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Social security newsletter

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I. Regulatory Updates

Motor Transport and Other Allied Workers in Karnataka covered by new legislation for social security and welfare measures

The Karnataka Motor Transport and Other Allied Workers' Social Security and Welfare Act, 2024 ('Karnataka SW Act') has been published in the official gazette on 7 March 2024 pursuant to the Governor's assent¹. The Karnataka SW Act aims to provide social security and other welfare benefits to motor transport and other allied workers. The date from which it will be effective is yet to be notified by the state government.

In brief, the Karnataka SW Act applies to the workmen working in every motor transport undertaking, garages, workshops, automobile body building and any other similar establishments which shall be notified by the State Government. Further, a Welfare Board known as 'the Karnataka State Motor Transport and Other Allied Workers' Social Security and Welfare Board' ('Board') would be constituted.

The Karnataka SW Act requires every motor transport and other allied worker to register with the registering officer, in the digital portal, for receiving social security and other benefits. The worker would also need to contribute to specific schemes as prescribed to be entitled to the benefits.

Further, the Government has also been empowered to collect cess from establishments in the business of transport of persons or goods in the prescribed manner or at such time and intervals. The manner of calculating the cess in each transaction delivery would be prescribed for different motor vehicles or for different classes of motor vehicles. A social security fund called the Motor Transport and Other Allied Workers Social Security Fund would be created by the Board where all the sums collected through levy of cess, surcharge, and taxation, grants from the central / state government and amounts received on account of corporate social responsibility would be kept. The fund would be used for expenses towards schemes for the beneficiaries such as payment of any premium, contribution to any government pension fund or financial assistance for accident benefit, educational assistance, health benefit and pension etc.

Impact of the notification:

The Karnataka Government aims to create social and welfare programs for the workers in the unorganized sector of motor transport industries. Although the Karnataka SW Act indicates collection of cess being linked to each transaction, the larger framework for calculation and collection of cess is awaited.

We could expect more of such Bills to be introduced for other sectors, similar to the Karnataka SW Act. It remains to be seen how these Bills on social security would play out / align once the labour codes are brought into effect.

¹ March 6, 2024



Governments of Haryana and Rajasthan permit exemptions to factories employing women during night shift, subject to conditions being fulfilled

Over the years, there have been amendments and notifications issued under Section 66(1) of the Factories Act, 1948 to enhance safety measures for women workers and promote gender equality in employment opportunities. Accordingly, various state governments in India have different rules and conditions regarding the employment of women during night shifts.

Recently, the Government of Haryana issued a notification² prescribing the conditions to be met by any factory which seeks to apply for exemption for employing women during night shift i.e. between the hours of 07.00 PM to 06.00 AM. This exemption is applicable for a period of 1 year and subject to employers meeting requirements under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ('POSH Act'), compliance with provisions of other applicable labour laws, including the Factories Act, 1948, Payment of Equal Remuneration Act 1976, other labour legislations related to hours of work, rest intervals, holidays, etc., provision of transport and medical facilities.

Some other miscellaneous obligations of the employer include:

- Arrangement of proper lighting and CCTV camera inside and surrounding the factory, including all such places where the female workers may move out of necessity in the course of her work.
- Employment of women workers in a batch of not less than ten during night shift.
- Ensuring sufficient women security guards at the entry as well as exit point of the factory.
- Assignment of woman supervisors/shift-in-charge/other supervisory staff for the women workers working during the night shift.
- Obtaining consent or declaration from women worker, including security guard, supervisors, shift-incharge to work during the night shift between 7 PM to 6 AM.
- Display of contact details of police, hospital, members of IC, etc. at conspicuous places.
- Scheduling a monthly grievance meeting of women workers working in all shifts through their representatives for further resolution.
- Any other condition as may be specified by the Central or State Government in this regard time to time to be complied with.

The Government of Rajasthan passed an amendment³ under the Rajasthan Shops and Commercial Establishments Act, 1958, effective for a period of 3 years from March 19, 2024, by which establishments are permitted to allow women employees to work at night, provided their consent has been obtained for the same. The female employees would need to be provided with appointment letters as well as ID cards. Similar to the requirement in Haryana, the women workers in Rajasthan need to be provided with transport to and from the workplace and their safety must be ensured by the employer, including compliance under the POSH Act.

There are special conditions for pregnant women – they would not be required to work during night shifts 3 months prior to their delivery date and 1 month post the delivery date.

² March 14, 2024

³ March 7, 2024



Impact of the notification:

State Governments are taking efforts to make the working conditions conducive for female workforce. On similar lines, the Labour department of Haryana government has amended erstwhile guidelines permitting women to work during the night shift in the factory under applicable labour legislations. The Rajasthan Government has also taken steps to permit women to work in night shifts. With the mechanisms being laid down to ensure safety and security of the women workforce, the guidelines enable them to work in the night shift thereby bringing in diversity, equality and inclusion of women.

This is a welcome step to boost women's economic empowerment and provide equal opportunity to work in India. It further helps to increase in women's labour participation, productivity, quality and international competitiveness leading gender equity in the job market while ensuring their safety at the work place.

Government of Gujarat grants certain exemptions to IT/ITes and financial services sector

The Government of Gujarat released a notification dated 5 February, 2024 exempting IT/ITes and financial services companies from the specified provisions under the Gujarat Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2019.

The notification exempts these companies from complying with requirements such as observance of mandated working hours and spread over of hours of work, subject to companies ensuring health and safety of workers, prohibiting discrimination of female employees, ensuring payment of overtime as prescribed and whenever applicable, and taking other welfare measures.

The current exemption has been provided for a period of 2 years from the date of issue of the notification.

Impact of the notification:

With this notification coming into effect, IT/ITes and financial services companies in Gujarat would not have challenges where working hours and spread over hours exceed the prescribed limits. While this can be seen as a leniency being provided, companies would also need to ensure that the workforce has adequate rest and health is not compromised.



Revision of Labour Welfare Fund ('LWF') contribution rates in Maharashtra

As per a recent notification⁴, the Maharashtra Government has revised the rate of contributions by employers and employees towards the Labour Welfare Fund under the Maharashtra Labour Welfare Fund Act, 1953 ('LWF Act').

The LWF Act covers establishments registered under the Maharashtra Shops & Establishment legislation which employs or on any working day of the preceding 12 months, employed 5 or more persons. The LWF Act prescribed the following rates of contribution, payable every 6 months:

- Employee: Those earning up to INR 3000: INR 6, Employer: INR 18
- Employee: Those earning above INR 3000: INR 12, Employer: INR 36

As per the amendment to Section 6BB under the Act, the new contribution rate is INR 25 for an employee, payable every 6 months. For an employer, the contribution has been revised to thrice the amount of the contribution payable by the employee i.e., INR 75.

<u>Impact of the notification:</u>

As per the amendment, the earlier prescribed salary limits for the purpose of contribution have been done away with. Further, basis this update, employers would need to deduct a higher amount (compared to the earlier amount) from the wages as employees' contribution, to meet their obligations under the LWF Act. Employers would also need to separately contribute an amount of INR 75 as their contribution, every 6 months. While LWF legislations are state-specific and vary across states, primarily they regulate and incorporate various services, benefits and facilities offered to the employee through the state government.

Government of Maharashtra amends Rules on Professional Tax

Under Section 27A of the Maharashtra State Tax On Professions, Trades, Callings And Employments Act, 1975 ('Maharashtra PT Act'), exemptions from applicability of the provisions of the Maharashtra PT Act have been given to certain categories of persons. One such exemption had been given to a person suffering from a permanent physical disability (including blindness) specified in the rules which has the effect of reducing considerably such individual's normal working capacity. The disability has to be certified by an approved physician, a surgeon or an oculist.

Rule 32 of the Rules under the Maharashtra PT Act provides a list of physical disabilities and mental retardation for the purpose of exemption under the concerned legislation.

Under the recent amendment⁵, this rule has been repealed.

Impact of the notification:

With the deletion of this rule, there would be no specified list / categories of permanent physical disability warranting exemption from the provisions of the Maharashtra PT Act. Hence, it could widen the category of claiming exemptions under the Maharashtra PT Act.

⁴ March 18, 2024

⁵ March 15, 2024



Sikkim issues draft rules under the Occupational Safety, Health and Working Conditions Code, 2020 ('OSH Code')

As per a recent notification⁶, the labour department of Sikkim has notified the draft rules under the OSH Code. The draft rules have been published inviting objections/suggestions (from stakeholders and all persons likely to be affected by the said rules), to the Additional Labour Commissioner, Labour Department of Sikkim by June 9, 2024.

Some of the key aspects include:

- 1) Electronic registration for unregistered establishments by giving details as specified in Form-1. The Form shall be signed digitally or in any other manner as may be required on the portal.
- 2) Every employer to provide free annual medical examination to its employees (drawing wages less than or equal to ceiling specified under Code on Social Security, 2020) aged 40 or older.
- 3) Letter of appointment to be given to employees, without which they shall not be employed in any establishment.
- 4) A worker may not be required to work for more than 48 hours in a week. The total period of work of a worker, including the rest hours, may not exceed 10.5 hours a day. No worker may be allowed to work for more than five hours without an interval of half an hour. In case of flexibility in working hours, the total period of work of a worker, including the rest hours, may not exceed 12 hours a day.
- 5) Every worker is entitled to overtime at twice the rate of wages if they work for more than the specified hours.

Draft Rules by Sikkim under the OSHWC Code, 2020 allows employers to adopt flexible work arrangements whereby a worker can work for four days a week as well. Such worker will only be eligible for overtime pay after 48 hours of work in a week without any daily threshold for overtime.

The Draft Rules also have special provisions on the employment of women.

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⁶April 25, 2024



II. Case Updates

Circumventing appellate procedure to avoid mandatory pre-deposit not permissible

The High Court ('HC') of Jammu & Kashmir and Ladakh dealt with a Writ Petition⁷ filed under Article 226 of the Constitution regarding the grant of a gratuity award. Inter alia other issues, the HC ruled on the issue of appeal before the Appellate Authority under the Payment of Gratuity Act, 1972 ('Gratuity Act') against the gratuity award passed by the Controlling Authority ('CA'). The HC stated that it is mandated under Section 7(7) that the appeal be filed within 60 days accompanied by a certificate from the CA which confirms the award deposit. Relying on other rulings, the HC highlighted the significance of the pre-deposit provision in securing the gratuity amount during the process of appeal. It was held that a pre-deposit was fundamental to consideration of appeal by Appellate authority.

Further, the HC asserted that the employer cannot circumvent the procedure prescribed under Section 7(7) by approaching the High Court to avoid paying the pre-deposit amount. The HC reaffirmed that the remedy provided under the Gratuity Act must be pursued by the Appellant and matters concerning the entitlement to gratuity are subject to determination by the competent authority.

Contract worker who carries out work of a perennial nature will be regularized

The Supreme Court ('SC') has held⁸ that workers engaged in permanent or perpetual work of an employer cannot be categorized as 'contract workers'. The employer in this case had 32 workers who began working through a contractor from 1984 to 1994. A settlement was reached in 1997, regularizing 19 (out of the 32) workers. The remaining 13 workers were not regularized. The Tribunal in Orissa directed the regularization of the 13 workers based on the nature of their work. The Orissa HC also upheld the Tribunal's decision.

Upon the case coming to the SC, the SC held that categorizing such contract workers under the Contract Labour (Regulation & Abolition) Act, 1970 ('CLRA') would be seen as a case of misclassification due to their nature of work which was essentially perennial or permanent work. Accordingly, the SC ordered the employer to regularize them. The SC also noted that the denial of employment and regularization for the 13 workers was wrongful and ordered that there should be no restriction on their wages. The SC has directed the employer to calculate back wages for these workers from the decision of the Tribunal in May, 2002.

Oooperative Market Society Limited Bishnah v Assistant Labour Commissioner, Writ Petition (Civil) No 1483 of 2020

⁸ Mahanadi Coalfields Limited v Brajrajnagar Coal Mines Workers' Union, Civil Appeal Nos 4092, 4093 of 2024.



II. Case Updates

Maternity Benefit cannot be denied to an employee who is on probation

The Maharashtra Administrative Tribunal ('MAT') has held⁹ that a female employee cannot be denied her basic human and natural right to be a mother due to her being on probation with the employer. The MAT stated that probation cannot be an obstacle to a female employee and that the employer may choose to extend the probation for an employee's assessment only if the performance in the corresponding months on her resuming work is found unsatisfactory. If the work is found to be satisfactory in the 180-day period after she resumes work post maternity, her seniority would be deemed from the end date of her original probation period.

 Provisions mandating provident fund and pension contributions by International Workers constitutionally invalid¹⁰

The International Worker ('IW') provisions (Para 83 of EPF Scheme, 1952 and Para 43-A of EPS, 1995) mandating contributions by non-Indian passport holders under the Provident Fund regulations were introduced effective 1 November 2008. The objective was to encourage foreign Governments to sign social security agreements ('SSAs') with India which would enable Indian nationals working overseas to be exempt from host social security contributions subject to specified conditions.

Recently, the provisions on IWs have been held to be constitutionally invalid and arbitrary by the HC of Karnataka, in its ruling on April 25, 2024. The HC has further ruled that all orders passed against which the writ petitions were filed and covered in the judgement, are unenforceable.

The HC took note of the fact that unlike domestic workers, where the statutory wage ceiling of INR 15,000 pm was applicable, IWs were mandatorily required to contribute to PF on total wages irrespective of their salary levels. IWs were eligible to withdraw the PF balances only upon retirement at the age of 58 unless they were covered under an SSA.

The HC considered that non-citizen employees working in India and employees who are citizens of India are treated as two different classes but when working in India they are equal but treated differently. That being so, it is violation of Article 14 of the Constitution of India. Further, such provisions also fail to defeat the very intent of the Act which is to uplift and maintain the rights of the lower/ weaker sections and not for the rich.

On these grounds, the HC struck down the validity of the provisions of the IW scheme.

For more information, please contact

Divya Baweja

Deloitte Touche Tohmatsu India LLP

Saraswathi Kasturirangan

Deloitte Touche Tohmatsu India LLP



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