



Tax alert: Delhi Government reiterates contractor's and principal employer's responsibility vis-a-vis statutory bonus

30 September 2024

The Office of the Commissioner (Labour) Labour Department, Government of the National Capital Territory of Delhi ('GNCTD'), on 23 September 2024, issued an advisory on the responsibility of the contractor to pay statutory bonus to its employees and principal employer's responsibility to ensure such obligation is fulfilled.

In a nutshell



The Office of the Commissioner (Labour) reiterated that it is a statutory responsibility of the contractor to pay bonus to its employees.



Principal employers are urged to ensure disbursement of bonus to outsourced employees by their contractors.



Minimum bonus of 8.33% of basic and dearness allowance to be paid within 8 months of close of accounting year.



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Background and Issue:

- The Payment of Bonus Act, 1965 ('POBA') gives a statutory right of bonus to employees.
- Various government departments engage a large number of employees through contractors.
- The above outsourced employees complained regarding non-receipt of bonus from contractors. In light of this, the labour department of Delhi has recently issued an advisory, over and above those issued in 2018 and 2023.
- The advisory reiterates the principles as explained below.
- A Press Release was also issued by the Union Ministry of Labour and Employment in 2023, wherein states were asked to include statutory obligations of contractor in their contracts with the latter, for protecting the rights of the outsourced employees.

Key Highlights from the Advisory:

The Delhi Government reiterates the following principles through the advisory issued to its departments:

- Every employer to whom POBA is applicable, is required to pay to every eligible employee a minimum bonus of 8.33% of basic and dearness allowance, within 8 months of the close of accounting year.
- Even contractors are employers under POBA and hence ought to pay bonus to their employees.
- By drawing attention to provisions of the Contract Labor (Regulation and Abolition) Act 1970 ('CLRA'), the advisory also casts the responsibility on principal employers who employ such outsourced employees, through contractors, to ensure that contractors fulfil their responsibility vis-à-vis payment of bonus.
- In case of non-payment of bonus, there is a risk of prosecution to contractors
- Additionally, bonus amount due is recoverable from contractors under the Industrial Disputes Act, 1947 and the said amount if not paid, is recovered as arrears of land revenue.

Comments:

- This advisory highlights the importance of the issue and their relevance to all principal employers and contractors, on their respective responsibilities
- Further, principal employers engaging outsourced employees through contractors have an added responsibility under CLRA to ensure that contractors fulfil their statutory obligation.
- Hence, contractors that are employers under POBA and principal employers engaging outsourced employees through contractors, would be well advised to review their processes to ensure compliance with the statutory requirement.



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