embodied in the certified Standing Orders.

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[4] MA No. 155/2007

[5] CIVIL APPEAL NO. 4404 of 2023

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