



advocates & solicitors

A background image showing four hands of different skin tones reaching towards the center, each holding a white puzzle piece. The hands are positioned to assemble the pieces into a larger shape, symbolizing teamwork and collaboration.

# **Knowledge Management**

## Semi-Annual Employment Law Compendium 2024

July – December 2024

# Semi-Annual Employment Law Compendium 2024



This Compendium consolidates all the key regulatory developments, notifications, orders, judicial precedents and other updates in the labour and employment space in India, during the calendar period from July 2024 till December 2024. It also captures the JSA insights on:

1. Handling anonymous complaints of sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**").
2. Continued employee absenteeism: employers' way forward.

Please [click here](#) to access the Semi-Annual Employment Law Compendium – January 2024 to June 2024.

## Regulatory Updates

### The Government of India presented Budget 2024-2025 placing significant focus on employment opportunities and skill development

On July 23, 2024, the Hon'ble Finance Minister, Ms. Nirmala Sitaraman, presented the Budget 2024-2025 ("**Budget**") for the financial year 2024-2025. The

Budget for the first time has placed significant focus on employment-linked incentives and skill development. It envisages an allocation of INR 2 lakh crore (Indian Rupees two lakh crore) for employment, skilling and education.

The Government of India is tasked with implementing the following 5 (five) major schemes aimed at providing financial support to new employees and offering various incentives to employers to hire more employees, based on their enrolment with the Employees Provident Fund Organisation ("**EPFO**"). provide 1 (one) month's wage as subsidy in 3 (three) instalments, with a maximum of INR 15,000 (Indian Rupees fifteen thousand) for freshers (with a salary less than INR 1,00,000 (Indian Rupees one lakh)), irrespective of the sector; offer fixed rate incentives to both employees and employer with respect to their EPFO contribution during the first 4 (four) years of work in manufacturing sector; provide eligible employers with a reimbursement of up to INR 3,000 (Indian Rupees three thousand) per month for EPFO contributions for each additional employee hired over the next 2 (two) years; upgrade 1,000 (one thousand) industrial training institutes to meet the industry skill needs; and offer internship opportunities at 500 (five hundred) top Indian companies with a monthly allowance of INR 5,000 (Indian Rupees five thousand)

during the internship tenure, and a one-time assistance of INR 6,000 (Indian Rupees six thousand) to support their needs. In addition to the employment-linked schemes, the Government of India has further promised to revamp the Shram Suvidha and Samadhan portal to enhance ease of compliance for industry and trade; a comprehensive integration of the e-shram portal with other portals to facilitate a one-stop solution; and to set up women's hostels and creches to facilitate higher participation of women in workforce.



### Central Government increases minimum wage rates to support workers

In a significant effort to assist workers in the unorganised sector amid rising living costs, the Central Government has announced an increase in minimum wage rates through a revision of the variable dearness allowance, effective from October 1, 2024. This adjustment benefits workers across various sectors, including construction, loading and unloading, housekeeping, mining, and agriculture. The new rates are categorised by skill level and geographical area and variable dearness allowance is revised biannually, with the latest adjustment reflecting changes in the consumer price index.

### The Ministry of Commerce and Industry issues circular in relation to minimum wages applicable to workers/employees in Santacruz Electronics Export Processing Zone (Electronics) and gems and jewellery sectors

The Deputy Development Commissioner, *vide* circular<sup>1</sup> dated August 30, 2024, specified the minimum wages

including basic wage, special allowance, house rent allowance (5%) applicable to skilled, semi-skilled and unskilled workers in gems and jewellery units and shops and establishment and Santacruz Electronics Export Processing Zone (Electronics). The special allowance is revised twice in a year by the labour department under the Government of Maharashtra. All units are to ensure that no employee is deprived of the minimum wages at any point of time. The zone administration will be regularly verifying the records and registers to ensure payment of minimum wages by employers, by obtaining photocopies of payment register for specified period.

### Ministry directions on registration of platform aggregators and platform workers on e-Shram portal

On September 1, 2024, the Union Minister for Labour and Employment, Dr. Mansukh Mandaviya, convened a review meeting in New Delhi to discuss approaches aimed at extending social security benefits to gig and platform workers in India. This meeting emphasized the government's commitment to the welfare of this vital and expanding segment of existing labour workforce in India. Introduction of the Social Security Code was highlighted as a significant milestone in officially defining and recognizing the gig economy and rights of platform workers and acknowledging their contributions to the Indian economy.

The Ministry of Labour and Employment ("**Labour Ministry**"), *vide* circular<sup>2</sup> dated September 16, 2024, outlined the directives for registration of platform aggregators and platform workers on the eShram portal ("**Directions**"). Launched on August 26, 2021, the eShram portal is designed to support unorganised and migrant workers across India, providing them with a Universal Account Number ("**UAN**") which facilitates access to skills training, job opportunities, and eligibility checks for various social security schemes administered by both Central and State Governments. The Government of India is committed to transforming the eShram portal into a comprehensive '*One-Stop Solution*' for workers.

States like Karnataka and Rajasthan have already initiated significant steps in enhancing rights of

<sup>1</sup> Circular no./LAB/22/2024

<sup>2</sup> Circular no. W-11015/15/2024-RW (GPW)

platform-based gig workers, even prior to the Central Government's initiatives.

## Key highlights of the Directions

1. **Registration requirements:** Aggregators are urged to promptly register themselves and the platform workers engaged by them on the eShram portal. Detailed terms and a Standard Operating Procedure (“SOP”) for registration of platform aggregators and platform workers have been provided to facilitate this process. Additionally, for better coordination and informed policy decision-making, information pertaining to the platform and platform workers are required to be shared during the on-boarding process. The prescriptions are outlined in the Directions and includes details relating to the total number of platform workers engaged by the aggregator, details of welfare schemes implemented, payments made for such welfare schemes, amongst others.
2. **Applicability:** These Directions apply specifically to platform-based gig workers engaged in or undertaking platform work, as well as to aggregators providing services *via* digital platforms. Aggregators are defined as digital intermediaries or a marketplace connecting service providers with buyers or consumers across various sectors, including ridesharing, food and grocery delivery, healthcare, logistics, and any other goods and services provider platform. Platform work means a work arrangement outside of a traditional employer employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or other notified activities, in exchange for payment.
3. **Responsibilities of aggregators:** Aggregators have been tasked with registering their platform workers on the eShram portal and regularly update their details, such as work engagement and payment information. Additionally, any worker exits should also be reported promptly to maintain accurate records and ensure integrity of the registry.
4. **Support for onboarding:** A toll-free helpline (14434) has been established to assist aggregators

and workers with the registration process and to address any technical issues.

Further, the Union Minister held a meeting on September 18, 2024, with major platform aggregators to discuss developments in creating a comprehensive framework tailored to the unique needs of gig workers, with a target to onboard a significant number of workers onto the eShram portal within 3 (three) months.

## Conclusion

With the introduction of the Directions, the Labour Ministry's recognition of the invaluable contributions from platform aggregators and platform workers in India has notably seen a push. Prior to its release, the Labour Ministry's collaboration with several aggregators helped gather essential insights into the gig-worker economy, ultimately shaping the current Directions. It is encouraging to see the cooperative spirit demonstrated by both aggregators and platform workers, as their active participation in the registration process is crucial for establishing a just and equitable gig economy.

As platform work is projected to reach 23,500,000 (twenty-three million five hundred thousand) workers by 2029-30, these Directions could pave the way for robust regulations addressing wages, working conditions, and job security for platform workers. That said, certain practical challenges remain, particularly in the integration of welfare schemes with e-Shram cards. Registered users have reported issues regarding the portal's usability and clarity, highlighting the need for ongoing improvements in the system to facilitate smoother access to benefits. Further, the Directions are not mandates and are currently advisory in nature, with the Labour Ministry making recommendations to target onboarding of platform workers within the next 3 (three) months.

By collaborating effectively, stakeholders can create an inclusive framework that empowers all gig and platform workers, ensuring benefits and protections they are entitled to while enhancing the user experience in an evolving labor landscape. As we await further information from the Labour Ministry, it is crucial for all stakeholders to remain engaged and proactive in implementing these Directions. Continuous dialogue and feedback will be essential to address existing challenges and improve the system,



ultimately benefiting the growing workforce in the gig economy.

### Labour Ministry releases guidelines for processing of digital signature certificate e-sign requests submitted by an employer

Labour Ministry, *vide* notification<sup>3</sup> dated October 10, 2024, released guidelines for processing Digital Signature Certificate (“DSC”) e-sign requests submitted by employers, following directives from previous circulars issued by the Central Provident Fund Commissioner. The guidelines mandate that at least one DSC of the employer or authorised signatory must be registered with EPFO. The e-sign feature is part of an e-governance initiative, facilitating the authentication of establishment-related documents and statutory returns. The notification outlines the online submission process for DSC/E-sign requests, including required stamps and Form 5A completion. Essential details, such as the name and mobile number of the applicant, as well as format for the request letter, are specified. Given the sensitive nature of DSC/e-sign usage, strict compliance with these guidelines is required and requests must be processed within 15 (fifteen) working days of receipt.

### Government schemes for skilled and unskilled migrant labourers

On December 2, 2024, Labour Ministry highlighted several government initiatives aimed at supporting both skilled and unskilled migrant workers in India. The following are key schemes:

1. Pradhan Mantri Jeevan Jyoti Bima Yojana offers life insurance coverage of INR 2,00,000 (Indian Rupees two lakh) to the family of a migrant worker in the event of death;
2. Pradhan Mantri Suraksha Bima Yojana provides INR 2,00,000 (Indian Rupees two lakh) in case of accidental death or permanent disability, and INR 1,00,000 (Indian Rupees one lakh) for partial disability;
3. PM SVANidhi scheme offers microloans of up to INR 10,000 (Indian Rupees ten thousand) to street

vendors, including migrant workers, to help restart or expand their businesses;

4. Pradhan Mantri Awas Yojana ensures affordable housing for migrant workers; Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana provides free medical treatment to migrant workers; and
5. Pradhan Mantri Shram Yogi Maan-Dhan pension scheme offers a monthly pension of INR 3,000 (Indian Rupees three thousand) to unorganised workers, including migrants, once they turn 60 (sixty) years. The e-shram portal, launched in 2021, is a key platform that integrates 12 (twelve) social security schemes, allowing migrant workers to easily access and track their benefits.

Further, the government has introduced 4 (four) labour codes (i.e., Code on Wages, 2019; the Industrial Relations Code, 2020; Code on Occupational Safety, Health and Working Conditions, 2020; and Social Security, Code 2020), focusing on minimum wages, gender equality, maternity benefits, and improved working conditions, ensuring better protection and welfare for migrant workers across India. These initiatives are designed to uplift migrant workers, providing them with access to healthcare, pensions, housing, and financial support, ultimately improving their quality of life and future prospects.



### Labour Ministry clarifies e-shram portal registration criteria

On December 19, 2024, Labour Ministry issued a clarification regarding the registration process on e-shram portal. Workers wishing to register must meet the following criteria:

<sup>3</sup> File no. compliance/SOP(DSC)/2022/5550

1. they should not be members of the EPFO or Employees' State Insurance Corporation ("ESIC");
2. must be aged between 16 (sixteen) and 59 (fifty nine) years;
3. should be employed in the unorganised sector, including self-employed individuals, daily wage labourers, and gig workers; and
4. must possess an aadhaar card, a valid mobile number linked to aadhaar, and a bank account.

### EPFO launched a promotion campaign for adoption of facial authentication technology for digital life certificate submission

EPFO, *vide* notification dated July 11, 2024, launched a targeted campaign to increase the usage of facial authentication technology for Digital Life Certificate ("DLC") submission. This initiative demonstrates EPFO's dedication to using technology to facilitate effective pension disbursement and provide pensioners with simple, convenient DLC submission options.

### EPFO issued format essential for third-party audits in exempted establishments

EPFO, *vide* circular dated July 11, 2024, issued a notification to all zonal and/or regional offices highlighting the finalised format of Form RM-6, essential for third-party audits as per the SOP for the management and regulation of exempted establishments issued *vide* notification dated October 10, 2023. Form RM-6 is a critical tool in the audit process, providing comprehensive information about the financial status and management practices of these establishments. Auditors are required to verify the accuracy of financial



statements and ensure compliance with provident fund regulations. The audit report must also include detailed information on the establishment's financial records, ownership structure, trustee board composition and adherence to legal amendments that benefit employees.

### EPFO issued new SOP for handling transaction-less and inoperative accounts

EPFO, *vide* notification dated August 2, 2024, updated its procedures for managing transaction-less and inoperative accounts. The new SOP announced focuses on the generation of UAN, Know Your Customer ("KYC") seeding, and account unblocking. For transaction-less accounts, UAN generation and linking will require physical verification at field offices or NAN 2.0 camps, with appointments available through the EPFiGMS portal and home visits for disabled members. KYC seeding will follow distinct protocols based on the status of establishment. The unblocking process will involve thorough verification, including potential crowdsourcing to ensure accuracy and prevent fraud, enhancing overall security and service efficiency.

### EPFO issues an order to enhance security protocols for employers with mobile verification

The EPFO, *vide* order<sup>4</sup> dated September 4, 2024, implemented a significant update to its security protocols, mandating mobile One-Time Password ("OTP") verification for employer logins alongside traditional passwords. This change aims to bolster the security of account access, safeguarding sensitive information. However, the transition has resulted in a surge of password reset requests from employers unprepared for the new system. To address this backlog, EPFO has directed clerks and branch supervisors to prioritise processing password reset letters promptly, forwarding them to the electronic data processing branch within the same or next working day.

This timely action is crucial to ensure that employers can continue submitting their electronic challan cum return on time, as delays could lead to compliance

<sup>4</sup> Order no. temporary arrangement/Adm-I/370

issues and financial penalties. Employers are urged to update their login details to comply with the new requirements and act quickly on any reset requests to maintain smooth operations.

### **EPFO issues notification regarding utilisation of reserves and surplus for crediting interest by private provident fund trusts of exempted establishments**

EPFO *vide* notification<sup>5</sup> dated October 7, 2024, addresses the utilisation of reserves and surplus by private provident fund trusts, prohibiting overdrawal and mandating interest credit on a monthly basis reflecting the fund's earnings. The circular, which supersedes previous guidelines, highlights that distributing these funds among current beneficiaries could lead to unjust enrichment, violating trust principles. It raises questions regarding the enforceability of its directives given the lack of specific provisions in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and scheme, and requires clarification on the calculation of distributable surplus, especially regarding unrealised gains and investment provisions.

### **Employees' State Insurance Corporation introduces new circular to streamline claims process**

ESIC, *vide* notification<sup>6</sup> dated November 5, 2024, issued a circular aimed at simplifying the submission process for cash benefit claims, such as sickness benefits and maternity benefit claims, by insured persons. The circular promotes the use of insured person portal for online claim submissions and urges the elimination of physical documentation wherever possible. This initiative follows previous guidelines dated November 22, 2022, and May 2, 2023, encouraging digital claim submissions. Branch offices are instructed not to ask for physical copies if they have already been submitted online and to verify documents electronically in exceptional cases. This move aims to reduce delays, enhance transparency, and support a more efficient, paperless system for claims processing.

<sup>5</sup> Circular No. E.III/10(122)/2024/Circular/Exemption/5435

<sup>6</sup> File No. N-11012/5/2023-BFT-II-Part (1)

### **ESIC announces bulk aadhaar seeding via employer portal**

ESIC, *vide* circular<sup>7</sup> dated December 11, 2024, introduced a new feature for bulk aadhaar seeding of beneficiaries through the employer portal. Employers can upload multiple excel sheets for bulk seeding, streamlining the process, particularly for those with large numbers of unseeded beneficiaries. The notification also includes methods for aadhaar linking via OTP, biometric, and face authentication, along with a user manual for easy implementation. The ESIC has urged field offices to prioritise and expedite seeding for employers with a large number of beneficiaries and to ensure widespread publicity for timely completion.



### **National pension system contributions via Bharat Bill Payment System**

On August 28, 2024, the Pension Fund Regulatory and Development Authority announced a new facility allowing National Pension System contributions through the Bharat Bill Payment System ("BBPS"). This addition aims to simplify the contribution process, enabling payments *via* various applications like Bharat Interface for Money (i.e., BHIM) and PhonePe. Trail commissions will be applicable to points of presence for contributions made through BBPS under the 'All-Citizen Model', with charges displayed and collected upfront. Initially, BBPS will handle lump sum contributions settled on a T+1 basis, with refunds for failed transactions processed within 5 (five) working days. Systematic investment plan mandates *via* BBPS will be introduced in the future.

### **Karnataka's proposed bill for enhancing rights and protection of platform-based gig workers**

On June 29, 2024, the Labour Department, Government of Karnataka released the Karnataka Platform based

<sup>7</sup> Circular No. N-16016/1/2023-Bft-II

Gig Workers (Social Security and Welfare) Bill, 2024 (“**Draft Bill**”), which aims to protect the rights of platform-based gig workers and imposes obligations on aggregators in relation to their welfare, social security, occupational health, safety and working conditions in Karnataka. Stakeholders had to submit suggestions or objections on the Draft Bill by July 12, 2024. Key aspects of the Draft Bill are summarised below.

### Applicability of the Draft Bill

The Draft Bill applies to aggregators (i.e., a digital intermediary connecting buyers and sellers of goods or services including an entity that coordinates with one or more aggregators for providing services) in Karnataka providing services in ride sharing services, food and grocery delivery services, logistics services, e-commerce market places<sup>8</sup>, professional services provider, healthcare, travel and hospitality and content and media services (“**Specified Services**”). A ‘gig-worker’ under the Draft Bill means a person who performs work or participates in a work arrangement that results in a contractual rate of payment, inclusive of piece-rate work or work arrangements sourced through digital platforms within the Specified Services.

The Code on Social Security, 2020 (“**Social Security Code**”) which is awaiting implementation recognises both ‘gig workers’ and ‘platform workers’ as distinct categories of workers. Its primary objective is to provide an array of benefits to them. In contrast, the Draft Bill extends in applicability specifically to ‘platform-based’ gig workers. This approach is largely similar to provisions of the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 passed by the Government of Rajasthan in 2023. The Draft Bill aims to provide for the following:

1. **Constitution of Karnataka Platform Based Gig Workers Welfare Board (“Welfare Board”)**: The Draft Bill aims to establish the Welfare Board to safeguard welfare of gig workers. It further prescribes duties and functions for the Welfare Board, which *inter alia* include registration of gig workers and aggregators in the state; setting up a monitoring mechanism to certify collection of welfare fees; ensuring implementation of social security schemes based on contributions made, and disbursing social security benefits through

individual social security accounts linked to the unique identifications (“**Unique IDs**”) allocated to each gig worker; constituting a committee to provide recommendations to the state for the formulation, review and implementation of schemes; and ensuring that workers, including women and persons with disabilities have access to benefits as per the schemes.

2. **Registration of all aggregators and the gig workers**: The Draft Bill mandates aggregators to register with the Welfare Board and provide latest data of all gig workers engaged by them within 60 (sixty) days from the enactment date of the law. All platform-based gig workers onboarded or registered with any platform will have to be registered with the Welfare Board by the aggregators, valid in perpetuity, irrespective of the duration or time of engagement. Each such platform-based gig-worker will be provided a Unique ID by the Welfare Board.
3. **Welfare fees and the Karnataka Gig Worker’s Social Security and Welfare Fund (“Welfare Fund”)**: The Draft Bill envisages establishment of the Welfare Fund for the benefit of registered platform-based gig workers, which is supposed to include sums received from welfare fees, contributions by individual platform-based gig workers, sums received as grant-in-aid from the State Government, all sums through grants, gifts, benefactions, bequests, donations or transfers and such other prescribed sums, and would be held, utilised and managed for the benefit of the registered platform-based gig workers. Every aggregator would be required to quarterly deposit a welfare fee known as ‘The Platform Based Gig Workers Welfare Fee’, at such rate (in percentage) of the pay of the platform-based gig worker in each transaction or on the annual state specific turnover as prescribed by the State Government. All payments generated on platforms is required to be mapped to a ‘Central Transaction Information and Management System’ administered by the State Government and monitored by the Welfare Board.
4. **Grievance redressal mechanism**: The Draft Bill grants rights to registered platform-based gig workers to file a petition in person before the grievance redressal officer designated by the State Government or submit a petition through the web

<sup>8</sup> Business-to-business/business-to-consumer



portal for grievances arising out of entitlements, payments and other benefits. Furthermore, it directs aggregators with more than 50 (fifty) registered gig workers to establish an 'Internal Dispute Resolution Committee'. This committee is expected to resolve complaints within 30 (thirty) days. Gig workers also have the option to seek dispute resolution through mechanisms under the Industrial Disputes Act, 1947 ("IDA"), in addition to internal procedures.

5. **Transparency and fair contracts:** The Draft Bill mandates aggregators to enter into written contracts with gig workers using clear language understood by them and notify them of any changes to these contracts. Aggregators are restricted from terminating a gig worker without providing valid reasons in writing with a prior notice of 14 (fourteen) days. Aggregators are obligated to disclose to gig workers details about work allocation, distribution processes, performance assessment criteria, rating systems, personal data processing practices and reasons for work denial upon request; and maintain transparency regarding automated monitoring and decision-making systems that impact gig workers' working conditions, including factors such as fares, earnings and customer feedback.
6. **Penalties:** For violations by aggregators, the Draft Bill sets out substantial monetary fines extending up to INR 1,00,000 (Indian Rupees one lakh), with an additional penalty extendable up to INR 5,000 (Indian Rupees five thousand) for each day of continuing contravention.

Notably, the Karnataka State Gig Workers Insurance Scheme, 2023 complements the Draft Bill by emphasising the State's commitment in addressing the unique challenges faced by gig workers and providing them with essential financial protection in the event of accidents. Under this scheme, gig workers engaged in delivery professions with platforms such as Swiggy, Zomato, Amazon, Flipkart and others operating within Karnataka are eligible for comprehensive insurance coverage, which includes an accidental death benefit of INR 4,00,000 (Indian Rupees four lakh) comprising of INR 2,00,000 (Indian Rupees two lakh) in accidental insurance and INR 2,00,000 (Indian Rupees two lakh) in life insurance. Additionally, gig workers are entitled up to INR 2,00,000 (Indian Rupees two lakh) for permanent disability due to accidents and

reimbursement of hospital expenses up to INR 1,00,000 (Indian Rupees one lakh). To avail these benefits, eligible gig workers aged between 18 (eighteen) to 60 (sixty) years are required to register on the Seva Sindhu Portal, with submission of documents including aadhaar number and proof of identity.

## Impact and Conclusion

Overall, the Draft Bill introduces groundbreaking measures to enhance gig worker welfare in the state, although focused on the subset of platform-based gig workers. Once enacted, Karnataka will follow Rajasthan in becoming the second Indian State implementing regulations tailored to the welfare of these workers. While aggregators would be bound by onerous compliance requirements and additional cost obligations, other procedural aspects may also be demanding – for instance, dispute resolution mechanism under the Draft Bill, and the interplay between these provisions and those under the IDA. Since the IDA traditionally governs employer-workman employee relationships, potential challenges and/or inconsistencies in adapting its framework to the aggregator-gig worker dynamics is likely.

Additionally, it is important to note that the Karnataka State Government already mandates contribution obligations on eligible employers towards the State fund constituted under the Karnataka Labour Welfare Fund Act, 1965. In this context, it would be critical to examine the efficacy and appropriate management of the proposed Welfare Fund under the Draft Bill, and the aggregators' associated liabilities, which may likely result in duplication of contribution obligations on the aggregators.

Nonetheless, the Draft Bill signifies a move towards collective bargaining and enhancing greater protections for (platform-based) gig workers in Karnataka, reflecting the evolving landscape of labor rights in India. Stakeholders' feedback during the comment period will play a crucial role in refining and finalising this Draft Bill and its alignment with industry realities.





## Karnataka shops and commercial establishments to operate 24x7 throughout the year

Following an earlier notification issued in 2021, and as part of efforts to support Karnataka's economic growth and the booming IT and IT Enabled Services ("IT/ITeS") industry, the Government of Karnataka issued a notification on September 27, 2024 ("2024 Notification"), allowing all shops and commercial establishments in Karnataka employing 10 (ten) or more persons to operate on a 24x7 basis throughout the year. The notification is effective for a period of 3 (three) years subject to prescribed conditions.

### Key requirements under the 2024 Notification

The 2024 Notification provides that the permission granted thereunder is subject to Section 12(3) of the Karnataka Shops and Commercial Establishments Act, 1961 ("S&E Act"), which provides eligible employees in an establishment to at least 1 (one) whole day in a week as a holiday for rest, and additionally outlines several important requirements to ensure the welfare of employees while promoting extended operational hours:

1. **Appointment of additional staff:** Every employer is required to appoint additional staff to ensure that every employee can avail 1 (one) day of holiday per week on a rotational basis. Details of every employee is required to be displayed by the employer at a conspicuous place in the shop or commercial establishment.
2. **Exhibit details of employees on holiday or leave:** Employers are required to display details of employees who are on holiday or leave on a daily basis, at a conspicuous place in the shop or commercial establishment.

3. **Wage payments:** Wages and overtime pay must be credited to employees' savings bank accounts in accordance with the Payment of Wages Act, 1936.
4. **Working hours:** Employees cannot be made to work for more than 8 (eight) hours a day or 48 (forty-eight) hours a week. The maximum work period, including overtime, must not exceed 10 (ten) hours in any day, and the total overtime must be capped at 50 (fifty) hours in a period of 3 (three) continuous months.
5. **Women's safety:** Written consent from women employees is required if they are asked to work between 8:00 PM and 6:00 AM. Employers are also required to provide adequate protection and transport arrangements for women working during these hours. A notice indicating transport availability is to be displayed at the main entrance of the shop or commercial establishment.
6. **Basic amenities:** Employers must provide essential facilities, including restrooms, washrooms, safety lockers, and other basic amenities for employees.
7. **Internal committee ("IC"):** An IC, as mandated under the POSH Act, must be constituted and made operational.

### Compliance and Penalties

If employees are found working on holidays or after normal duty hours without proper overtime authorization, penal action can be initiated against the employer and/or manager as outlined in the S&E Act and the Karnataka Shops and Commercial Establishments Rules, 1963 ("S&E Rules").

The conditions outlined in the 2024 Notification are in addition to and are to be read together with the provisions of the S&E Act and the Employees' Compensation Act, 1923. Importantly, in case of violation of any of the above terms and conditions, as observed by an inspector or otherwise, necessary penal action can be initiated against employers or managers under the S&E Act and the S&E Rules.

### Conclusion

The 2024 Notification represents a significant step towards enhancing the operational flexibility of shops and commercial establishments in the state,

particularly in supporting the booming IT/ITeS sectors. By allowing these establishments to operate 24x7, the government aims to foster economic growth while ensuring that employee welfare remains a priority. The comprehensive requirements outlined ranging from mandatory rest days and additional staffing to wage regulations and women's safety measures are designed to strike a balance between operational efficiency and the well-being of workers. Employers must remain vigilant in adhering to these regulations to avoid penalties and ensure a safe and equitable working environment.



### **The Government of Assam issued rules for regulating private placement agencies for recruitment of workers**

The Government of Assam, *vide* notification dated July 2, 2024, issued the Assam private placement agencies for Recruitment of Workers (Regulation) Rules, 2024, under Section 15(1) of the Assam private placement agencies for Recruitment of Workers (Regulation) Act, 2019. These rules are designed to regulate private placement agencies involved in the recruitment process within the state, with the primary objective to protect the general public and workers by ensuring accountability and transparency in hiring process. The rules mandate applicable agencies to submit extensive supporting documents, including character references and background checks on their principals, in order to obtain a license. Applications would be reviewed by the superintendent of police and the controlling authority, who will assess the agency's history and evaluate any potential threats to public order or national security.

### **The Government of Tamil Nadu issued amendments to the Tamil Nadu Shops and Establishments Rules, 1948**

The Government of Tamil Nadu, *vide* notification dated July 2, 2024, issued amendments to the Tamil Nadu Shops and Establishments Rules, 1948. These amendments lay down *inter alia* the process and relevant forms required for application and registration of eligible establishments, amendments to the registration certificate and intimation requirements for existing establishments. Interestingly, for amendments to existing registration certificates, fresh registration certificates will be issued online by the concerned inspector in Form Z within 24 (twenty-four) hours from the time of making the application.

### **The Government of Haryana issued notification regarding monthly deposit of labour welfare fund**

The Government of Haryana, *vide* notification dated July 9, 2024, announced that contributions to the labour welfare fund under the Punjab Labour Welfare Fund Act, 1965 (as amended in the State of Haryana) must be deposited on a monthly basis *via* established online portal. Similar to the procedures for employee provident fund and employee state insurance contributions, labour welfare fund contributions will be deposited online on a monthly basis.

### **The Government of Haryana issues notification regarding submission of ER-II returns**

The employment department of Haryana, *vide* letter<sup>9</sup> dated September 2, 2024, issued a directive requiring all employers in the state to submit biannual returns in Form ER-II, based on details from the quarterly return (ER-1) as of September 30, 2023, in compliance with the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. This bi-annual return must be filed by employers with 25 (twenty-five) or more employees every 2 (two) years and is crucial for maintaining accurate employment records and compliance. The directive includes a template for form ER-II, which can be submitted via email, post, or in

<sup>9</sup> Letter no. EMI/ER-II/2024/979.



person to the local employment exchange by September 30, 2024. Employers are instructed to fill out the proforma accurately, ensuring all data aligns with the ER-I return, which includes employment figures and wage details. After submission, employers should confirm receipt with the employment department to avoid compliance issues.

### **The Government of Kerala issued Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Kerala Rules, 2024**

The Government of Kerala, *vide* notification dated August 6, 2024, issued the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Kerala Rules, 2024, amending the existing 1998 rules. The amendment introduces a new proviso to Rule 284 (2), stating: *'Provided that, if a beneficiary commits default in the payment of contribution for more than three years, the membership shall not be resumed.'* This change clarifies that beneficiaries who fail to pay contributions for over 3 (three) years will not have their membership reinstated.



### **The Government of Kerala enhances and streamlines factory inspection protocols in Kerala**

The Government of Kerala, *vide* notification dated August 12, 2024, introduced amendments to the existing notification under the Factories Act, 1948 ("**Factories Act**"), to improve transparency, accountability, and simplicity in factory inspections. Key changes include redefined jurisdictional powers for Inspectors of Factories and Boilers: Grade I Inspectors will oversee all factories within their areas

and serve as controlling officers for Grade II Inspectors, who will in turn supervise additional inspectors in their jurisdictions. Additionally, same inspector is prohibited from conducting consecutive inspections of the same factory. These updates are part of the centralised inspection system under the business reform action plan, reflecting the government's commitment to enhancing governance and ease of doing business in the state.

### **Government of Kerala issues a notification on the minimum rate of wages for the brick manufacturing and wire cut bricks industry sector**

The labour department of Kerala, *vide* notification<sup>10</sup> dated September 13, 2024, announced a significant revision of minimum wage rates for employees in the brick manufacturing and wire cut bricks industry. The updated wage structure encompasses various categories, including unskilled, semi-skilled and skilled workers, with specific rates for time-rated and piece-rated work. Notably, the notification introduces a dearness allowance based on the consumer price index, ensuring workers are compensated fairly according to living costs. Existing employees earning above the newly established rates will maintain their higher wages, and those in unlisted job categories will receive equivalent compensation. This initiative reflects the government's commitment to enhancing labour welfare and fostering a just work environment.

### **The Government of Kerala extends applicability of Section 85 of Factories Act to established industries in the small-scale sector**

The Government of Kerala, *vide* notification<sup>11</sup> dated September 28, 2024, declared that schedules related to 'Hazardous Manufacturing Processes' under Section 85 of the Factories Act, will apply to any manufacturing location in the state, regardless of the number of employees. Specifically, this includes operations with fewer than 10 (ten) workers using power, or fewer than 20 (twenty) without power, and extends to those collaborating with the owner's permission or under agreement, unless the owner is only using family members. This decision aims to encompass new types

<sup>10</sup> Notification no. G.O.(P)No.67/2024/LBR

<sup>11</sup> Notification no. G.O.(Rt) No.1011/2024/LBR



of industries emerging in the small-scale sector that were previously unregulated, ensuring they are covered within the Factories Act. The notification includes a detailed list of affected manufacturing processes and their descriptions.

### **The Government of Kerala notifies amendments to the Kerala Labour Welfare Fund Rules, 1977**

The Government of Kerala, *vide* order<sup>12</sup> dated October 10, 2024, amended the Kerala Labour Welfare Fund Rules, 1977, introducing key updates to enhance compliance and payment processes for employers. Notably, employers can make payments for fines and unpaid accumulations online, providing greater flexibility. Payments to beneficiaries will be made *via* national electronic fund transfer or other modern banking systems, improving transaction efficiency. Additionally, employers can remit contributions using various methods, including online payments, and must submit a detailed statement in Form 'A' for transparency. It also mandates employers to maintain specified registers, either manually or electronically, fostering better record-keeping.

### **The Government of Kerala launches free medical treatment and insurance for inter-state migrant workers**

The Government of Kerala, *vide* notification<sup>13</sup> dated October 16, 2024, introduced a scheme to support inter-state migrant workers aged 18 (eighteen) to 60 (sixty) years, offering free medical treatment and accidental disability insurance. Administered by the labour and skills department, the initiative aims to enhance welfare of this workforce segment. Aadhaar integration streamlines service delivery, beneficiaries must provide their aadhaar number or undergo authentication to access benefits. For those without aadhaar, alternative identification documents are accepted. The government will run public awareness campaigns and facilitate aadhaar enrolment to ensure accessibility. To address authentication challenges, alternatives like iris scans, facial recognition, and OTPs are provided.



### **The Government of Kerala mandates aadhaar linking for maternity benefit scheme**

The Government of Kerala, *vide* notification<sup>14</sup> dated November 26, 2024, requires women beneficiaries of the maternity benefit scheme, administered by the Labour and Skills Department, to link their aadhaar for efficient service delivery. This move aims to simplify the process, reduce delays, and ensure direct and timely access to maternity benefits. Women eligible for the benefits must provide proof of aadhaar or undergo aadhaar authentication. For those without aadhaar, enrolment centers, including in remote areas, will assist in obtaining aadhaar. Women can also provide alternative documents such as a bank passbook, permanent account number card, voter ID, or Mahatma Gandhi National Rural Employment Guarantee Scheme card, along with an aadhaar enrolment slip. The Labour and Skills Department will conduct awareness campaigns to inform beneficiaries about this requirement. In cases of biometric authentication failure, alternatives like iris scans, face recognition, or OTP-based verification will be used. The Labour and Skills Department will also follow an exception handling mechanism to ensure that no eligible woman is deprived of benefits due to technical issues.

### **The Government of Madhya Pradesh introduced Madhya Pradesh Private Security Agencies (Regulation) Rules, 2024**

The Government of Madhya Pradesh, *vide* notification dated August 7, 2024, issued the Madhya Pradesh Private Security Agencies (Regulation) Rules, 2024,

<sup>12</sup> Notification no. G.O.(P)No.68/2024/LBR

<sup>13</sup> G.O.(P)No.75/2024/LBR

<sup>14</sup> F.No.37(1) Home-9/2021

replacing the Madhya Pradesh Private Security Agencies Rules, 2012. These new rules come into effect on the same day and aim to update and enhance the regulatory framework governing private security agencies in the State. The new rules aim to streamline the registration, operation and compliance requirements for these agencies, enhancing oversight and standards within the sector. They mandate specific requirements for licensing, operational procedures, training and equipment. The rules also introduce stringent inspection and enforcement measures, including penalties for non-compliance, to ensure higher professionalism and accountability within the private security sector. Existing agencies are given a timeframe to align with these new rules.

### **The Government of Rajasthan launched new online dashboard for enhanced transparency and efficiency in compliance with Business Reforms Action Plan 2024**

The Government of Rajasthan, *vide* office order dated August 14, 2024, launched a new online dashboard to enhance ease of doing business, in line with the Business Reforms Action Plan 2024 reforms. Accessible *via* the department's website, the dashboard provides real-time or regularly updated information on the status of applications and compliance inspections, including details on processing times, fees and the workload. It covers key labour regulations including the Contract Labour (Regulation and Abolition) Act, 1970, aiming to improve transparency and efficiency.

### **The Government of Rajasthan notifies Rajasthan Private Security Agencies (Regulation) (Amendment) Rules, 2024**

The Government of Rajasthan, *vide* notification<sup>15</sup> dated November 19, 2024, has amended the Rajasthan Private Security Agencies (Regulation) Rules, 2022. These amendments come into effect from the date of their publication in the Official Gazette. The key change pertains to Rule 3, where sub-rules (9) and (10) of the existing rules have been revised. The new provisions specify that applications for licensing must be submitted online *via* the private security agency

licensing portal to the Controlling Authority, along with the required fees as outlined in Section 7(3) of Private Security Agencies (Regulation) Act, 2005.



### **The Government of Puducherry introduces draft Puducherry Transgender Persons (Protection of Rights) Rules, 2024**

On August 20, 2024, the Government of Puducherry formalised the Puducherry Transgender Persons (Protection of Rights) Rules, 2024, to support transgenders. These rules establish the process for obtaining a certificate of identity crucial for legal gender recognition. Applicants must submit Form I to the District Magistrate in person, by post, or online at [socwel.pon@nic.in](mailto:socwel.pon@nic.in), along with an affidavit confirming their gender identity. Those with prior legal recognition of gender may choose to apply for a new certificate. The District Magistrate will issue the certificate of identity within 30 (thirty) days, enabling updates to official documents and issuance of a transgender identity card.

### **The Government of Puducherry revised minimum wages rates**

The Government of Puducherry, *vide* notification<sup>16</sup> dated September 2, 2024, revised the minimum wage rates for employees across various sectors, aiming to ensure fair compensation. The new rates cover a wide range of occupations, including shops and establishments, automobile workshops, bakeries, food processing, hotels, carpentry, chemical industry, oil

<sup>15</sup> G.O. (P) No.81/2024/LBR

<sup>16</sup> Notification no. G.O.Ms. No. 09/AIL/Lab/G/2024

mills, petroleum gas cylinder, plastic industry, and security services, reflecting the government's commitment to economic inclusivity. Key provisions include the introduction of a dearness allowance tied to the Puducherry consumer price index, which will be recalculated annually to keep pace with the living costs. The notification also emphasises gender equality in wages, mandating equal pay for equal work regardless of gender. Monthly wages will be calculated by multiplying the daily rate by 30 (thirty), and importantly, employees currently earning above the new minimum rates will continue to receive their higher wages, ensuring that no one is adversely affected by the revision.



### The Government of Maharashtra revised the minimum wages for certain industries

The labour department of Maharashtra, vide notification<sup>17</sup> dated September 2, 2024, made significant revision to the minimum wage rates under the Minimum Wages Act, 1948, in the scheduled employment for 'employment in rice mill, flour mill or dal mill', for 'employment in industries manufacturing flattened parched rice (poha), Murmura, Churmura, Kurmura from paddy or rice including micromica (Bharda) narda from maize' and for 'employment in any industry in which any process of transforming plastics into various solid shapes, through moulding, forming, extrusion or casting by application singly or together with heat and/or pressure or both or other similar work or work incidental to such process is carried on', marking the first adjustments since July 2010. The primary aim is to ensure fair compensation reflecting current economic conditions and inflation rates. The new rates are

categorised into 2 (two) zones based on geographic and economic conditions. These rates include basic pay and allowances such as the cost-of-living allowance, which is adjusted biannually based on the consumer price index. The primary aim is to ensure fair compensation reflecting current economic conditions and inflation rates. By adjusting the wages, the government seeks to protect labour rights and promote worker welfare.

### The Government of Maharashtra notifies certain administrative revisions under the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2017

The Government of Maharashtra, vide notification<sup>18</sup> dated September 4, 2024, notified significant amendments to the schedule of the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2017, which governs employment conditions in shops and establishments statewide. Key changes include a shift in administrative authority from the 'Deputy Municipal Commissioner (Special)' to the 'Assistant Commissioner' of the Municipal Corporation of Greater Mumbai, enhancing oversight. Additionally, the government clarified that the geographic scope of the 'Assistant Commissioner's' jurisdiction is changed from 'Mumbai City and Greater Mumbai Suburban Districts' to 'their respective jurisdiction,' ensuring more precise administrative functions. These updates aim to streamline processes, improve compliance, and provide better guidance for businesses, while empowering employees through targeted enforcement of their rights.

### The Government of Gujarat introduces procedure for fixation and revision of minimum wages under the Minimum Wages Act, 1948 and the Gujarat Minimum Wages Rules, 1961

The labour department of Gujarat vide circular<sup>19</sup> dated September 4, 2024, unveiled a procedure for fixing and revising minimum wages, emphasising transparency

<sup>17</sup> Notification no.MWA-1015/259/CR-97/Lab-7

<sup>18</sup> Notification no. MSA-07/2022/CR-134/Labour-10

<sup>19</sup> Circular no. LED/MWA/e-file/11/2024/1058/M2



and stakeholder participation. Central to this process is the establishment of an advisory board comprising of the representatives from the employers, employees, and an independent expert chairman, facilitating balanced decision-making. The procedure begins with publishing of a draft notification outlining proposed wage changes, followed by a public consultation phase where stakeholders can submit objections and suggestions. The advisory board then reviews this feedback before the government makes a final decision, which is published as the revised minimum wage rates. This structured approach reflects the government's commitment to creating a fair wage system that protects workers' rights while considering employers' realities, ultimately fostering social equity and economic growth in Gujarat.

### The Government of Gujarat revised minimum rates of wages under Contract Labour (Regulation and Abolition) Act, 1970

On October 3, 2024, the labour department, the Government of Gujarat announced the minimum rate of wages under the Contract Labour (Regulation and Abolition) Act, 1970 ("**Contract Labour Act**"). The rates vary based on the skill level of workers and designated zones. For Zone I, which includes Municipal Corporations and Urban Development Corporations, the daily wages are set at INR 452 (Indian Rupees four hundred and fifty-two) for unskilled workers, INR 462 (Indian Rupees four hundred and sixty-two) for semi-skilled workers, and INR 474 (Indian Rupees four hundred and seventy-four) for skilled workers. In Zone II, covering all other areas, the rates are INR 441 (Indian Rupees four hundred and forty-one) for unskilled, INR 452 (Indian Rupees four hundred and fifty-two) for semi-skilled, and INR 462 (Indian Rupees four hundred and sixty-two) for skilled workers. Additionally, a special allowance has been introduced for the period from October 1, 2024, to March 31, 2025, applicable to workers in manufacturing companies, shops, establishments, and contractors.



<sup>20</sup> Notification no. F 2(365)-FB/EoDB/BRAP/2024/878-84.

### The Government of Tripura enhances ease of doing business under the Factories Act

The Government of Tripura, *vide* notification<sup>20</sup> dated September 9, 2024, aims at enhancing the ease of doing business in the state by providing a comprehensive framework for obtaining statutory clearances. The guidelines outline a detailed list of required documents under the Factories Act, breaking down procedures into clear stages with associated costs and time estimates. Key features include searchable criteria based on risk category, firm size, business location, and investor type (foreign *versus* domestic). This initiative is designed to simplify processes such as factory plan approvals, revised plan drawings and factory registration, ultimately reducing compliance burdens, speeding up processing times, and fostering a more transparent, investment-friendly environment that encourages both domestic and foreign investment in Tripura.



### The Government of Goa announced Goa Rights of Persons with Disabilities (Second Amendment) Rules, 2024, strengthening the disability rights

The Department of Empowerment of Persons with Disabilities *vide* notification<sup>21</sup> dated September 19, 2024, announced the Goa Rights of Persons with Disabilities (Second Amendment) Rules, 2024, amending the Rights of Persons with Disabilities Rules 2018 to enhance clarity and streamline responsibilities across various departments. Key changes include renaming the relevant authority from 'Directorate of Social Welfare' to 'Department for Empowerment of Persons with Disabilities' and updating titles for officials involved in disability empowerment to reflect this new focus. Amendments to Rules 3, 4, 14, and 25 clarify the roles of officials, reinforcing the governance

<sup>21</sup> Notification no. 1/15/2024-25-DEPwD/Admn/Rules/359.



structure dedicated to disability affairs. These revisions signify the government's commitment to prioritising the rights and empowerment of persons with disabilities, aiming for a more efficient and supportive approach to address their needs.

### Delhi urges compliance on bonus payments for outsourced workers engaged by various government departments through contractors

The Government of the National Capital Territory of Delhi, *vide* notification<sup>22</sup> dated September 23, 2024, issued an advisory addressing complaints from outsourced workers regarding non-payment of bonuses by contractors. The labour commissioner emphasised that all contractor establishments employing 20 (twenty) or more workers are legally required to adhere to the Payment of Bonus Act, 1965, which mandates a minimum bonus of 8.33% of basic wages and dearness allowance, payable within 8 (eight) months of the accounting year's end, ideally before Diwali. The advisory warns that contractors failing to comply may face prosecution and any unpaid bonuses can be recovered as arrears of land revenue. It also highlights that principal employers must ensure their contractors follow all labor laws, urging them to guarantee bonus payments to outsourced workers in time for the upcoming festival season.

### The Government of Uttar Pradesh grants 2 (two) year exemption for IT/ITeS sectors

The Government of Uttar Pradesh, *vide* notification<sup>23</sup> dated September 26, 2024, granted a 2 (two) year exemption to establishments in the IT/ ITeS sectors from certain provisions of the Uttar Pradesh Dookan Aur Vanijya Adhishtan Adhiniyam, 1962. Specifically, the exemption applies to Section 6 (regulating 'hours of work and overtime') and Section 7 (regulating 'intervals for rest and spread over of working hours in a day'). This move aims to provide more operational flexibility to these industries while maintaining essential worker protections. Under the exemption, young workers are limited to 6 (six) hours of work per day, while employees aged 18 (eighteen) and above

can work up to 12 (twelve) hours a day, including breaks. Employees working beyond 48 (forty-eight) hours a week are entitled to overtime pay at twice the normal rate. The new rules also mandate a minimum 30 (thirty) minute rest period after 5 (five) continuous hours of work, a weekly off, compensatory holidays for working on public holidays, and adequate security and transport for women working night shifts. These provisions come into effect immediately, ensuring both flexibility for employers and safeguarding workers' welfare.

### The Government of Uttar Pradesh revises minimum wages for 74 (seventy-four) scheduled employments

The Government of Uttar Pradesh, *vide* notification<sup>24</sup> dated October 1, 2024, has revised minimum wages for 74 (seventy-four) scheduled employments, including various industries such as shops, plastics, metals, rubber, and brick kilns. These changes, effective from October 1, 2024, to March 31, 2025, aim to improve workers' economic conditions in response to the rising cost of living, enhance purchasing power, and promote overall economic growth through increased consumer spending.



### Annual report submission under POSH Act in Gurugram

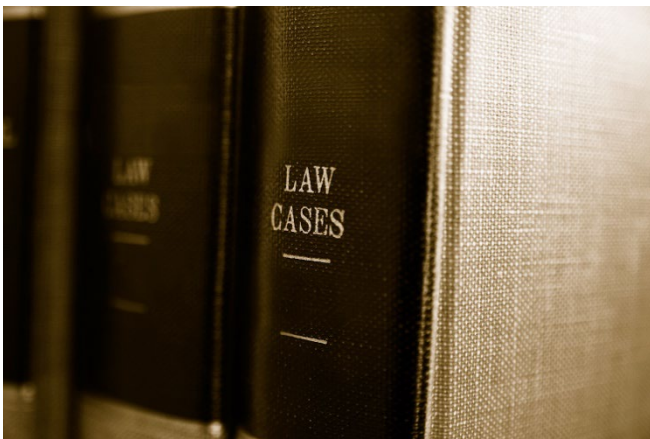
On November 4, 2024, the Office of the Additional Deputy Commissioner-cum-District Officer, Gurugram, issued a notification requiring all government and non-

<sup>22</sup> F. No. 15 (46)/Lab/2020/3401-3405.

<sup>23</sup> Notification no. 1866/XXXVI-03-2024-1844430

<sup>24</sup> Notification No.801-07 Enforcement (MW)/15

government organisations operating in the district to submit an annual report on implementation of the POSH Act. The report must be submitted by February 28 each year and should detail the number of sexual harassment cases at workplace, actions taken to address them and measures implemented to prevent harassment. This applies to all organisations, including industries, educational institutions, banks, hospitals, and any other entity with more than 10 (ten) employees. The POSH Act mandates constitution of ICs in such organisations and aims to protect women's dignity and provide a mechanism for grievance redressal. Organisations that fail to comply with the report submission will face a penalty of INR 50,000 (Indian Rupees fifty thousand) and legal action. This initiative ensures accountability in maintaining a safe and respectful workplace environment for women in Gurugram.



## Case Laws: Supreme Court

**Determinative factor for 'workman' under the IDA is the principal duties and functions performed in the establishment, and not merely the designation of post**

In the case of *Lenin Kumar Ray vs. M/s Express Publications (Madurai) Limited*.<sup>25</sup>, the Supreme Court re-confirmed that it is a well settled position under law that the determinative factor for 'workman' covered under Section 2(s) of the IDA is 'the principal duties and functions performed by an employee in the establishment and not merely the designation of his post'. It further opined that the onus of proving the nature of employment rests on the person claiming to

be a 'workman' within the definition of Section 2(s) of the IDA.

## Supreme Court upholds disciplinary removal, clarifies need for engagement with employee representations but with limited high court intervention

In the *State of Rajasthan and Ors. vs. Bhupendra Singh*<sup>26</sup>, on August 8, 2024, the Supreme Court upheld the removal of an employee from service, clarifying that once the disciplinary authority accepts the findings of an inquiry officer, it need not provide elaborate reasons for the punishment. The Supreme Court emphasised that while disciplinary authorities should address employee representations when imposing major penalties, High Courts should only intervene in disciplinary decisions if the findings are based on no evidence or are clearly perverse. The Supreme Court found that the Rajasthan High Court's decision to overturn the removal order was unsustainable, as it improperly reappraised evidence. Consequently, the Supreme Court restored the removal order but ruled that the employee's payments should not be recovered due to his age and retirement status.

## Supreme Court rules against retrospective pay scale reductions and recovery orders by the State Government

In *Jagdish Prasad Singh vs. State of Bihar and Ors.*<sup>27</sup>, on August 8, 2024, the Supreme Court ruled that the State Government cannot retroactively reduce an employee's pay scale or recover excess payments made, deeming such actions '*grossly illegal and arbitrary*'. The Supreme Court quashed the government's order to reduce the appellant's pay scale and recover excess amounts, noting that such measures have severe consequences and should not be applied retrospectively, especially after a significant time lapse. The Supreme Court highlighted that no departmental action can be taken against an employee after their retirement, and any such action not preceded by a show cause notice violates principles of natural justice. The Supreme Court emphasised that recovery of excess payments is permissible only if

<sup>25</sup> 2024 INSC 802 (decided on October 21, 2024)

<sup>26</sup> [2024] 8 S.C.R. 154

<sup>27</sup> [2024] 8 S.C.R. 377

detected within a short period, not after many years. Consequently, the Supreme Court ordered restoration of the appellant's pay scale and pension, including applicable interest.



### Supreme Court orders continuation of service for employee, limits back wages to 50%, and reviews true grounds for termination

In *Swati Priyadarshini vs. The State of Madhya Pradesh and Ors.*<sup>28</sup>, on August 22, 2024, the Supreme Court reaffirmed that the form of a termination order is not the final factor; instead, courts can investigate the underlying reasons for an employee's dismissal. In a case involving a woman appointed as an assistant project coordinator under the Sarv Shiksha Abhiyan, the Supreme Court directed her reinstatement with back wages limited to 50% after finding that her contract was terminated due to alleged misconduct related to her reporting on a hostel's conditions. The Supreme Court overturned the Madhya Pradesh High Court's Division Bench decision, restoring the Single Judge's ruling but with modifications. The Supreme Court barred the respondents from taking further action against the appellant related to the past issues but allowed future action in accordance with law.

### Resignation can be withdrawn before its acceptance by the competent authority

In *S.D. Manohara vs. Konkan Railway Corporation Limited and Ors.*<sup>29</sup>, the Supreme Court reinstated an Indian railways employee, ruling that his resignation was effectively withdrawn before acceptance. The

court noted that even if the employee's withdrawal of his resignation from December 5, 2013, was made on May 26, 2014, it occurred only 5 (five) months into his 24 (twenty-four) years of service. The case involved contested claims regarding whether the resignation was withdrawn before acceptance, with the employer relying on a letter dated April 15, 2014, to claim acceptance. The Supreme Court found this letter to be an internal communication with no clear evidence of delivery to employee. The Supreme Court highlighted that the employer's request to report for duty after his alleged unauthorized absence indicated no finality to the resignation. The single judge of Karnataka High Court ("**Karnataka HC**") had correctly concluded that the resignation was withdrawn before it was accepted. The Supreme Court set aside the division bench's contrary ruling, ordering that employee be reinstated. While reinstating him, the Supreme Court limited his back salary to 50% for the period he was absent (i.e. from July 1, 2014, up to reinstatement), emphasizing the importance of proper procedures in employment matters.

### Case Laws: Delhi High Court

#### Lock-in period provision in an employment agreement during the term of employment is valid and does not infringe the fundamental rights of an employee; disputes on lock-in period are arbitrable under the Arbitration and Conciliation Act, 1996

In *Lily Packers Private Limited vs. Vaishnavi Vijay Umak and Ors.*<sup>30</sup>, (the "**Lily Case**"), a Single Judge of the Delhi High Court ("**Delhi HC**") adjudicated on the validity of the lock-in period provision in the employment agreement(s) of the respondent employees with the petitioner company; and whether the dispute on lock-in period was arbitrable under the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). The Delhi HC held that the lock-in period as a restrictive covenant in the employment agreements was valid, enforceable during the term of employment and did not infringe the fundamental rights of the employees under the Constitution of India ("**Constitution**"). It also held that the dispute on lock-in period was arbitrable. The Lily Case validates the enforceability of lock-in period and gives employers

<sup>28</sup> MANU/SC/0916/2024

<sup>29</sup> 2024 INSC 693 (decided on September 13, 2024)

<sup>30</sup> Arbitration Petition 1210/2023 (decided on July 11, 2024)



the legal sanction to incorporate such negative covenants in the employment agreements provided that these covenants are operative during the period of employment.

### Employer cannot revoke offer of employment in the absence of any barrier in appointment

In the case of *Matthew Johnson Dara vs. Hindustan Urvarak and Rasayan Limited*.<sup>31</sup>, a single judge bench of the Delhi HC upheld an employee's rights and opined that once an employee has been offered a position by the employer, their offer of appointment cannot be revoked in the absence of any barrier with respect to the employee's joining. The Delhi HC's ruling in the judgment reflects the necessity of weighing in proportionality between irregularities and consequences in employer-employee relationships. Courts in India have consistently underscored this principle of proportionality, ensuring that actions of employers align with fairness and reasonableness, particularly in cases where termination has far-reaching consequences on the livelihood of employees. In this case, the Delhi HC observed that the sole ground for revocation, i.e., absence of a relieving letter from the petitioner's previous employer, was not proportionate to the severity of consequence, especially when the irregularity was subsequently resolved. This decision sets an important precedent for fostering fairness and proportionality in employer-employee relationships paving way for employers to adopt more balanced measures in hiring and firing decisions.

### Delhi HC directs university of Delhi to pay interest on delayed gratuity

In *Madan Mohan vs. University of Delhi and Ors.*<sup>32</sup>, the Delhi HC ruled in favor of the petitioner a retired professor, who sought interest on his retirement gratuity delayed by over 5 (five) years. Further, gratuity amount of INR 14,38,204 (Indian Rupees fourteen lakh thirty-eight thousand two hundred and four), which was due on March 31, 2018, was eventually paid on October 5, 2023. The university justified the delay by citing uncertainty over

applicability of gratuity under the new pension scheme, which was clarified only in 2023. Delhi HC rejected this reasoning, emphasising the overriding authority of the Payment of Gratuity Act, 1972 ("**Gratuity Act**"), and its mandate for timely payment. Citing Section 7(3-A) of the Gratuity Act, the Delhi HC directed the university to pay interest at 10% per annum for the delay, recognising gratuity as a statutory right and not a discretionary benefit. The university was given 4 (four) weeks to comply with the order.



### Case Law: Madras High Court

#### Madras High Court affirms that provisions of the Maternity Benefits Act, 1961 would prevail over contractual conditions

The Madras High Court ("**Madras HC**") in *MRB Nurses Empowerment Association vs. The Principal Secretary, Department of Health and Family Welfare and Ors.*<sup>33</sup>, held that, nurses employed on a contractual basis will also be entitled to maternity benefits and that the provisions of the Maternity Benefit Act, 1961 ("**Maternity Act**") would prevail over contractual conditions if the latter either denies or offers less favourable benefits. The argument of the respondent with respect to non-eligibility of contract nurses for maternity leave owing to the terms of their contract was rejected by the Madras HC. The Madras HC went on to affirm that Section 27 of the Maternity Act ensures contract employees' eligibility for maternity benefits notwithstanding less favourable contractual conditions. By securing women's right to maternity benefit in this decision, the Madras HC makes a progressive step in line with the rulings of the Supreme

<sup>31</sup> W.P. (C) 11818/2024 (decided on October 16, 2024)

<sup>32</sup> MANU/DE/7931/2024, W.P. (C) 1387/2020 (decided on November 4, 2024)

<sup>33</sup> 2024 SCC OnLine Mad 5801



Court, paving the way for meaningful implementation of the Maternity Act through effective enforcement.



### Case Laws: Karnataka HC

**Karnataka High Court upheld that unauthorised absence of a workman from industrial employment attracts disciplinary inquiry proceedings for an act of misconduct**

In *G. Ramesh vs. Karnataka State Seeds Corporation Limited*<sup>34</sup>, the Karnataka HC upheld the dismissal of an employee who had been absent for over 900 (nine hundred) days without prior permission. The Court observed that such prolonged absence without leave constitutes misconduct in industrial employment and warrants disciplinary action. The petitioner argued that his extended absence was due to a health issue but failed to provide any medical documentation to support this claim. The respondent contended that no leave application or medical documents were submitted to justify the absence. The Court in this case observed that ‘An employee is under an obligation not to absent himself from work without worthy cause during the time at which he is required to be at work. Absence without leave is misconduct in industrial employment warranting disciplinary punishment.’

<sup>34</sup> 2024: DHC: 5115

<sup>35</sup> Writ appeal no.1122 of 2021 (decided on September 17, 2024)

### Contract labourers must be heard before contract finalization

In *Hindustan Aeronautics Limited and Ors. vs. Hindustan Aeronautics Contract Workers Association*<sup>35</sup>, a division bench of Karnataka HC ruled that Hindustan Aeronautics Limited is required to revise its ‘comprehensive contract’ to comply with legal standards, ensuring that representatives of contract labourers are given an opportunity to voice their concerns before finalizing the contract. The Karnataka HC upheld the principles of natural justice, recognizing the workers’ rights to be heard regarding contractual decisions that impact their employment. This decision followed a dispute where workers contended that the contract violated Articles 14, 21, 23, 39, 42, and 43 of the Constitution of India and the Contract Labour Act. The Karnataka HC emphasised that, while the Contract Labour Act did not mandate consultation with contract labourers, allowing their input before significant changes is both reasonable and necessary.

### Case Law: Punjab & Haryana High Court

**Punjab & Haryana High Court upheld that transfer of workman from one place to another without any material documents supporting the need of such transfer cannot be considered as a fair decision**

In *Pappu Giri vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat*<sup>36</sup>, the Punjab & Haryana High Court (“P&H HC”) ruled that transferring a workman from one workplace to another without valid justification is unfair. In this case, the petitioner workman was employed as a ‘clipper’ with the respondent management at a wage of INR 3,640 (Indian Rupees three thousand six hundred and forty) per month. On raising the issue of over time payment, the workman along with other 28 (twenty-eight) workers, was transferred from Panipat to Dadra and Nagar Haveli. However, the appointment letter did not mention any provision for transfer. The workman was not permitted to work at his previous location because he did not join the new location. The P&H HC observed that the employer’s decision to transfer the

<sup>36</sup> 2024 LLR 748

workman was not justifiable in the absence of any supporting documentation, such as a resolution passed by the management or an affidavit explaining the necessity of transfer. The respondent management's argument was insufficient because there was no explicit or implied clause in the appointment letter allowing for such transfers in the event of the establishment of a new unit or factory at a different location.

## Case Laws: Bombay High Court

### Liability for payment of gratuity rests with employer, notwithstanding the existence of a separate contractor

In *Indian Institute of Technology, Bombay vs. Tanaji Babaji Lad and Ors.*<sup>37</sup>, Bombay High Court ("Bombay HC") held that contract labourers involved in various projects at IIT Bombay will be considered employees of the institute for the purpose of gratuity payments. Petitioner argued that these workers were employed by their respective contractors, denying any employer-employee relationship with IIT Bombay. However, Bombay HC found that IIT Bombay maintained ultimate control over the workers' services, thus affirming the claim of the contract labourers. Bombay HC rejected writ petitions filed by IIT Bombay and mandated that the institute pay the awarded interest on gratuity to respondents or their heirs within 2 (two) months.

### Casual labourers cannot be terminated on oral basis and without notice

In *Sharad vs. The Chief General Manager, Telecom (R.E.) Project and Ors.*<sup>38</sup>, Bombay HC upheld the award of compensation of INR 30,000 (Indian Rupees thirty thousand) to a casual labourer whose services were terminated orally, violating due process as outlined in Section 25F of IDA. Employer claimed termination was due to wilful absenteeism starting August 1, 1988, but the labourer denied any voluntary abandonment of his job. Notably, employer admitted that no notice was issued regarding alleged absence. Further, labourer had worked for over 240 (two hundred and forty) days in the year prior to his termination, and there was no evidence of him

abandoning his work. Here, while acknowledging that he continued to work as a labourer post-termination and was not entitled to arrears of wages, Bombay HC decided to award compensation instead of reinstatement or back wages.



### Bombay HC upholds labor court's decision on employee reinstatement and back wages

In *Jerry Varghese International Limited vs. Mathew Yohannan and Ors.*<sup>39</sup>, Bombay HC upheld the Labor Court's awards, dismissing writ petitions filed by petitioner/parent company. The case centred around 2 (two) workers employed under Shanti Publications, a division of the parent company. Labour Court ruled that despite the closure of Shanti Publications, workers remained employees of petitioner company. This decision was based on evidence such as salary slips and appointment letters that linked the workers' employment to the parent company. The Labor Court ordered reinstatement of one worker with back wages and full back wages until superannuation for the other, due to the improper termination that violated retrenchment procedures under the IDA. Bombay HC rejected company's claim that Shanti Publications was a separate entity, ruling instead that it was a division of the parent company. This ruling reinforces the principle that divisions without independent legal status cannot evade employment obligations of the

<sup>38</sup> MANU/MH/6650/2024, Writ Petition No. 4242 of 2011 (decided on October 22, 2024)

<sup>39</sup> MANU/MH/7039/2024, Writ Petition Nos. 1546 of 2024 and 3657 of 2024 (decided on November 12, 2024)

parent company, emphasising labor protections and compliance with statutory procedures for termination.

## Case Law: Madhya Pradesh High Court

### Labour Court's authority to issue notices to non-party entities

In *Manjeet Global Private Limited vs. State of Madhya Pradesh and Ors.*<sup>40</sup>, Madhya Pradesh High Court ("Madhya Pradesh HC") upheld Labour Court's power to issue notices to parties not originally included in a reference. Appellants, who purchased respondent's unit on July 15, 2021, argued that they were not liable for compensation to the workers of the respondent, as those workers were never their employees. However, Madhya Pradesh HC supported the Single Judge's conclusion that the Labour Court could issue notices to any establishment or group, regardless of their party status in original proceedings, especially when majority of employees' rights are at stake. Madhya Pradesh HC emphasised that since appellants took over the unit's assets and liabilities, they cannot claim immunity from proceedings. The appeals were dismissed.



## Case Law: Jammu & Kashmir High Court

### Jammu & Kashmir High Court quashes IC's report and complaint against senior income tax officer

In *Mohammad Altaf Bhat vs. Principal Chief of Commissioner and Ors.*<sup>41</sup>, a complaint was filed before

the IC under the POSH Act against petitioner. IC framed a report and recommended imposing a fine of INR 1,00,000 (Indian Rupees one lakh) on the petitioner without providing him an opportunity to defend himself against the allegations set up by the respondent. Petitioner maintained the instant petition essentially on the ground that the entire proceedings before IC are *non-est*, without jurisdiction and violated principles of natural justice, as well as the procedure established by law. Jammu & Kashmir High Court ("J&K HC") observed that the complaint was filed 18 (eighteen) months after the alleged incident, exceeding 3 (three) month limitation prescribed under Section 9(1) of the POSH Act, with no valid explanation for delay. J&K HC ruled that complaints must be filed within a 3 (three) months' time period and an extension of an additional 3 (three) months is permissible only if valid reasons are recorded by IC. It observed that complaints filed beyond this condonable period without proper justification are beyond the jurisdiction of the IC and further emphasised that statutory authorities must adhere to procedural safeguards and natural justice principles during inquiries. As a result, J&K HC concluded that the complaint was time-barred and procedurally flawed and subsequently quashed the proceedings.

## Case Law: Kerala High Court

### Kerala High Court rules gratuity must be paid in lump sum, not installments

In *Sadhoo Beedi Enterprises vs. The Controlling Authority*<sup>42</sup>, Kerala High Court ("Kerala HC") emphasising that gratuity is a terminal benefit designed to provide immediate financial support to retirees, held that gratuity cannot be paid in instalments. Kerala HC considered a writ petition against an order directing the payment of gratuity in instalments. Justice Murali Purushothaman observed that, unlike pensions which are paid periodically, gratuity is a one-time lump sum payment upon termination of employment. Kerala HC referred to the Payment of Gratuity Act, 1972 ("Gratuity Act") and cited the Supreme Court's ruling in *Maniben Maganbhai Bhariya vs. District Development Officer*<sup>43</sup>, which highlighted the Gratuity Act's objective to ensure financial security for employees after retirement. The petitioner's request to pay the

<sup>40</sup> 2024: MPHC -IND: 30862 (decided on October 25, 2024)

<sup>41</sup> Writ Petition No. 441 of 2021 (decided on November 28, 2024)

<sup>42</sup> 2024: KER:91694, Writ Petition No. 36274 of 2024 (decided on December 4, 2024)

<sup>43</sup> AIR 2022 SC 2119

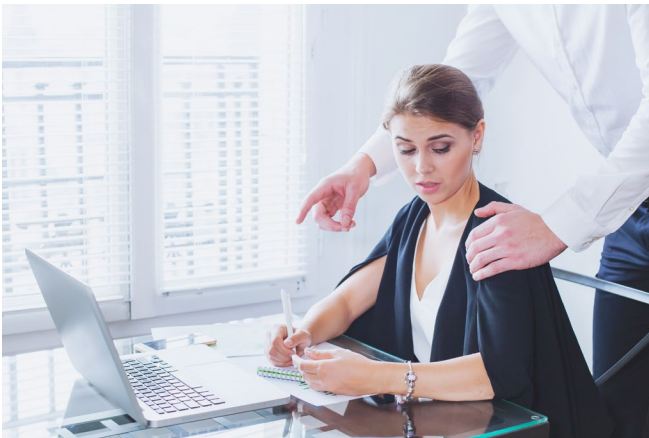


gratuity in 12 (twelve) instalments was rejected, with the ruling that financial distress of the employer is not a valid excuse for delaying or denying gratuity payments. The petitioner was directed to pay full gratuity amount and accordingly, the petition was dismissed.

## Case Law: Jharkhand High Court

### Jharkhand High Court dismisses petition on gratuity interest rate

In *Tata Steel Limited vs. State of Jharkhand and Ors.*<sup>44</sup>, Jharkhand High Court (“Jharkhand HC”) dismissed a writ petition challenging 2 (two) orders related to delayed gratuity payments. Petitioner argued that 10% per annum interest rate imposed under Section 7 (3-A) of Gratuity Act was excessive, citing the current long-term deposit rate of around 6%. However, the respondents contended that the interest rate of 10% was fixed by a government notification dated October 1, 1987, and remains binding unless altered by any new notification. Jharkhand HC upheld this stance, ruling that changes in long-term deposit rates do not automatically affect the gratuity interest rate, and dismissed the petition.



## JSA insights

### Handling anonymous complaints of sexual harassment under the POSH Act

The POSH Act stands as a significant legislative shield against sexual harassment of women at workplaces. It sets out a prescriptive redressal mechanism for

complaint resolution. This includes *inter alia* mandatory formation of an IC (or, ‘local committee’, as the case maybe) to handle complaints of sexual harassment<sup>45</sup> and timelines for filing and resolution of complaints; an IC’s responsibility to conduct fair and impartial investigations; and obligation to maintain confidentiality throughout the investigation process, to safeguard privacy of both the complainant and the respondent.

In the Indian organisational context, in addition to adoption of the mandatory prevention of sexual harassment at workplace policy under the POSH Act, companies adopt several other policies from a good governance and misconduct reporting perspective, which includes policies on whistleblowing, ‘bystander intervention’, anonymous ‘tip’ policies and the like. Very often, members of the management and even the IC find themselves in conflicting situations where a complaint of sexual harassment is routed to them anonymously – and more so, through reporting mechanisms under the above policies, from members and colleagues within the organisation and in some cases, even outside. In such cases, the following questions are often debated on, can an IC act on an anonymous complaint of sexual harassment? and what would be their responsibility or recommended way forward in such cases?

### Does the POSH Act set limitations on ‘anonymous’ complaints?

The POSH Act does not expressly call out the requirement that written complaints of sexual harassment cannot or should not be ‘anonymous’. Under Section 9 of the POSH Act, an ‘aggrieved woman’ can file a ‘written complaint’ of sexual harassment with the IC, ‘within prescribed periods’. The notable prescriptions here are that complaints to an IC must be filed by an ‘aggrieved woman’ and ‘in writing’. Where an ‘aggrieved woman’ is unable to file a ‘written complaint’, the POSH Act allows other persons to file such complaints on behalf of the aggrieved woman, provided she has consented to it.

Interestingly, adopting a strict interpretation of the statute, an aggrieved woman could still file a complaint of sexual harassment in writing, satisfying the above requirements while choosing to remain anonymous.

<sup>44</sup> Writ Petition No. 2120 of 2023 (decided on December 10, 2024)

<sup>45</sup> For the purposes of this newsletter, the focus on complaint resolution mechanism is limited to that of an IC only (and not *vis-à-vis* a ‘local committee’).



However, through judicial precedents, the position on this ambiguity is well settled under law that written complaints of sexual harassment cannot be anonymous, i.e., identity of an aggrieved woman cannot be held back, and that an IC cannot act on a complaint raised on anonymity. In the case of *Manjeet Singh vs. Indraprastha Gas Limited*<sup>46</sup>, the Delhi HC had set aside conclusions drawn by an IC on grounds that the complaint received was anonymous. It was noted that anonymous complaints cannot be acknowledged or acted upon unless submitted in writing. To investigate an incidence of alleged sexual harassment based on anonymity could present challenges for the IC. This approach is seen as contrary to the principles of natural justice, which are fundamental to internal investigations and disciplinary procedures. This applies to investigations under the POSH Act as well. Indian courts have time and again re-affirmed the significance of principles of natural justice to ensure a safer workplace and to maintain transparency in processes under the POSH Act.

One of the more important reasons for disallowing cognisance of anonymous complaints is that the law, while seeking to protect women from sexual harassment at workplace, also seeks to protect the respondent from frivolity of complaints. Judicial precedents have established that due process must be followed when investigating sexual harassment cases under the POSH Act. This includes providing the respondent with a reasonable opportunity of being heard, cross-examining witnesses and offering rebuttals against the allegations raised.

In case of an anonymous complaint, a respondent may not be in a position to address the above and hence, the necessity to present the respondent with full facts and circumstances of the case and specifics of allegations, including details of the aggrieved woman. Further, investigating anonymous complaints under the POSH Act, while undermining principles of natural justice, could also result in several other challenges including increased number of frivolous complaints and complaints from parties unrelated to the actual alleged incidence. Several other cases including *Vineeth V.V. vs. Kerala State Electricity Board and Ors.*<sup>47</sup> and *Aureliano Fernandes vs. State of Goa and Ors.*<sup>48</sup> have also established the need for an IC to investigate matters of sexual harassment in line with principles of natural

justice and to offer respondents with reasonable opportunity to defend their case.

Depending on the gravity of complaint, the IC or management may not be in a position to completely disregard the allegations or complaint solely on grounds that the complainant chose to conceal their identity. Some of the recommended way forward for members of management and IC in such situations could be to request and encourage the anonymous complainant to come forward and make full and adequate disclosures, and to have the aggrieved woman make a complaint in writing to the IC (and if complaint is being filed on behalf of the aggrieved woman, seek her consent in doing so). Management may also initiate fact-finding exercises to assess if there is any merit to the allegations which warrants disciplinary measures. Unless of course there is an official written complaint of sexual harassment following the above measures, the IC is likely to be limited in its duties and powers to act on such anonymous complaints under the POSH Act.



### Continued employee absenteeism: Employers' way forward

After the COVID-19 pandemic and introduction of work-from-home hybrid work models, organisations are facing newer challenges linked to prolonged employee leaves and absenteeism. While employers continue to accommodate leave requests to ensure employee welfare and enhanced work-life-balance, what is also seen is a growing trend around unauthorised continued periods of absence. Needless to say, absence from work can have significant

<sup>46</sup> 236 (2017) DLT 396

<sup>47</sup> (WP (C) No. 9331 of 2024)

<sup>48</sup> (Civil Appeal No. 2482 of 2014)

consequences at workplace, impacting not only work schedules, but also team dynamics.

### Legal position around period of absence

The Factories Act and applicable state specific shops and establishment regulations provide for minimum leaves to be extended to workers/employees, subject to applicable conditions. Organisations can choose to extend benefits over and above those which are statutorily prescribed. Unauthorised absence is typically handled under organisational policies, together with prescriptions under standing orders (if applicable), where such absence is usually regarded as a 'misconduct' resulting in appropriate disciplinary sanctions, ultimately leading up to termination, where severity of misconduct warrants the same. Model standing orders of some states such as Haryana, Telangana, Tamil Nadu, Maharashtra and Karnataka (subject to specific exceptions) provide that absence from work typically between 8 (eight) to 10 (ten) days could amount to unauthorised absence.

### Termination due to unauthorised absence

Indian courts, while recognising that unauthorised absence can be a misconduct and accordingly, initiation of disciplinary procedures can be a consequent action, has also held that an employee's services cannot be terminated solely on grounds of prolonged leave. The question of whether 'unauthorised absence from duty' amounts to misconduct or not, would largely depend on whether such absence has been wilful or due to compelling circumstances. Unless a disciplinary authority can prove that prolonged absence is wilful, such absence cannot amount to misconduct. In the case *Barun Chatterjee vs. State of West Bengal*<sup>49</sup>, the Calcutta High Court stated that merely proving that an employee was absent from duty without authorisation is not sufficient grounds for termination. It has to be proved that such absence was wilful.

In the case of *Chief Engineer, APSEB vs. K Naga Hema*<sup>50</sup>, the Andhra Pradesh High Court held that services of an employee cannot be terminated automatically due to prolonged unauthorised absence, without following a

proper enquiry. Even if standing orders of a company allow for automatic termination, principles of natural justice must apply. Employers must ensure a fair inquiry before termination<sup>51</sup>.

A free and fair enquiry process where principles of natural justice are followed must entail *inter alia* the following:

1. employees must be provided reasonable notice of the case against them;
2. employees must be provided reasonable opportunity to be heard;
3. disciplinary enquiry must consist of an impartial or unbiased person who is neither directly nor indirectly party to the case; and
4. disciplinary authority should not act arbitrarily and must act in good faith.

### Recommended approach before termination, proportionality of punishment

Employers can attempt to contact employees absent without notice, after expiry of a reasonable duration (as per applicable policies or standing orders) to determine their whereabouts. If the absence persists, a preliminary warning letter can document these efforts, notify employees of their breach of contract, and warn them of potential consequences including initiation of appropriate disciplinary actions. At least one warning letter should be issued, urging employees to return to office or report to their manager by a specified date. Where employees do not respond to these preliminary communications, employers may then proceed with initiating appropriate disciplinary actions on grounds of alleged misconduct relating to unapproved continued absence.

Punishments should be awarded after taking into account the gravity of offence, reasons for unauthorised absence as well as previous conduct of the employee. Punishments should also be proportionate to the nature of misconduct. Validity of reasons for unauthorised absence and proportionality of disciplinary actions must be assessed on a case-to-case basis. In *Malaikannu A. vs. Managing Director, Marudhu Pandiar Transport Corporation Limited*.

<sup>49</sup> W.P.S.T. No. 125 of 2013.

<sup>50</sup> 1996 (1) ALD 304 (DB)

<sup>51</sup> DK Yadav v J.M.A. Industries Ltd. 1993 SCC (3) 259

**and Anr.**<sup>52</sup>, the Madras HC ruled that termination for unauthorised absence, even when natural justice principles are followed, may be unreasonable if the absence was due to a serious medical condition, such as a heart ailment.

In **Union of India vs. Yashpal**<sup>53</sup>, the Allahabad High Court (“**Allahabad HC**”) examining a challenge to a termination order passed by an employer on account of the employee’s prolonged absence from work, noted that *“In the context of absence from duty without leave, all factors should have been examined by the disciplinary authority before award of major punishment of dismissal could be made”*. The Allahabad HC noted that,

*inter alia*, gravity of misconduct, past conduct, nature of duties, position in organisation, previous penalty, if any and requirement of discipline to be enforced were relevant to be considered by the disciplinary authority before awarding a major punishment such as dismissal from service. In the present case, the court set aside the termination order observing that the disciplinary authority (employer) had failed to take into consideration material aspects of the matter while passing the termination order, including past records of the employee.



<sup>52</sup> (2001) IILLJ1344Mad

<sup>53</sup> WA 15295/2023 (Allahabad 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, 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; and (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.

### The authors of this Compendium are:



**Gerald Manoharan**  
Partner



**Minu Dwivedi**  
Partner



**Sonakshi Das**  
Partner



**Bhavya Sriram**  
Partner



**Muskan Jain**  
Associate



**Ananya Sharma**  
Associate



**Prashaant  
Malaviya**  
Associate



**Mahemaa  
Senthilkumar**  
Associate



**Pratiksha Easwar**  
Associate



18 Practices and  
41 Ranked Lawyers



7 Ranked Practices,  
21 Ranked Lawyers



12 Practices and 50 Ranked  
Lawyers



14 Practices and  
12 Ranked Lawyers



20 Practices and  
22 Ranked Lawyers



Ranked Among Top 5 Law Firms in  
India for ESG Practice



Recognised in World's 100 best  
competition practices of 2025



Among Top 7 Best Overall  
Law Firms in India and  
11 Ranked Practices



Asia M&A Ranking 2024 – Tier 1

Employer of Choice 2024



**Ranked #1**  
**The Vahura Best Law Firms to  
Work**  
**Report, 2022**

11 winning Deals in  
IBLJ Deals of the Year

Energy and Resources Law Firm of  
the Year 2024

Top 10 Best Law Firms for Women in  
2022

11 A List Lawyers in  
IBLJ A-List - 2024

Litigation Law Firm  
of the Year 2024

Innovative Technologies Law Firm of  
the Year 2023



Banking & Financial Services  
Law Firm of the Year 2022

7 Practices and  
3 Ranked Lawyers

For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

[www.jsalaw.com](http://www.jsalaw.com)



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi

This compendium is not an advertisement or any form of solicitation and should not be construed as such. This compendium has been prepared for general information purposes only. Nothing in this compendium constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. This compendium is a consolidation of only the relevant notifications/judgements circulated in the newsletters or as prisms. Please read the original documents of the notifications/ judgments. Please note that this compendium is not exhaustive. JSA and the authors mentioned in the compendium disclaim all and any liability to any person who takes any decision based on this publication.