



December 2022

Several legislative changes were introduced in the labour and employment sector in the year 2022. Through some of these changes, we have seen laws leaning on a gradual shift towards introducing flexible work hours, digitization of procedural compliances under labour laws in India, *etc.* In view of the waning severity of the COVID-19 pandemic, there has also been a pan India relaxation of COVID-19 related restrictions, including in workplaces.

With this year-end edition of the JSA Employment Newsletter, we bring to you a brief roundup of the key central and state specific labour law enactments, amendments, notifications, orders and other updates issued over the year, and discuss some of the recent interesting judicial precedents spread across several employment legislations.

2022 – Round-up of key employment law regulatory updates

Work from home permission granted for employees of special economic zones (SEZs)

The Ministry of Commerce and Industry issued the Special Economic Zones (Fifth Amendment) Rules, 2022 *vide* notification dated December 8, 2022 (“**SEZ Rules**”). SEZ Rules permit certain category of employees of establishments within SEZs (“**Units**”), including employees¹ of Units providing information technology (“**IT**”) and IT enabled services, to work from home or any place outside the SEZ, until December 31, 2023. Additionally, subject to applicable conditions, employees of Units who are (a) temporarily incapacitated; (b) travelling; and (c) working off site are also permitted to work from home. For a detailed analysis, please refer to the [JSA Prism of December 15, 2022](#).

Changes applicable to shops and commercial establishments

1. Shops and commercial establishments in Tamil Nadu, Punjab, Puducherry and Andhra Pradesh permitted to operate on all days of the year

a) Tamil Nadu, Puducherry

The Labour Welfare and Skill Development Department, Government of Tamil Nadu *vide* notification dated June 2, 2022, extended permission to shops and establishments employing 10 (ten) or more persons under the Tamil Nadu Shops and Establishments Act, 1947 to remain open on a 24*7 basis on all days of the year, for a period of 3 (three) years subject to certain conditions.

Similarly, the Labour Department, Government of Puducherry *vide* notification dated October 27, 2022, permitted shops and establishments under the Puducherry Shops and Establishments Act, 1964 to remain open on a 24*7 basis on all days of the year, for a period of 3 (three) years subject to conditions.

¹ The term ‘employee’ for the purposes of this exemption to work from home, has been defined under the SEZ Rules as “*all persons employed on the rolls of the Unit or under a direct contract or where the Unit is the principal employer under a contract with another organisation where such persons are expected to report on a day-to-day basis for work to the Unit and the Unit administers the control on their attendance*”.

Some key prescribed conditions in both the States include: (a) provision of minimum 1 (one) weekly holiday on a rotational basis to employees; (b) display of weekly holiday details in the establishment in the form as prescribed; (c) compliance with limits on hours of work (not exceeding 8 (eight) hours a day and 48 (forty eight) hours a week), and period of work including overtime (10.5 (ten point five) hours a day and 57 (fifty seven) hours a weeks); and (d) compliance with other measures as prescribed to ensure the safety of women working in night shifts.

b) **Punjab**

The Department of Labour, Government of Punjab *vide* notification dated June 8, 2022, permitted all establishments under the Punjab Shops and Commercial Establishments Act, 1958 to remain open on all days of the year, up to May 31, 2023, subject to certain conditions.

Some key conditions include: (a) provision of minimum 1 (one) weekly holiday to all employees; (b) display in advance of the timetable of holidays for each month in the establishment; (c) compliance with provisions on intervals of rest (1 (one) hour of rest after every 5 (five) hours of continuous work), limits on working hours (9 (nine) hours in a day, 48 (forty eight) hours in a week), and spread over total hours (11 (eleven) hours in a day); (d) provision of adequate security arrangements for employees and visitors for establishments remaining open after 10:00 PM; and (e) compliance with other measures as prescribed to ensure the safety of women working in night shifts.

c) **Andhra Pradesh**

The Labour, Factories, Boilers and Insurance Medical Services Department, Government of Andhra Pradesh *vide* notification dated November 1, 2022, allowed all retail enterprises, i.e., 'shops' under the Andhra Pradesh Shops and Establishments Act, 1988 ("**AP S&E Act**") to remain open every day of the year from 6:00 AM to 11:00 PM, for a period of 5 (five) years from the date of the notification, subject to certain conditions.

Some key conditions include: (a) provision of compensatory, compulsory weekly 1 (one) day holiday on a preferential basis without any deduction of benefits, monetary, or otherwise; (b) advance display of list of such holidays for each month on notice boards; (c) compliance with limits on working hours (8 (eight) hours per day and 48 (forty eight) hours per week); (d) employment of women in 2 (two) shifts, with a minimum 1 (one) hour changeover period; and (e) provision of adequate safety measures and transportation facilities for travel from workplace to place of residence for women employees.

2. **Shops and establishments in Maharashtra mandated to have name boards in Marathi**

The Government of Maharashtra *vide* notification dated March 17, 2022, amended the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017, to *inter alia*, mandate establishments to have name boards in Marathi. Establishments can have name boards in languages along with Marathi, however, lettering in Marathi must be written at the beginning of the name board and the font size must not be smaller than the font size of the letters in any other language. It also places a prohibition on establishments serving or selling liquor from having name boards in the names of legends or forts.

3. **One-time registration offered to shops and commercial establishments in Uttar Pradesh**

The Department of Labour, Government of Uttar Pradesh, *vide* notification dated August 3, 2022, notified the Uttar Pradesh Dookan Aur Vanijya Adhishthan (Navam Sanshodhan) Niyamawali, 2022 removing the requirement for shops and commercial establishments in Uttar Pradesh to renew their registration every 5 (five) years and provides for a one-time registration issued on payment of the prescribed registration fee. Shops and commercial establishments that are run on a yearly contract basis are required to apply for licence on a yearly basis and are liable to pay 1/15th of the prescribed registration fee. Shops and commercial establishments having 5 (five) year registrations prior to notification of this amendment are required to renew their registration once, by depositing the prescribed registration fees.

Women across various states allowed to work in night shifts in factories, commercial establishments, specifying conditions of work

Several states have issued notifications enabling women employees to work during night shifts in factories and commercial establishments, while outlining health, safety and security requirements for women employees to be satisfied by employers. This is in line with Section 43 of the Occupational Safety, Health and Working Conditions Code, 2020 (*presently pending implementation*), which provides that “Women shall be entitled to be employed in all establishments for all types of work under this code and they may also be employed, with their consent before 6:00 AM and beyond 7:00 PM, subject to such conditions relating to safety, holidays and working hours or any other condition to be observed by the employer as may be prescribed by the appropriate Government”.

Some of the terms and conditions mandated on employers seeking to employ women during night shifts, include:

1. Prior written consent of the woman employee;
2. Adherence to limits on hours of work, overtime, intervals of rest and total spread over of hours as prescribed under the relevant shops and establishment legislation;
3. Compliance with provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Maternity Benefit Act, 1961;
4. Provision of transportation facilities for pick up and drop of women employees to and from the workplace to place of residence and deployment of adequate safety measures, including security guards, etc.

Additionally, some State specific terms and conditions are provided below:

1. Punjab

Pursuant to notification dated March 3, 2022, some key conditions to employ women in establishments during night shifts, include *inter alia*, (a) filing of an application with the Department of Labour seeking permission to employ women during night shifts; (b) holding annual defence workshops for women employees; (c) employment of a minimum of 5 (five) women employees during night shift; and (d) maintenance of register recording details of transportation facilities provided (including driver’s name, vehicle used for transport, time of pick up and drop of women employees), movement register and attendance register for security guards.

2. Goa

Section 17A of the Goa Shops and Establishments (Amendment) Act, 2022 notified on May 2, 2022 allows women to work in establishments between 6:00 AM and 7:00 PM, provided their consent is obtained, and the government or relevant authority designated by the government is satisfied of the establishment’s compliance with (a) provision of adequate protection of the woman’s safety, dignity, honour; (b) transport facility from workplace to her residence; and (c) any other terms and conditions as may be specified by the government by way of notification.

3. Andhra Pradesh

Pursuant to notification dated October 26, 2022, some key conditions to employ women in establishments in Andhra Pradesh during night shifts, were included. These are (a) provision of adequate lighting in the factory premises; (ii) proximity of toilet, washroom and drinking water facilities to the workplace; and (iii) observing healthy working conditions and compliance with other safety conditions for women employed as prescribed by the government from time to time.

4. Haryana, Madhya Pradesh

The Punjab Shops and Commercial Establishments (Haryana Amendment) Rules, 2022 notified on May 17, 2022, read with notification dated June 7, 2022, allows certain classes of establishments, including *inter alia*, IT/ITes establishments, logistics and warehousing establishments and banking establishments to employ women from 7:00 PM to 6:00 AM. Similarly, pursuant to notification dated August 1, 2022, shops and establishments under the Madhya Pradesh Shops and Establishments Act, 1958 have been permitted to employ women between 9:00 PM and 7:00 AM.

Some key conditions for employment of women during night shifts in shops and establishments in Haryana and Madhya Pradesh, include: (a) obtaining and forwarding the consent/declaration from each woman employee to be employed during the night shift to the Labour Commissioner of the relevant state; (b) filing of half yearly report providing details of employees during night shifts with the Labour Commissioner; (c) filing of report (immediately) on occurrence of any untoward incident, with the Labour Commissioner and local police station; (d) employment of women in batches of 10 (ten), with the total strength of women workers employed being not less than 2/3rd the total strength; (e) 1/3rd of the supervisory staff deployed during the night shift to be women; (f) maintenance of registers bearing records of movement of vehicles and drivers used for facilitating transportation of women employees; (g) provision of separate canteen facility for women employees (where number of women employed are more than 50 (fifty)); (h) provision of medical facilities including deployment of emergency vehicles (where more than 100 (one hundred) women are employed in a shift) for transportation during emergency situations; and (i) holding of monthly grievance redressal meetings with women employees and prompt redressal of grievances raised. The permission granted to employ women during night shifts establishments in Haryana is subject to an application for grant of such permission being made by the establishment which is valid for a period of 1 (one) year.

5. **Uttar Pradesh, Himachal Pradesh**

Pursuant to notifications dated May 27, 2022 and August 12, 2022, factories in Uttar Pradesh and Himachal Pradesh, respectively, are permitted to employ women between 7:00 PM and 6:00 AM, subject to certain terms and conditions such as : (a) intimation of arrangements made by the employer for employment of women workers to the Inspector of Factories, of the region concerned for verification; (b) filing of monthly reports with the Inspector of Factories, with details of women employees employed at night; (c) filing of immediate reports with the Inspector of Factories and local police station for reporting of any untoward incident; (d) prohibition on termination of woman employee denying to work during the night; (e) provision of food, supervision during hours of work and travel, ensuring proximity of toilets, washrooms, change-rooms and drinking water facilities to the workplace; and (f) employment of a minimum of 4 (four) women employees in the premises or a particular department during the night shift. This permission granted to factories in Himachal Pradesh is valid for a period of 3 (three) years from the date of the notification, *i.e.*, August 12, 2022.

6. **Tamil Nadu**

Pursuant to notification dated June 2, 2022 some key conditions to employ women in shops and establishments in Tamil Nadu between 8:00 PM and 6:00 AM include provision of: (a) adequate measures to protect dignity, honour and safety of women employees; (b) transportation facilities and a notice at the entrance of the establishment indicating availability of such facility; and (c) washroom, safety lockers and other basic amenities.

7. **Telangana**

Pursuant to notification dated October 13, 2022, some key conditions to employ women in shops and establishments in Telangana between 8:30 PM and 6:00 AM include: (a) employment of women in batches of 5 (five) during night shifts; (b) pre-employment screening of antecedents of drivers employed to provide transportation facilities for women; (c) provision of shelter, rest, rooms, lunch rooms, night creches, ladies' toilets; (d) selection of routes, inspection of routes of travel from workplace to place of residence as used by drivers providing transport facility; (e) setting up of a control room or travel desk to monitor movement of vehicles; (f) filing of returns and records as prescribed.

Statutory registers may be maintained in electronic form in Tamil Nadu and Andhra Pradesh

1. **Tamil Nadu**

Amending the Tamil Nadu Shops and Establishments Rules, 1948 *vide* notification dated March 30, 2022, the Department of Labour Welfare and Skill Development, Government of Tamil Nadu allows employers to maintain statutory registers in electronic form.

2. Andhra Pradesh

The Labour Factories Boilers and Insurance Medical Services Department, Government of Andhra Pradesh *vide* notification dated November 1, 2022, allows retail enterprises, i.e., 'shops', under the AP S&E Act to maintain records like the wages register and muster rolls of employees in electronic form, available for online access to inspectors.

Other relevant changes

1. Employees' State Insurance Act, 1948 ("ESI Act") compliance for companies incorporated using the SPICe+ Form

The Employees' State Insurance Corporation ("ESIC") *vide* circular dated December 1, 2022 notified that the ESI Act registration status for companies (incorporated using the SPICe+ form under the Ministry of Corporate Affairs portal) would stand automatically activated after the lapse of 6 (six) months of the notification, irrespective of their coverage under the ESI Act (ESI Act compliance being mandated only for establishments employing 10 (ten) / 20 (twenty) or more persons ("ESI Applicability Threshold")). To avoid such automatic activation and to extend exemption from compliance with the ESI Act, companies that have not reached the ESI Applicability Threshold are required to extend their 'dormant' status by logging into the ESIC website.

2. Applicability of Contract Labour (Regulation and Abolition) Act, 1970 in Himachal Pradesh

The Government of Himachal Pradesh *vide* notification dated February 10, 2022, notified the Contract Labour (Regulation and Abolition) Himachal Pradesh Amendment Act, 2020 to amend its applicability to establishments and contractors who employ or employed on any day of the preceding 12 (twelve) months, 30 (thirty) or more workmen. This revised threshold stands effective retrospectively from July 9, 2020. Earlier, the applicability was limited to 20 (twenty) or more workers.

3. Mandatory online registration of employers for filing of professional tax under the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976

The Office of Commissioner of Commercial Taxes, Government of Karnataka, *vide* notification dated March 31, 2022, with effect from April 1, 2022, made it mandatory for employers to obtain registration under the Karnataka Tax on Profession, Trades, Callings and Employments Act, 1976 through its online portal, e-PRERANA.

4. Notification of the Gujarat IT/ITes Policy (2022-2027)

The Department of Science and Technology, Government of Gujarat, on February 7, 2022, notified the Gujarat IT/ITes Policy (2022-2027), effective up to March 31, 2027, offering various incentives for IT/ITes units in Gujarat including financial incentives for generation of employment opportunities to local employees and reimbursement of statutory contributions made under the Employer's Provident Fund for a period of 5 (five) years.

5. Contributions towards labour welfare fund in Delhi now accepted online

The Delhi Labour Welfare Board, Government of National Capital Territory of Delhi, *vide* notification dated July 1, 2022 notified introduction of an online website portal providing services including *inter alia* registration under the Bombay Labour Welfare Fund Act, 1953 (as extended to Delhi), accepting contributions from employers and employees and submission of contribution related details in relation to the labour welfare fund.

6. Relaxation of COVID-19 related restrictions in workplaces

The Home Secretary, Ministry of Home Affairs ("MHA") *vide* notification dated March 31, 2022, ordered that no further orders pertaining to COVID-19 related restrictions may be issued by the MHA. The last order issued by the MHA prescribing COVID-19 related restrictions dated February 25, 2022, stands ineffective as on date, and no new orders have been issued by the MHA on this subject, thereafter.

While some states have revoked all orders prescribing containment measures for workplaces, facial masking and physical distancing mandates in indoor environments are notified by states from time to time.

7. Status of Labour Codes

While the 4 (four) labour codes on wages, social security, industrial relations and occupational safety, health and working conditions are still pending implementation, several states including Andhra Pradesh, Delhi, Haryana, Maharashtra, Karnataka, Telangana, Tamil Nadu and Karnataka have issued draft rules under the codes for public consultation this year. Some states are yet to release their draft rules under any of the codes.

Case Law Ratios

Temporary employee entitled to wages equal to a regular employee performing the same duties

The Punjab and Haryana High Court in the case of *Secretary, DAV College Managing Committee and another, v. District Judge, Karnal and others*² reiterating the constitutional principle of “equal pay for equal work” held that temporary employees, including work-charge, daily wage, casual, ad-hoc and contractual employees, other than in matters of the manner of selection and appointment, are entitled to wages equal to the salary at the lowest grade of a regular employee discharging the same duties as the temporary employee.

Blood relatives can share employer-employee relationship under the Employees' Compensation Act, 1923

The Karnataka High Court in the case of *Divisional Manager, the Oriental Insurance Co. Ltd. v. Sayeeda Khanam*³ examined an insurance company's refusal to release compensation claims to representatives of a deceased employee. The insurance company denied existence of employer-employee relationship as the deceased's employer was his brother. The Karnataka High Court clarified that there is no provision under the Employees' Compensation Act, 1923 prohibiting employment of blood relatives, and an employer-employee may exist between blood relatives. Hence, the insurance claim amount was ordered to be released.

Government employee suffering disability during course of employment is entitled to alternate employment with same pay benefits

In the case of *Ch. S. Rajeshwara Rao v. Government of Andhra Pradesh*⁴, the Andhra Pradesh High Court held that a government employee suffering disability during service has the right to alternate employment at the same pay scale and service benefits under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (*now Rights of Persons with Disabilities Act, 2016*). The court further held that such employees cannot be subjected to break in service and can claim back wages and continuity in service until alternate employment is offered by the employer.

Retirement benefits cannot be attached for satisfaction of any civil court decree

In the case of *Smt. N. R. Indira v. State of Telangana*⁵, the Telangana High Court examined validity of withholding the petitioner's retirement benefits by the respondent, in furtherance of an order of the civil court, which directed withholding of the petitioner's salary and leave encashment benefits pursuant to default in his guarantor obligations for certain loan transactions. The court held that while salary and leave encashment could be withheld by the respondent, the respondent was not entitled to withhold pension and gratuity for appropriation of decree of any civil court.

² CR-1706-2022 (O&M) (Punjab and Haryana HC)

³ MFA No. 25711/2011 (Karnataka HC)

⁴ WP 5468/2011 (Andhra Pradesh HC)

⁵ WP 1034/2021 (Telangana HC)

Employment Practice

JSA has a team of experienced Employment Law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our Key areas of advice include (a) Advising on boardroom disputes including issues with directors, both executive and non-executive;(b) Providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimize associated risks and ensure legal compliance, (c) Providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals, (d) Advising on compliance and investigations, including creating Compliance Programs and Policy, Compliance Evaluation Assessment and Procedure Development and providing support for conducting internal investigations into alleged wrongful conduct, (e) Designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs, (f) Advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

This Newsletter has been prepared by:



Gerald Manoharan
Partner



Sonakshi Das
Senior Associate



Sandhya Swaminathan
Associate



14 Practices and
23 Ranked Lawyers



15 Practices and
18 Ranked Lawyers



7 Practices and
2 Ranked Lawyers

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